

CYNGOR SIR POWYS COUNTY COUNCIL

PLANNING, TAXI LICENSING AND RIGHTS OF WAY COMMITTEE

5th October 2017

REPORT BY: HEAD OF LEISURE AND RECREATION

**SUBJECT: Applications to register a new Town or Village
Greens – method of determining applications**

REPORT FOR: DECISION

Applications to register a new Town or Village Green under section 15 of the Commons Act 2006 – Method of determining applications.

Background:

Applications can be made to a Commons Registration Authority to register new Town or Village Greens under section 15 of the Commons Act 2006. Powys County Council is the Commons Registration Authority for the whole county, including areas that are in Brecon Beacons National Park.

Section 15 of the Commons Act 2006 allows for registration of an area of land as Town or Village Green if either:

- It can be shown that 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 (section 15(2)); or
- The landowner wishes to voluntarily register an area of land that he / she owns as a Town or Village Green (section 15(8)).

There are strict criteria in relation to the time period within which an application can be made under section 15(2) of the Commons Act 2006. In Wales, either use of the land for lawful sports and pastimes must be continuing to take place at the time of application, or the application must be submitted within 2 years of the date on which the use has stopped.

These criteria do not apply to applications made under section 15(8) of the Commons Act 2006; a landowner can apply to voluntarily register their land as a Town or Village Green at any time.

Current situation:

The Council's current approach to processing and determining applications to register new Town or Village Greens is outlined on the flowchart at appendix A. This is sent out to prospective applicants and other interested parties.

When an application is received by the Council, officers must check whether it has been duly made. This includes checking that the relevant sections of the application form have been completed and that supporting evidence has been supplied. Without prejudice to the final outcome, officers must decide whether there is a 'prima facie' case to be considered.

If an application is accepted as being duly made, it must then be advertised, via a newspaper advertisement and site notices. Notice of the making of the application must be served on the applicant, affected landowners and others and a 6-week period must be allowed for receipt of any objections.

Following that, the Council must formally determine the application, on the basis of the legal criteria and available evidence. This is a 'quasi-judicial' role and factors outside the legal criteria must not be taken into account, when deciding whether a new Town or Village Green should be registered.

If the Local Member for the ward affected by the application also sits on the Planning, Taxi Licensing and Rights of Way Committee, then they must take no part in the formal determination of the application at all, as this could lead to the Council's decision being challenged in the courts. If they choose to submit evidence as a witness for the case, then they do so entirely in a personal capacity and not in their role as the Local Member.

It is not proposed that this overall arrangement be changed. However, there is a degree of flexibility in terms of how each individual application is determined.

The purpose of this report is to give the Planning, Taxi Licensing and Rights of Way Committee an overview of the ways in which it may determine these applications. The Committee is asked to consider the general circumstances under which they may wish to determine a case on the basis of a hearing, rather than written evidence only, and when it may be appropriate to appoint an independent inspector.

Options:

Broadly, the law allows Commons Registration Authorities to determine applications to register new Town or Village Greens in one of two ways being:

- To consider the documents provided by the applicant and objector and determine the application solely on the basis of the written evidence; or
- To hold a hearing, so that the applicant and objector and their witnesses can appear and present evidence in person. The Committee can then determine the case following the hearing, on the basis of both the written information submitted beforehand and any further information gained during the hearing.

The Council is not required to hold a hearing if an application is opposed. However, the Council must provide opportunity for the applicant to deal with any matters raised by the objector and any other matters that could lead to the Council rejecting the application.

The Council may also opt to appoint an independent legal specialist in relation to these applications. The specialist may be asked:

- To provide written advice (i.e. a barrister's opinion) about specific points in relation to an application e.g. if a particularly complex or unusual issue arises; or
- To hold a non-statutory hearing on behalf of the Council, to hear and assess all of the evidence in relation to an application. In this event, the specialist may be a barrister or other expert e.g. a Planning Inspector. They will write a report for the Council, detailing their assessment of the evidence. Whilst the specialist may make a recommendation in relation to the outcome of the application, it remains the Council's responsibility to formally determine the case.

Evidence from individuals, including the applicant and objectors, about usage or non-usage of the land for 'lawful sports and pastimes' is key to deciding whether a new Town or Village Green should be registered or not. The evidence of those claiming to have used the land is often referred to as 'user witness' evidence.

