

CITY AND COUNTY OF SWANSEA

NOTICE OF MEETING

You are invited to attend a Meeting of the

RIGHTS OF WAY AND COMMONS SUB COMMITTEE

At: Committee Room 2, Civic Centre, Swansea

On: Wednesday, 8 October 2014

Time: 2.00 pm.

AGENDA

| | Page No. |
|--|----------|
| 1 Apologies for Absence. | |
| 2 To receive Disclosures of Personal and Prejudicial Interests. | 1 - 2 |
| 3 Minutes. To approve as a correct record the Minutes of the Meeting of the Rights of Way and Commons Sub Committee held on 13 August 2014. | 3 - 8 |
| 4 Alleged Public Footpath from Birchgrove Road to Smiths Road - Community of Birchgrove. | 9 - 18 |
| 5 Application to Register Land known as Castle Acre Green, Norton, Swansea as a Town or Village Green - Application No.2731(S). | 19 - 21 |
| 6 Application to Register Land at Picket Mead, Newton, Swansea as a Town or Village Green - Application No.2730(S). | 22 - 24 |
| 7 Date of Next Meeting - 2 p.m. on Wednesday, 3 December 2014. | |



Patrick Arran
Head of Legal, Democratic Services & Procurement
1 October 2014

Contact: Democratic Services: - 636016

RIGHTS OF WAY & COMMONS SUB COMMITTEE (12)

Councillors

Labour Councillors: 8

| | |
|------------------|-------------------|
| Ann M Cook | Jennifer A Raynor |
| Joe A Hale | Robert V Smith |
| Jane E C Harris | Des W W Thomas |
| Yvonne V Jardine | T Mike White |

Liberal Democrat Councillors: 2

| | |
|--------------|--------------|
| Paul M Meara | John Newbury |
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Independent Councillor: 1

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| Keith E Marsh | |
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Conservative Councillor: 1

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| Linda J Tyler-Lloyd | |
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Officers:

| | |
|---------------------|---|
| Phil Holmes | Head of Regeneration & Planning |
| Deb Smith | Directorate Lawyer, Legal, Democratic Services & Procurement |
| Sandie Richards | Principal Lawyer |
| Kim Flanders | Planning Policy & Environment Manager, Regeneration & Housing Department |
| Chris Dale | Countryside Access Team Leader (Rights of Way), Regeneration & Housing Department |
| Mike Workman | Rights of Way Officer, Legal & Democratic Services & Procurement |
| Democratic Services | |
| Planning Services | |
| Archives | |
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Disclosures of Interest

To receive Disclosures of Interest from Councillors and Officers

Councillors

Councillors Interests are made in accordance with the provisions of the Code of Conduct adopted by the City and County of Swansea. You must disclose orally to the meeting the existence and nature of that interest.

NOTE: You are requested to identify the Agenda Item / Minute No. / Planning Application No. and Subject Matter to which that interest relates and to enter all declared interests on the sheet provided for that purpose at the meeting.

1. If you have a **Personal Interest** as set out in **Paragraph 10** of the Code, you **MAY STAY, SPEAK AND VOTE** unless it is also a Prejudicial Interest.
2. If you have a Personal Interest which is also a **Prejudicial Interest** as set out in **Paragraph 12** of the Code, then subject to point 3 below, you **MUST WITHDRAW** from the meeting (unless you have obtained a dispensation from the Authority's Standards Committee)
3. Where you have a Prejudicial Interest you may attend the meeting but only for the purpose of making representations, answering questions or giving evidence relating to the business, **provided** that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise. In such a case, you **must withdraw from the meeting immediately after the period for making representations, answering questions, or giving evidence relating to the business has ended**, and in any event before further consideration of the business begins, whether or not the public are allowed to remain in attendance for such consideration (**Paragraph 14** of the Code).
4. Where you have agreement from the Monitoring Officer that the information relating to your Personal Interest is **sensitive information**, as set out in **Paragraph 16** of the Code of Conduct, your obligation to disclose such information is replaced with an obligation to disclose the existence of a personal interest and to confirm that the Monitoring Officer has agreed that the nature of such personal interest is sensitive information.
5. If you are relying on a **grant of a dispensation** by the Standards Committee, you must, before the matter is under consideration:
 - i) Disclose orally both the interest concerned and the existence of the dispensation; and
 - ii) Before or immediately after the close of the meeting give written notification to the Authority containing:

- a) Details of the prejudicial interest;
- b) Details of the business to which the prejudicial interest relates;
- c) Details of, and the date on which, the dispensation was granted; and
- d) Your signature

Officers

Financial Interests

1. If an Officer has a financial interest in any matter which arises for decision at any meeting to which the Officer is reporting or at which the Officer is in attendance involving any member of the Council and /or any third party the Officer shall declare an interest in that matter and take no part in the consideration or determination of the matter and shall withdraw from the meeting while that matter is considered. Any such declaration made in a meeting of a constitutional body shall be recorded in the minutes of that meeting. No Officer shall make a report to a meeting for a decision to be made on any matter in which s/he has a financial interest.
2. A "financial interest" is defined as any interest affecting the financial position of the Officer, either to his/her benefit or to his/her detriment. It also includes an interest on the same basis for any member of the Officers family or a close friend and any company firm or business from which an Officer or a member of his/her family receives any remuneration. There is no financial interest for an Officer where a decision on a report affects all of the Officers of the Council or all of the officers in a Department or Service.

