

Report of the Head of Legal and Democratic Services

Planning Committee 8 December 2015

APPLICATION TO REGISTER LAND NORTH OF CAERGYNYDD ROAD, WAUNARLWYDD, SWANSEA AS A TOWN OR VILLAGE GREN

APPLICATION NO. 2732(S)

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| Purpose: | To inform the Sub-Committee of the recommendation of the Inspector |
| Policy Framework: | None |
| Statutory Tests: | Section 15 Commons Act 2006 |
| Reason for the Decision: | The Authority has a statutory duty to determine the application |
| Consultation: | Legal, Finance, Planning and Local Members |
| Recommendation | It is recommended that: <ol style="list-style-type: none">1) the application for the above registration be REFUSED in accordance with the recommendation of the Inspector;2) no part of the land of the application site be added to the Register of Town or Village Greens under Section 15 of the Commons Act 2006. |
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| Finance Officer: | Aimee Dyer |
| Legal Officer: | Sandie Richards |
| Access to Services Officer: | Phil Couch |

1.0 Introduction

- 1.1 The Council has received an application made by Mr. Glenn Young under Section 15(2) of the Commons Act 2006 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 is owned by this Council and 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 act as an Independent Inspector to advise on the application and the appropriate procedure to be adopted in determining the application.

3.0 The Remit of the Inspector

- 3.1 The role of the Inspector was to act on behalf of the Council solely in its role as Commons Registration Authority. The Inspector had no involvement with the Council in its capacity of landowner or objector, other than in the context of receiving evidence from the Council in those capacities, as one of the parties to the disputed issues relating to the application.
- 3.2 Mr. Alesbury is a recognised expert in this area of law and has been appointed on numerous occasions to hold public inquiries in relation to village green applications both by the City & County of Swansea and other local authorities throughout England and Wales.

4.0 The Role of this Committee

- 4.1 The Inspector's findings are not binding on this Committee. It is for the Committee to reach its own determination on the matters of fact and law arising as a result of the Application.
- 4.2 It is for this Committee to determine the Application fairly, putting aside any considerations for the desirability of the land being registered as a Town or Village Green or being put to other uses.
- 4.3 However, the Inspector has had the opportunity to assess the written evidence of all parties in light of the legislation and relevant case law. It is therefore not appropriate for this Committee to re-open issues regarding the quality of the evidence unless they had extremely strong reasons to do so.

5.0 The Legal Tests to be Satisfied

- 5.1 The Commons Act 2006 is the statutory regime governing village greens. Section 15 of the Act sets out the requirements which must be met if the land is to be registered. Registration of town and village greens is determined by the Council in its capacity as Commons Registration Authority. The process of determination of any application is focused on whether a village green has come into existence as a matter of law.

5.2 The application in this case was made under s.15(2) of the Commons Act 2006. That section applies 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;*

5.3 The test can be broken down as follows:

“a significant number of the inhabitants . . . “

It is sufficient to show a general use by the local community as opposed to mere occasional use by trespassers. It is not assessed by a simple headcount of users.

5.4 *“. . . of the inhabitants of any locality or any neighbourhood within a locality”*

This is not defined by any arbitrary margins and must be a recognised county division such as a borough, parish or manor. An ecclesiastical parish can be a locality as required by s.15(2). It is acceptable for the users of the land to come ‘predominantly’ from the locality. A neighbourhood must be clearly defined and have a sufficient cohesiveness. It must also be within a locality.

5.5 *“. . . have indulged as of right . . . “*

Use ‘as of right’ is use without permission, secrecy or force. The key issue in user ‘as of right’ is not the subjective intentions of the users but how the use of the land would appear, objectively, to the landowner. Use is ‘as of right’ if it would appear to the reasonable landowner to be an assertion of a right. Permission by the landowner, perhaps in the form of a notice on the land, would mean that the use is not ‘as of right’. Equally use by force, such as where the user climbs over a fence or other enclosure to gain access to the land would not be use ‘as of right’.