Irrespective of whether objections are made in relation to an application, it is important that the Committee has sufficient detail to be able to assess whether, on the balance of probabilities, the legal criteria for registration are met or not.

In relation to the options for determination:

- If an application is not opposed, it may be reasonable to assume that the content of the user witness evidence is not being questioned. As such, there may be sufficient information in written statements to determine the case without further enquiry.
- If an application is opposed, consideration needs to be given to the content of the objection(s) made. It may be that the objections are solely related to factors that cannot be taken into account in determining the application. In that case, determination on the basis of written evidence alone may be sufficient.
- However, objectors may challenge the content of the evidence supplied by witnesses about use, or non-use of the land. Objections may be made in relation to whether the evidence of use satisfies the legal criteria or not, or may relate to the interpretation of a legal criterion in relation to the application in question. A hearing gives opportunity for further clarity to be sought from witnesses, if information is lacking in the written evidence supplied.

The Committee can either conduct the hearing itself, or can appoint an independent inspector to do so.

If the Committee conducts the hearing, Committee members attend and hear the evidence in person. A range of written evidence from a variety of sources,

including the statements to be made by witnesses must be supplied by the applicant, objector(s) and any other interested parties before the hearing opens, to allow time for it to be reviewed. Once the hearing opens, the Committee will observe witnesses presenting evidence in person and being cross-examined. A hearing can last one or more days, depending on the number of witnesses, complexity of their evidence and time taken for cross-examination. A formal decision is made after the close of the hearing; the Committee members have opportunity to debate the case in closed session and then issue a formal written decision.

If an independent inspector is appointed, the Committee members do not attend the hearing at all and do not hear any of the witness evidence in person. In that respect, the Committee is reliant on the content of the inspector's report. An officer report is written to accompany the inspector's report and presented at a public Committee meeting, so that a formal decision can be made about the application.

As explained above, appointing an independent inspector does not replace the Council's responsibility to determine the application in question. It should be noted that the Committee is not obliged to follow the recommendation of an independent inspector. The Committee can diverge from the inspector's recommendation, if it is considered that this is justified in the light of the evidence and legal criteria.

Irrespective of the procedure followed, written advice can be sought by the Council from a legal specialist in relation to specific points at any stage of the application. A formal decision can be deferred until any necessary legal advice has been received.

Proposals:

The Committee will be asked to decide how individual cases are determined. However, the following general approach is proposed:

1. That unopposed applications be determined on the basis of written evidence only; an officer report with a recommendation will be prepared, to accompany the application and evidence and will be presented at a public Committee meeting;
2. That if the matters raised in objections relate solely to matters that are outside the legal criteria for registration, then the application will be determined on the basis of written evidence only; again, an officer report with a recommendation will be prepared, to accompany the application and evidence and will be presented at a public Committee meeting;
3. That if objections are made in relation to the content of the witness evidence about use or non-use of the land and whether it meets the legal criteria, then the application will be referred for a hearing.

4. If the application is referred for a hearing, the hearing will be conducted in one of the following ways:
 - a. Under most circumstances, hearings will be conducted by the Planning Taxi Licensing and Rights of Way Committee, so that members can hear the evidence and cross-examination themselves. The decision will be made following the close of the hearing and a debate in closed session, then issued in writing;
 - b. However, under exceptional circumstances, an independent inspector will be appointed to hold the hearing on the Council's behalf and prepare a report of their findings. That report will subsequently be presented, together with an officer report, at a public Committee meeting.

'Exceptional circumstances' will be identified by the Definitive Map and Commons Registration Officer, in consultation with Legal Services and with the Head of Leisure and Recreation. The Committee will then be asked to take those circumstances into account, when deciding how the application should be determined.

An example of such a circumstance would be where a conflict of interest is identified, that could be seen to be prejudicial to the Council's ability to determine the case impartially. This may arise if, for example, the Council was the owner of the land affected by the application.

Occasionally, the applicant and objectors may decide that they do not wish to attend a hearing to present evidence at all. If both parties are in agreement, under those circumstances, then the Committee could determine an opposed application on the basis of written evidence and an officer report only.

RECOMMENDATION:

- 1. That the approach under points 1 - 4(b) inclusive be outlined to applicants and other interested parties as the way in which applications for new Town or Village Greens will be determined, but subject to the Committee's view on individual cases.**

Appendices:

Appendix A Flowchart outlining the current process for determining applications for new Town or Village Greens (Feb 14)