CITY AND COUNTY OF SWANSEA

MINUTES OF THE RIGHTS OF WAY AND COMMONS SUB-COMMITTEE

HELD AT COMMITTEE ROOM 2, CIVIC CENTRE, SWANSEA ON
WEDNESDAY 13 AUGUST 2014 AT 2.00 P.M.

PRESENT: Councillor J A Raynor (Chair) presided

Councillor(s):

A M Cook
J E C Harris

Councillor(s):

Y V Jardine
R V Smith

Councillor(s):

L J Tyler-Lloyd
T M White

Officers:

S Richards - Principal Lawyer
M Workman - Rights of Way Officer
J Parkhouse - Democratic Services Officer

12. APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillors J A Hale, J E C Harries, K E Marsh and P M Meara.

13. DISCLOSURES OF PERSONAL AND PREJUDICIAL INTERESTS

In accordance with the Code of Conduct adopted by the City and County of Swansea, no interests were declared.

14. MINUTES

RESOLVED that the Minutes of the meeting of the Rights of Way and Commons Sub-Committee held on 18 June 2014 be signed and approved as a correct record.

The following was highlighted:

Minute No. 10 - Countryside Access Budget

It was requested that the Terms of Reference of the External Fund Panel be recirculated to the Committee and it be confirmed whether there are officers within the Authority who can provide details of grants available.

15. **EXTINGUISH RIGHT OF FOOTPATH NO. 88 - COMMUNITY OF LLANGYFELACH**

The Rights of Way Officer presented a report which requested whether to proceed with the Confirmation Order to extinguish Footpath No. 88 or to abandon the Order. It was outlined that on 11 March 2014 the Council made an Extinguishment Order under Section 118 of the Highways Act 1980 to remove the length of path shown between points A-B-C-D-E-F. Footpath No. 88 between points A-X is under the ownership of the Council, the remaining section under the ownership of those who have title to the three separate properties built on the path. The alternative is vested in the Council having been adopted as public ways.

One hundred and twenty four objections were made to this Order and another thirty three from the pupils of Llangyfelach Primary School. The Order was made under delegated authority by officers of the Council. As objections had been made to the Order, there is no authority for officers to decide whether the Order should be forwarded to the Planning Inspectorate or be abandoned. Under the Act, the Council has the discretion to abandon the Order after it has been made if it considers it is not expedient to confirm the Order.

The Committee were provided with the background and the grounds for making an Order under Section 118 of the Highways Act 1980.

The Committee asked a number of questions of the officer who responded accordingly. Members sought clarity on whether the path could be severed and considered as two separate matters.

RESOLVED that the item be deferred subject to clarification at the next scheduled meeting as to whether Footpath No. 88 could be severed and dealt with as separate applications.

16. **IMPLICATIONS OF THE CASE OF R (ON THE APPLICATION OF BARKAS) (APPELLANT) -V- NORTH YORKSHIRE COUNTY COUNCIL AND ANOTHER (RESPONDENTS) (2014) UKSC31 ON APPLICATIONS TO REGISTER COUNCIL OWNED LAND AS A TOWN OR VILLAGE GREEN**

The Principal Lawyer provided a for information update on the recent decision of the Supreme Court in the above in the case of Barkas and its implication on village green applications relating to Council owned land.

Minutes of the Rights of Way and Commons Sub-Committee
(13.08.2014) Cont'd

It was outlined that in the Barkas case the land was provided and maintained by the Local Authority as recreation grounds under what is now Section 12(1) of the Housing Act 1985. The Supreme Court has determined that whilst the applicant was able to meet the requirements regarding the recreational use of the land by the required users for the required time period, they could not show that they used the land as of right. In these circumstances, the Court determined that the land is used by right by the powers of the Housing Acts. Consequently such land is not registerable as a town or village green on the basis of such use.

The decision has implications for applications for the registration of land as a village green in circumstances where the land is held by a local authority for public recreation purposes pursuant to any statutory power at any time during the relevant 20 year period for the purposes of Section 15 of the Commons Act 2006. The position does not apply to land owned by a private individual or company where there is no legal duty and no statutory power to allocate land for public use and would be expected to protect their own legal rights.

The Committee asked a number of questions of the officer who responded accordingly.

17. **APPLICATION TO REGISTER LAND KNOWN AS CWM GREEN, WINCH WEN, SWANSEA AS A TOWN OR VILLAGE GREEN**

The Principal Lawyer presented a report to consider the determination of the application to register the land in question as a town or village green in light of the recommendation made in the report and addendum of the Inspector.

It was outlined that the Council had received an application made by Mr Brian Walters under Section 15 of the Commons Act 2006 in respect of land known as Cwm Green, Winch Wen, Swansea which was shown on the plan attached at Appendix 1 of the report. The land in question is in the ownership of the Council. An objection to the registration of the land has been received from the Council in its capacity as owner of the land.

