

**CYNGOR SIR POWYS COUNTY COUNCIL**

**PLANNING, TAXI LICENSING AND RIGHTS OF WAY COMMITTEE**

**5<sup>th</sup> October 2017**

**REPORT BY: HEAD OF LEISURE AND RECREATION**

**SUBJECT: 16-001VG Application to register a new Town or Village Green – method of determining application**

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**REPORT FOR: DECISION**

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**16-001VG Application to register a new Town or Village Green on land at Aberhafesp – Method of determining application.**

**Background:**

An application to register a new Town or Village Green on land at Aberhafesp was received on 2<sup>nd</sup> November 2016. The land affected by the application is located at the Hillcrest housing estate and is shown on the plan at appendix A; this is Powys County Council's interpretation of the plan that was supplied by the applicant.

The applicant is Mr Richard Amy of Madryn, Hillcrest, Aberhafesp. The owners of the land affected by the application are Mr F Davies of Ty Sgwylfa, Aberhafesp and his brother, Mr P Davies of Chimneys, New Mills.

The application and supporting documents were checked by officers of Countryside Services and Legal Services. On 16<sup>th</sup> November 2016, the application was registered as having been 'duly made' and allotted the reference number 16-001VG, in accordance with statutory requirements.

It was then advertised via a newspaper advertisement and site notices. Notice of the making of the application was served on the applicant, affected landowners and others and a 6-week period was allowed for receipt of any objections.

An objection was received, from Mr P Davies as one of the owners of the land affected by the application. Subsequent correspondence from Wace Morgan Solicitors confirms that the objection is from both Mr P Davies and Mr F Davies.

The Committee is not yet being asked to consider the evidence in relation to this application, nor to decide whether it should be granted or not. This report is solely to seek the Committee's view as to how the application should be determined, as there are several options as detailed below.

**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 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.

Opportunity has been allowed for the applicant (Mr Amy) to see and comment on the objections made. Irrespective of whether this case is decided via a hearing or on the basis of written evidence only, a timetable will be provided to the applicant and objector for submission of further comments and evidence and their final case statement. These submissions will be circulated, so that each can see and comment on the other party's statement and evidence, prior to any decision being made by the Committee.

The objections have not been appended to this report, as it is important that this case is not 'pre-determined' in any way. The important point for the Committee to consider is that the objectors have raised matters in connection with the evidence supplied. They have questioned whether it demonstrates that the legal criteria for registration of a Town or Village Green are met.

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.

This application has been opposed, bringing the user witness evidence of the applicant into question. A hearing would allow for witnesses to present evidence in person and for the applicant and objector to cross examine the other party and their witnesses. That gives opportunity for further clarity to be sought, if information is lacking in the written evidence supplied.

That course of action has been suggested to the applicant and objectors and seems broadly acceptable to both parties. Given that, it is proposed that this application be determined once a hearing has been held.

Finally, the Committee could either decide to conduct the hearing itself, or could appoint an independent inspector to do so.

Appointing an independent inspector does not replace the Council's responsibility to determine this case. Rather, an independent inspector will hold the hearing and write a report, as the basis on which the Committee can then make a decision about the case.

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

For this application, no such conflict of interest or other exceptional circumstance has been identified. The determination of these applications must be based solely on an assessment of whether the evidence meets the legal criteria. As such, the Local Member for the affected ward cannot take any part in determining the case, if they also sit on the Planning, Taxi Licensing and Rights of Way Committee.

Opportunities for members of the public to speak to the Committee are within the framework of the public hearing and can be subject to cross-examination by the applicant and objectors. There is no further opportunity for public speaking after the close of the hearing.

Given this, it is proposed by officers that a hearing be conducted by the Committee, so that the Committee members can attend and hear the oral evidence presented themselves.

If any novel or particularly complex legal issues do arise during the hearing, then the formal decision about the case can be deferred. That would allow time for legal advice to be sought in relation to any specific issues raised, so that the Committee has full information on which to base their decision.

#### **RECOMMENDATIONS:**

- 1. That a hearing be held by the Planning, Taxi Licensing and Rights of Way Committee to hear the evidence in relation to application 16-001VG to register a new Town or Village Green on land at Aberhafesp; and**
- 2. That the application be determined following the hearing, with the opportunity to seek further legal advice before making a decision if required.**

#### **Appendices:**

Appendix A Plan of land affected by application 16-001VG