

CYNGOR SIR POWYS COUNTY COUNCIL

PLANNING, TAXI LICENSING AND RIGHTS OF WAY COMMITTEE

10th and 11th October 2018

REPORT BY: HEAD OF LEISURE AND RECREATION

**SUBJECT: Commons Registration Act 1965 / Commons Act 2006
Application 16-001VG to Register a new Town or
Village Green**

REPORT FOR: INFORMATION

Application 16-001VG to register a new Town or Village Green on land at Hillcrest, Aberhafesp (Community of Aberhafesp.)

The application:

1. Application 16-001VG was made by Mr Richard Amy and is dated 1st November 2016.
2. The land subject of the application is a parcel of land surrounded by the housing estate known as 'Hillcrest', Aberhafesp. It extends to an area of approximately 0.15 hectares (0.32 acres) and is located within the estate, to the east of the B4558 and to the west of Aberhafesp Hall, Aberhafesp, Powys. The land is shown edged in red on the location plan at appendix A.
3. The application was made on form 44, as required by The Commons (Registration of Town or Village Greens) (Interim Arrangements) (Wales) Regulations 2007. It was received by the Registration Authority on 2nd November 2016.
4. The application was numbered 16-001VG and stamped as duly made on 16th November 2016, following a check by officers of Commons Registration and Legal Services.
5. The application was accompanied by four exhibits, as follows:
 - a. Exhibit A: A plan of the land that the applicant is seeking to register and the locality or neighbourhood to which the alleged green relates;
 - b. Exhibit B: Two photographs;
 - c. Exhibit C: A single photograph;
 - d. Exhibit D: User witness evidence, in the form of 17 letters.
6. Notice of the application was advertised in the County Times on 20th January 2017. Notices were displayed on site and served on the applicant and landowner(s), as required by the Regulations; the Community Council was also notified of the application.

7. A period of 6 weeks from the date of advertising was allowed for receipt of any objections or representations, with the deadline being 3rd March 2017.
8. An objection was received, from the owners of the land affected, Mr F Davies and Mr P Davies. It should be noted that responsibility for representing the case for the landowners now rests solely with Mr F Davies.
9. The objection was in the form of:
 - a. A letter from Wace Morgan solicitors, setting out the legal basis for the objection from their clients, Messrs Davies;
 - b. A letter from Messrs Davies and three pieces of correspondence between other parties.
10. Aberhafesp Community Council submitted an email expressing support for the application, although this was received after the deadline of 3rd March.
11. The applicant was provided with a copy of the objection and given opportunity to comment on it; his comments were forwarded to the objector. Further to that, the applicant and objector have been given opportunity to submit any further witness statements, together with case summaries and legal arguments. These have been provided to the other party for review.
12. The applicant has now submitted user witness evidence from a total of 26 individuals, including himself. His responses to the objection (which include some witness evidence, further photographs and correspondence about planning proposals) are part of the papers for the hearing. He has also submitted further photographs with his witness statements.
13. The objector has submitted his own witness statement, in the form of a letter. He has also submitted a legal submission for the hearing, prepared by Manby Bowdler solicitors on his behalf.

The Statutory Requirements:

14. 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.
15. The burden of proof is the normal, civil standard, namely, the balance of probabilities.

Locality and Neighbourhood

16. 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.

17. The application is based on long use of the application land by the inhabitants of the area marked in blue on the plan at exhibit A. The applicant has not stated whether the area identified is a neighbourhood or locality.

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 1st November 2016 and was received by the Registration Authority on the 16th November 2016. The relevant 20-year period of use by the inhabitants of the locality would therefore run from November 1996 to November 2016.

Use of the land for lawful sports and pastimes

21. 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.”

22. The activities need to have taken place on the land subject of the application.

23. 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.)

Use ‘as of right’

24. 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.

25. 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.

26. 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’.

Use by a significant number of inhabitants of the locality

27. ‘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]*

28. 'Significant' implies a number of users relative to the size of the population of the relevant locality or neighbourhood.

CONCLUSIONS:

Following the Hearing, having had the opportunity to examine the written evidence provided, hear the oral evidence presented and seek further legal advice if needed, 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 Hillcrest, Aberhafesp as shown edged red on Notice Plan 16-001VG, be accepted and the land registered as a 'new' town or village green;

OR:

(2) On the basis that only part of 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 Hillcrest, Aberhafesp as shown edged red on Notice Plan 16-001VG, be accepted in part.

OR:

(3) 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 Hillcrest, Aberhafesp as shown edged red on Notice Plan 16-001VG, be rejected.