In accordance with the procedure previously approved by this Committee, a Non Statutory Inquiry was held before an Independent Inspector on 25 and 26 February 2014 to consider the application. The Inspector was Mr Alun Alesbury, MA, Barrister at Law.

Minutes of the Rights of Way and Commons Sub-Committee
(13.08.2014) Cont'd

Following the Inquiry, the Inspector had written an interim report of his findings. A copy of this report was provided at Appendix 2 of the report. The report was interim in nature because the decision of the Supreme Court in the case of R (Barkas) -v- North Yorkshire County Council was imminently expected. The facts of the Barkas case are very similar to those in the application being considered in this report and have direct consequences upon it. Following the publishing of the decision in the Barkas case, the Inspector invited the parties to comment on the implications of the decision on the application and provided an addendum to his interim report which was attached at Appendix 3 of the report.

The Committee were asked to consider its role in the procedure, the legal test to be satisfied, the burden and standard of proof and the Inspector's findings. The Inspector concluded that:

- (a) Registration of the application for the land as a town or village green is not justified in this case because of statutory criteria set out in Section 15(2) of the Commons Act 2006 are not met in relation to the site.
- (b) In particular, the criteria are not met in relation to the use of the land as of right in the sense required by the Commons Act 2006.

The Inspector therefore recommended that the application site should not be added to the Statutory Register of Town and Village Greens under Section 15 of the Commons Act 2006.

The Committee considered the application.

RESOLVED that the application for the registration **BE REFUSED** in accordance with the recommendation of the Inspector.

18. **APPLICATION TO REGISTER DISUSED RAILWAY LAND, NORTH EAST OF STATION ROAD, LLANMORLAIS, SWANSEA AS A TOWN OR VILLAGE GREEN**

The Principal Lawyer presented a report to consider the determination of the application to register the land in question as a town or village green in light of the recommendation made in the report of the Inspector.

Minutes of the Rights of Way and Commons Sub-Committee
(13.08.2014) Cont'd

It was outlined that the Council had received an application made by Mr David James Matthews under Section 15(3) of the Commons Act 2006 in respect of disused railway land, north east of Station Road, Llanmorlais, Swansea which was provided in the plan at Appendix 1 of the report. The land in question is held under a long lease by Mr Richard Beynon. After the Council had publicised the application, approximately 40 statements or letters of objection were received by the Commons Registration Authority as well as some communications which were more neutral in character. However, the principal case in opposition to the applicant has been co-ordinated on behalf of Mr Beynon.

In accordance with the procedure previously approved by the Committee, a Non Statutory Inquiry was held before an Independent Inspector on 18-20 March 2014 to consider the application. The Inspector was Mr Alun Alesbury, MA, Barrister at Law.

The Committee were asked to consider its role in the process, the legal test to be satisfied, the burden and standard of proof and the Inspector's findings.

It was outlined that the Inspector's conclusion and recommendation were set out in paragraphs 11.45 to 11.47 of the report. The Inspector concluded that on balance, what took place over the relevant period of time "was no more than sporadic and very intermittent trespass by a small number of individuals" and further "that a great majority of any such use as did take place was more akin to the use of a linear route from A-B (and back to A again) and use of "the land" of the application site as a whole". The Inspector recommended that no part of the land to which this application relates should be added to the Statutory Register of Town or Village Greens because on the evidence it does not meet the criteria required for such registration for the reasons explained in the report.

The Committee considered the application.

RESOLVED that the application for the registration **BE REFUSED** in accordance with the recommendation of the Inspector.

19. **DEVELOPMENT AND MANAGEMENT CONTROL COMMITTEE**

The Chair stated that in light of the decision relating to the case of Barkas it would be appropriate for the report to be forwarded to the next available meeting of the Development Management and Control Committee.

Minutes of the Rights of Way and Commons Sub-Committee
(13.08.2014) Cont'd

RESOLVED that the report relating to Barkas be placed on the next available agenda of the Development Management Control Committee.

20. **DATE OF NEXT MEETING**

NOTED that the next meeting be scheduled for 2.00 p.m. on Wednesday 8 October 2014.

The meeting ended at 2.45 p.m.

CHAIR

S: Rights of Way and Commons Sub-Committee - 13 August 2014
(JEP/EJF)
13 August 2014

Report of the Head of Legal, Democratic Services and Procurement

Rights of Way and Commons Sub-Committee – 8 October 2014

ALLEGED PUBLIC FOOTPATH FROM BIRCHGROVE ROAD TO SMITHS ROAD - COMMUNITY OF BIRCHGROVE

| | |
|------------------------------------|---|
| Purpose: | To determine the application in accordance with the provisions of the Wildlife and Countryside Act 1981. |
| Policy Framework: | Section 4 of the Countryside Access Plan. |
| Reason for Decision: | Recognition of the status of the public path and to determine the application requiring its addition to the Definitive Map and Statement. |
| Consultation: | All the usual statutory consultees which included the three local Members, Ramblers Association and their local representative, the British Horse Society and their local representative, the Open Spaces Society, Natural Resources Wales, Green Openspaces and Heritage Alliance for Swansea, Byways and Bridleways Trust, Highways and Transport Service Unit. |
| Recommendation(s): | That a Legal Event Modification Order be made to add the path shown A-B into the Definitive Map and Statement reflecting the 2.5 metre wide length of path. |
| Report Author: | M. J. Workman |
| Finance Officer: | Sarah Willis |
| Legal Officer: | Sandie Richards |
| Access to Services Officer: | Phillip Couch |