5.6 If the use of the land is not sufficient in terms of frequency or regularity to reasonably bring it to the attention of a landowner, then it may be a secret use and have direct consequences upon it. Another example of a secret use could be where the use takes place exclusively under the cover of darkness such that it would not be reasonable to expect a landowner to become aware of it.

5.7 *“in lawful sports and pastimes on the land . . .”*

This is broadly interpreted so that general recreational use including walking with or without dogs and children’s play would all be included.

5.8 “ . . . for a period of at least 20 years. . . .”

The fulfilment of the 20 years continuous use must immediately precede the application under s.15(2). For the purposes of this application the relevant period is February 1993 to February 2013.

6.0 Burden and Standard of Proof

6.1 In order for an application to be successful each aspect of the requirements of Section 15(2) must be strictly proven and the burden of proof in this regard is firmly upon the Applicant. The standard of proof to be applied is ‘on the balance of probabilities’. Therefore the Applicant must demonstrate that **all** the elements contained in the definition of a town or village green in section 15(2) of the Commons Act 2006 have been satisfied.

6.2 This Committee must be satisfied based on the evidence and the report of the Inspector that **each** element of the test has been proven on the balance of probabilities. In other words, it must be more likely than not that each element of the test is satisfied.

7.0 The Inspector’s Findings

7.1 The Inspector addresses each of the elements of the test in his report dated 2nd November 2015 [which is attached as Appendix 2] and these are set out below.

7.2 It is of particular note that the Applicant has expressly indicated to the Registration Authority in writing that neither he nor the other people involved with the application are available at any time for the purposes of an inquiry despite being given considerably flexibility as to the timing of it.

7.3 Furthermore the Applicant stated that he “will no longer be related to this matter” and did not wish to take it any further. As can be seen from paragraph 11 of the Inspector’s report the Applicant stated that he did “not see the need now to pursue this matter as it looks as if planning will go in favour of leaving it a green space.” He concludes by requesting the Registration Authority to “close this case, as there is no longer a need to make it a village green.”

7.4 “A Significant Number of the Inhabitants” [of the Neighbourhood] and “lawful sports and pastimes on the land”

This issue is dealt with in paragraph 14 of the Inspector’s report. He concludes that it does seem to be established (and agreed by the Objector) on the information contained in the application papers that significant numbers of local people have used this piece of open land recreationally over a period which probably is long enough to meet the ‘20 years’ criteria.

7.5 “Locality” or “Neighbourhood within a Locality”

This is also addressed in paragraph 14 of the Inspector’s Report. The Inspector concludes that the Applicant has made no effort at all to identify a ‘locality’ or ‘neighbourhood’ to whose inhabitants the town or village green claim could be said to relate, and no-one else who provided material supporting the application had made good this deficiency. Whilst this issue could potentially have been resolved at inquiry, the Inspector took the view [at paragraph 15] that in the circumstances it has to be concluded that the Applicant’s case on this point has not been established or proved on the balance of probability test.

7.7 “As of right”

In paragraphs 16 to 18 the Inspector considers whether the use of the land has been “as of right”. He concludes [at paragraph 19] that “the Applicant has most clearly *not* established on the balance of probability that the land concerned was used over the relevant period, by relevant inhabitants, “as of right”, as Section 15 of the 2006 Act requires.”

8.0 Formal Conclusion and Recommendation

8.1 The Inspector’s conclusions and recommendations are set out in paragraph 21 of the Report.

8.2 He concludes that the application cannot succeed and recommends that no part of the application site should be added to the Register of Town or Village Greens, under Section 15 of the Commons Act 2006.

9.0 Equality and Engagement Implications

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

10.0 Financial Implications

10.1 If the land is designated as a town or village green it will not be available for development in the future.

11.0 Legal Implications

11.1 None over and above those included in the body of the report.

Background papers: Application file.

Appendices: Appendix 1: Plan of the application site

Appendix 2: Report of the Inspector, Mr. Alun Alesbury, M.A.,
Barrister at Law, dated 2nd November 2015