1.0 Introduction

- 1.1 On the 5th December 2013, an application was made under the provisions of the Wildlife and Countryside Act 1981 to this Council to recognise the path shown on the attached plan as a public right of way on foot (Appendix 1 provides the relevant extract). The claim has been supported by ten individuals who allege an average of forty years use of the path. The usual means by which an application is determined is to assess whether the way has been dedicated under section 31 of the Highways Act 1980, that is if there

has been a minimum period of twenty years uninterrupted use from the date the alleged existence of the public path was called into question. (Appendix 2 provides the relevant extract) This date is taken either from the occasion the path was blocked or warnings given to the public that no such right existed or from the date of the application.

- 1.2 The path comprises tarmac for its central portion being 2.5 metres wide and flanked by two grass verges which increase the width of the lane to 6 metres. Five bollards have been placed at its junction with Birchgrove Road and three at its junction with Smith's Road.
- 1.3 The path is included as a publicly maintainable highway on this Council's plan of adopted streets. Section 36(6) of the Highways Act 1980 requires all Authorities in England and Wales to provide and keep up to date a list within its area of such highways which are maintainable by them (Appendix 3 provides further information on what the list should include).

2.0 The Path History

- 2.1 The path first appears on the second edition of the 1899 ordnance survey plan as a vehicular width road some 6.0 metres wide and forming part of Smith's Road. Its appearance as a wide road is shown on the 1976 edition of the ordnance survey plan although that edition was based on one in 1969 and specifies it has included some additions after that earlier survey. Therefore this may be why the plan did not display the reduction in the width of the eastern end of Smith's Road. One resident of Smith's Road stated the road was altered and the cul-de-sac at the eastern end of that road developed in 1971. Nonetheless the total width of the road has not varied, as the current path including the two sections of grass remains at 6.0 metres.
- 2.2 On the 3rd May 1981, this Council adopted Smith's Road including the central part of the path shown A-B under the Private Street Works Code. Those living in the houses fronting Smith's Road, were required to each contribute to the cost of its improvement prior to the Council agreeing to maintain the road. Given the path was created as a public highway under an Act of Parliament this constitutes a legal event that is referred to under section 53(3)(a)(iii) as contained in Appendix 1. Therefore a modification order could be made to reflect this event, known as a legal event modification order, and so no public notice, advertising the order would be required, as the order would take effect on it being made.
- 2.3 In August 2010 the grass areas on either side of the path were also added to the plan of maintainable highways as part of an adoption review. As these two sections of highway were not added to the list of streets by any formal or legal procedure, then a legal event modification order cannot be justified to include this greater width. However it constitutes additional evidence that the Council took the view the whole length of path to be a public one.

- 2.4 As such the path has therefore never been closed to pedestrians and so the date of the application, that is 2013 will count as the date the existence of the right of way was called into question.
- 2.5 The inclusion of a route into the Council's plan of maintainable highways is evidence it is a highway, but gives no guidance as to its status. However as the minimum status of any highway is a footpath it must at the very least be a public right of way on foot.
- 2.6 The Council has been presented with user evidence that the path has been accessed by pedestrians prior to its adoption in 1981. Whilst the applicant has confirmed that the route that is the subject of the application is solely the central tarmacked section of 2.5 metres width, there is evidence of the entire width having been used prior to the closure of the road to vehicles. As such this Council is obliged to consider any evidence that shows a public way may exist.
- 2.7 The entire width including the grass verges have nonetheless been subject to long term use although there are only two persons who can show use from 1951, showing a minimum of twenty years prior to Smiths Road being narrowed (assuming the date of 1971 is accurate). In addition evidence that until the present day, the way has only been used by pedestrians confirming its minimum status as a public footpath.
- 2.8 Given any public footpath ought to be shown on the Definitive Map a modification should be made. As such the list of streets and Definitive Map are not mutually exclusive documents, although there will be a considerable degree of overlap.
- 2.9 As the later addition of the "grass verges" to the list of streets cannot be included into a legal event modification order, then if these were to be included, an evidential order will have to be made and advertised as usual. However there are only two persons who have stated they have made use of the greater width of path for the requisite 20 year period. In addition they live in close proximity to the Road, and so would fall under the category of representing a specialist use group. This is explained more fully in Appendix 4. Consequently it is difficult to conclude there has been a presumed dedication of a public way under the Highways Act 1980 for this earlier period to include both those "grass verges".

3.0 Conclusion

- 3.1 The evidence shows that the Council has adopted the entire width of the path between points A and B and so given its physical character it must have a minimum status of footpath. It is possible to be accessible by equestrians but there is no evidence of such use.
- 3.2 The application has specified the narrower central section which is tarmacked and subject to the formal adoption procedure under Section 228 of the Highways Act 1980. As such that narrower section could be made the subject

of a legal event modification order so that it could be added to the Definitive Map and statement. Given it would be made on the basis that it has already been recorded as a public highway. There would be no opportunity for the public to take issue with that and so the order would not have to be advertised.

4.0 Equality and Engagement Implications

4.1 There are no equality and engagement implications associated with this report.

5.0 Financial Implications

5.1 There are no financial implications associated with this report.

6.0 Legal Implications

6.1 There are no legal implications associated with this report.

Background Papers:

Appendices: Appendix 1 - Wildlife and Countryside Act 1981
Appendix 2 - Highways Act 1980
Appendix 3 - Section 36(6) Highways Act 1980
Appendix 4 - Special User Groups
Appendix 5 - Plan

APPENDIX 1

WILDLIFE AND COUNTRYSIDE ACT, 1981

Section 53 Duty to keep the Definitive Map and Statement under continuous review.

- (2) As regards every Definitive Map and Statement, the Surveying Authority shall:
 - (a) as soon as reasonably practical after commencement date, by order make such modifications to the map and statement as appear to them to be requisite in consequence of the occurrence, before that date, of any of the events specified in Sub-Section 3; and
 - (b) as from that date, keep the map and statement under continuous review and as soon as reasonably practicable after the occurrence on or after that date, of any of those events, by order make such modifications to the map and statement as appear to them to be requisite in consequence of the occurrence of that event.

- (3) The events referred to in Sub-Section 2 are as follows:
 - (a) the coming into operation of any enactment or instrument or any other event whereby:
 - (iii) a new right of way has been created over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path or restricted byway.
 - (b) the expiration, in relation to any way in the area to which the map relates of any period such that the enjoyment by the public of the way during that period rises a presumption that the way has been dedicated as a public path or restricted byway;

- (c) the discovery by the Authority of evidence which (when considered with all other relevant evidence available to them) shows:
- (i) that a right of way which is not shown on the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path, a restricted byway or, subject to Section 54A a byway open to all traffic;
 - (ii) that a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description;
 - (iii) that there is no public right of way over land shown in the map and statement as a highway of any description or any other particulars contained in the map and statement require modification.

APPENDIX 2

HIGHWAYS ACT, 1980

Section 31. Dedication of way as a highway presumed after public use for 20 years.

Where a public way over land, other than a way of such a character that use of it by the public could not give rise at common law to any presumption of dedication, has actually been enjoyed by the public as of right and without interruption of a full period of 20 years, the way is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during this period to dedicate it.

For Section 31(1) Highways Act, 1981 to operate and give rise to a presumption of dedication the following criteria must be satisfied:

- the physical nature of the path must be such as is capable of being a public right of way
- the use must be 'brought into question', i.e. challenged or disputed in some way
- use must have taken place without interruption over the period of twenty years before the date on which the right is brought into question
- use must be *as of right* i.e. without force, without stealth or without permission and in the belief that the route was public
- there must be insufficient evidence that the landowner did not intend to dedicate a right of type being claimed
- use must be by the public at large

APPENDIX 3

SECTION 36(6) HIGHWAYS ACT 1980

Section 36(6) of the Highways Act 1980 requires a list of maintainable streets to be kept up to date, although it does not specify the details it should provide such as information on the location of the street, its status or width. However many Authorities including this Council, consider a plan to be a more useful means of recording its list.

A 'street' is defined under Section 329 of the Highways Act 1980 as including any highway and any road, lane, footpath, square, alley or passage.

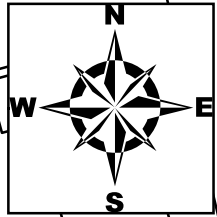
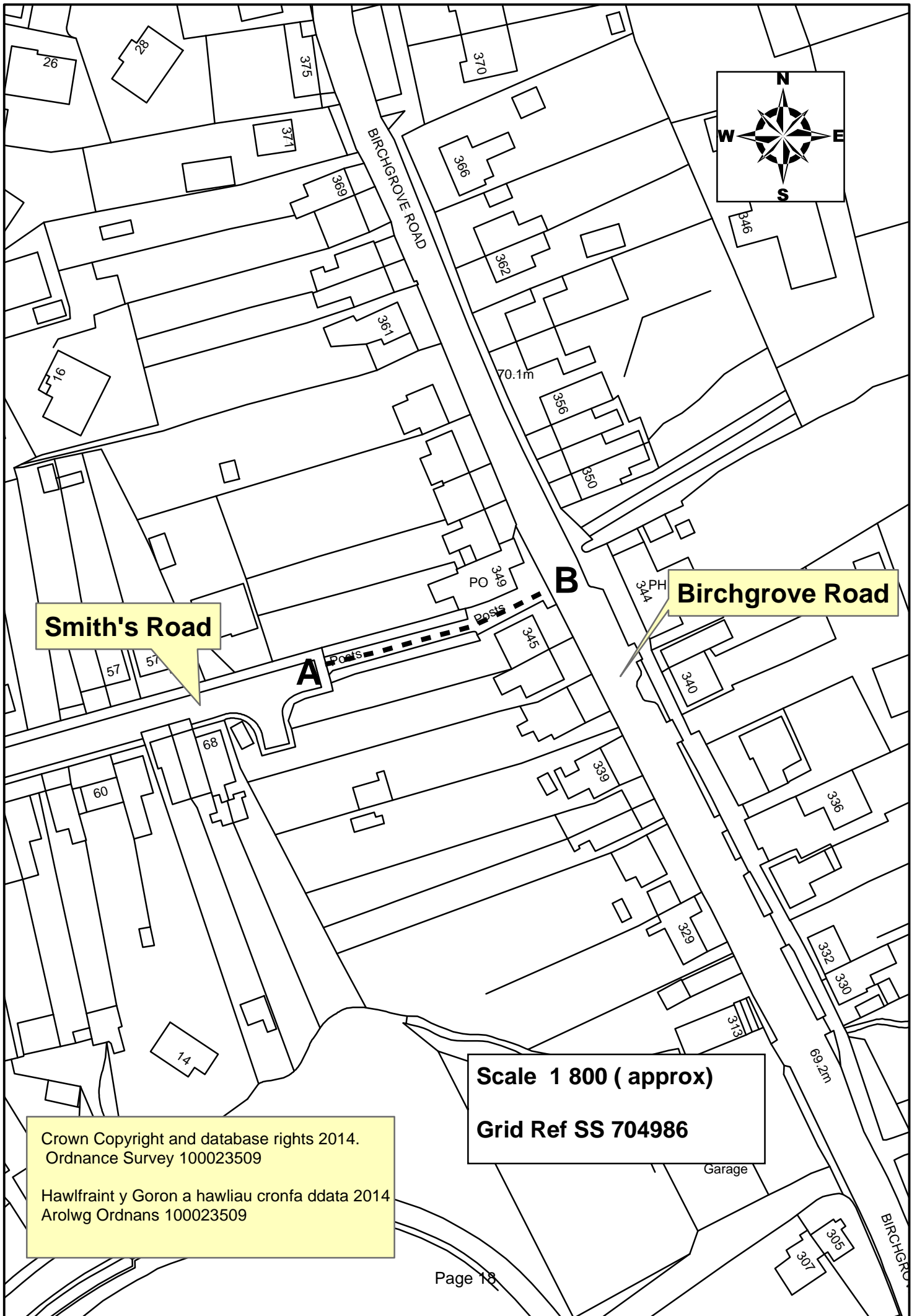
APPENDIX 4

SPECIAL USER GROUPS

- (a) The Planning Inspectorate has produced advice on this matter in that they say there is no strict legal interpretation of the term 'public'. The dictionary definition being 'the people as a whole' or 'the community in general'. Arguably and sensibly that use should be by a number of people who together may be taken to represent the people as a whole/the community.

However, Coleridge L J in R -v- Residents of Southampton 1887 said that "use by the public' must not be taken in its widest sense - for it is a common knowledge that in many cases only the local residents ever use a particular road or bridge. Consequently, use wholly or largely by local people may be use by the public as depending on the circumstances of the case, that use could be by a number of people who may sensibly be taken to represent the local people as a whole/the local community".

- (b) In contrast to this view was the decision made by Lord Parke in Poole -v- Huskinson 1834 who concluded: "there may be dedication to the public for a limited purpose...but there cannot be dedication to a limited part of the public". This case was quoted by an Inspector in 1997 appointed to consider an application to add a public bridleway to the Definitive Map for North Yorkshire County Council. Here the route had also been in use for 40 to 50 years. That Inspector concluded: "In the case before Lord Parke, residents of the same parish were held to constitute a limited part of the public and I therefore believe the inhabitants of the Parish of Cliffs should also be held to constitute a limited part". The Inspector refused to confirm the Order.



Smith's Road

Birchgrove Road

A

B

Scale 1 800 (approx)

Grid Ref SS 704986

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Ordnance Survey 100023509

Hawlfraint y Goron a hawliau cronfa ddata 2014
Arolwg Ordnans 100023509

Garage

Report of the Head of Legal, Democratic Services and Procurement

Rights of Way and Commons Sub-Committee – 8 October 2014

APPLICATION TO REGISTER LAND KNOWN AS CASTLE ACRE GREEN, NORTON, SWANSEA AS A TOWN OR VILLAGE GREEN

APPLICATION NO. 2731(S)

| | |
|------------------------------------|--|
| Purpose: | To inform the Sub-Committee of the proposal to hold a non-statutory inquiry. |
| Policy Framework: | None. |
| Statutory Tests: | Section 15 Commons Act 2006. |
| Report Author: | Sandie Richards |
| Finance Officer: | Sarah Willis |
| Legal Officer: | Nigel Havard |
| Access to Services Officer: | Phil Couch |

1.0 Introduction

- 1.1 The Council has received an application made by Dr. Robert Leek on behalf of the Castle Acre Village Green Action Group under Section 15(3) of the Commons Act 1996 in respect of land known locally as Castle Acre Green, Norton, Swansea. The application seeks to register the land as a Town or Village Green. A plan of the land in question appears as Appendix 1.

2.0 History of the Application

- 2.1 The land in question is not registered at HM Land Registry. However it has been confirmed by the Council that the land has been maintained by its Parks Services Department since the 1970s. The Council has made an objection to the application.
- 2.2 The Head of Legal, Democratic Services and Procurement has used the delegated authority granted by this Committee on 15th February 2012 to instruct Counsel to advise on the application and the appropriate procedure to be adopted in determining the application.

- 2.3 Counsel has advised that there are issues of fact and law in dispute and that it would be appropriate to hold a non-statutory inquiry. The holding of such an inquiry will ensure that evidence from both the Applicant and the Objectors can be heard and tested and the issues examined and argued over.
- 2.4 Once the inquiry has taken place Counsel will issue a report with recommendations for this Committee to consider and make a decision upon.

3.0 Equality and Engagement Implications

- 3.1 There are no Equality and Engagement implications to this report.

4.0 Legal Implications

- 4.1 The Council in its role as Commons Registration Authority has a statutory duty pursuant to Section 15 of the Commons Act 2006 and the Commons (Registration of Town or Village Greens) (Interim Arrangements) (Wales) Regulations 2007 to determine applications for land to be registered as a town or village green.
- 4.2 The effect of registration of land as a town or village green is that it is protected from development for ever and preserved for use by local people.
- 4.3 The land has been maintained by the City & County of Swansea and a conflict arises as the Council is both the Commons Registration Authority and the principal objector. These roles have to remain separate as far as possible so as to minimise challenge by way of judicial review. The application must be considered purely on the merits of the case by applying the relevant law and in accordance with the principles of natural justice. The usual way of overcoming the conflict caused by the dual role is by the holding of a non-statutory inquiry.

4. Financial Applications

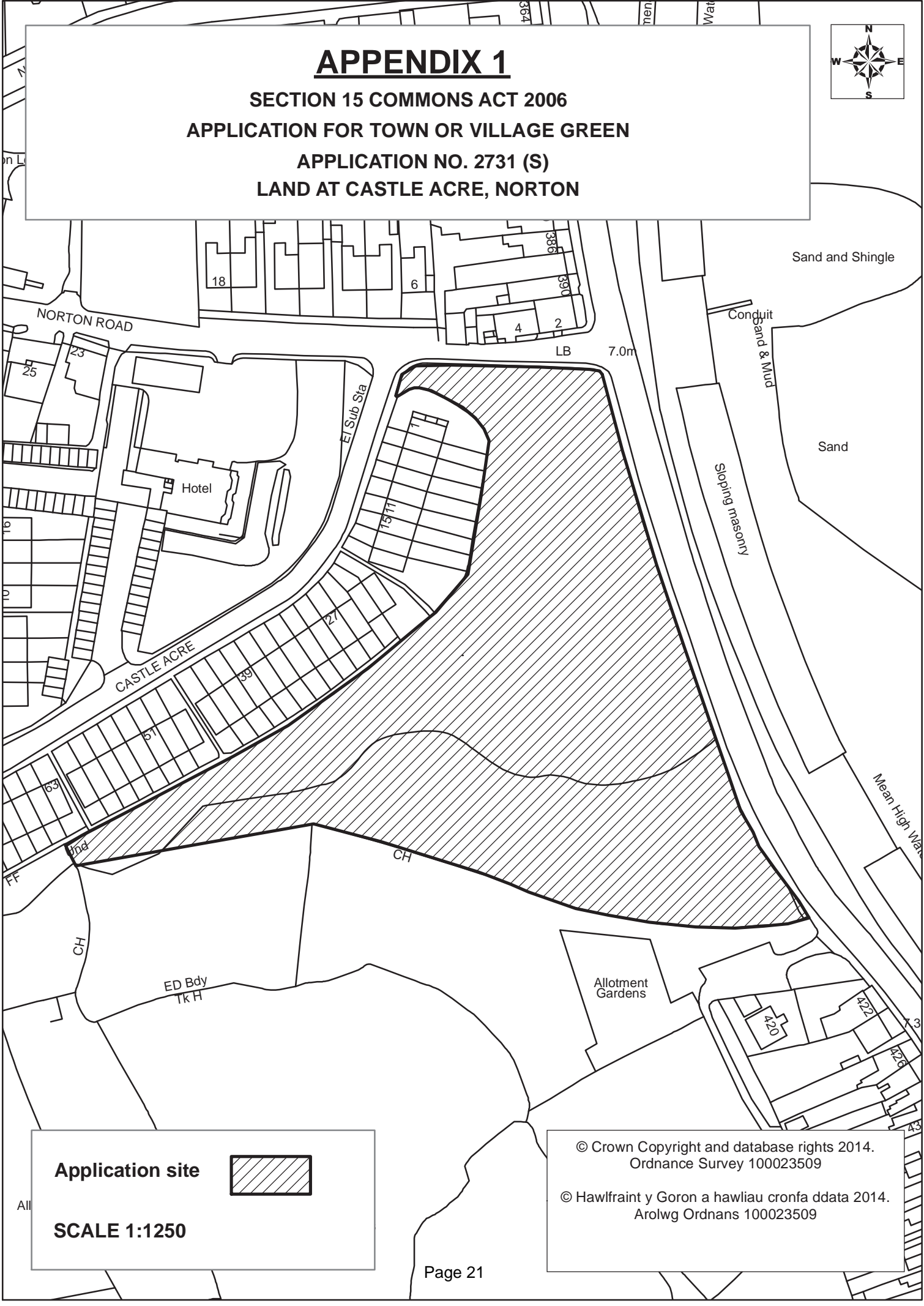
- 4.1 There is no specific budget identified for the expenditure incurred for the determination of applications. Expenditure will be incurred from existing budget provisions.
- 4.2 If the land is designated as a Town or Village Green it will not be available for development in the future.


Background papers: Application file.

Appendices: Appendix 1: Plan of the application site.

APPENDIX 1

SECTION 15 COMMONS ACT 2006
APPLICATION FOR TOWN OR VILLAGE GREEN
APPLICATION NO. 2731 (S)
LAND AT CASTLE ACRE, NORTON



Application site 

SCALE 1:1250

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Agenda Item 6

Report of the Head of Legal, Democratic Services and Procurement

Rights of Way and Commons Sub-Committee - 8 October 2014

APPLICATION TO REGISTER LAND AT PICKET MEAD, NEWTON, SWANSEA AS A TOWN OR VILLAGE GREEN

APPLICATION NO. 2730(S)

| | |
|------------------------------------|--|
| Purpose: | To inform the Sub-Committee of the proposal to hold a non-statutory inquiry. |
| Policy Framework: | None |
| Statutory Tests: | Section 15 Commons Act 2006 |
| Report Author: | Sandie Richards |
| Finance Officer: | Sarah Willis |
| Legal Officer: | Nigel Havard |
| Access to Services Officer: | Phil Couch |

1.0 Introduction

1.1 The Council has received an application made by Mr. Simon Arthur under Section 15(2) of the Commons Act 2006 in respect of land at Picket Mead, Newton, Swansea. The application seeks to register the land as a Town or Village Green. A plan of the land in question appears as Appendix 1.

2.0 History of the Application

2.1 The land in question is owned by this Council. The application site forms part of common land unit CL4(S).

2.2 It is of note that the Council in its capacity as landowner has not made an objection to the application.

2.3 However, an objection has been received from Carrington Moore Estates who own Picket Mead House and have the benefit of an easement over the land.

2.4 The Head of Legal, Democratic Services and Procurement has used the delegated authority granted by this Committee on 15th February 2012 to instruct Counsel to advise on the application and the appropriate procedure to be adopted in determining the application.

2.5 Counsel has advised that there are issues of fact and law in dispute and that it would be appropriate to hold a non-statutory inquiry. The holding of such an inquiry will ensure that evidence from both the Applicant and the Objectors can be heard and tested and the issues examined and argued over.

2.6 Once the inquiry has taken place Counsel will issue a report with recommendations for this Committee to consider and make a decision upon.

3.0 Equality and Engagement Implications

3.1 There are no Equality and Engagement implications to this report.

4.0 Legal Implications

4.1 The Council in its role as Commons Registration Authority has a statutory duty pursuant to Section 15 of the Commons Act 2006 and the Commons (Registration of Town or Village Greens) (Interim Arrangements) (Wales) Regulations 2007 to determine applications for land to be registered as a town or village green.

4.2 The effect of registration of land as a town or village green is that it is protected from development for ever and preserved for use by local people.

4.3 The land is owned by the City and County of Swansea and a conflict arises as the Council is both the Commons Registration Authority and owner of the land. These roles have to remain separate as far as possible so as to minimise challenge by way of judicial review. The application must be considered purely on the merits of the case by applying the relevant law and in accordance with the principles of natural justice. The usual way of overcoming the conflict caused by the dual role is by the holding of a non-statutory inquiry.

5.0 Financial Applications

5.1 There is no specific budget identified for the expenditure incurred for the determination of applications. Expenditure will be incurred from existing budget provisions.

5.2 If the land is designated as a Town or Village Green it will not be available for development in the future.

Background papers: Application file.

Appendices: Appendix 1: Plan of the application site.

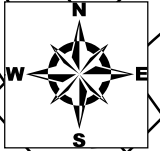
APPENDIX 1

SECTION 15 COMMONS ACT 2006

APPLICATION FOR TOWN OR VILLAGE GREEN

APPLICATION NO. 2730 (S)

LAND AT PICKET MEAD, NEWTON



House

82.9m

Hall

Reservoir
(covered)

Picket Mead

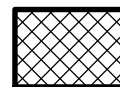
Picket Mead

NEWTON

SUMMERLAND LANE

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Application Site

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