

## Report of the Head of Legal and Democratic Services

Planning Committee - 12 April 2016

### APPLICATION TO REGISTER LAND KNOWN AS PICKET MEAD, NEWTON, SWANSEA AS A TOWN OR VILLAGE GREEN APPLICATION NO. 2730(S)

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

#### 1.0 Introduction

1.1 The Council has received an application by Mr. Simon Arthur under Section 15(2) of the Commons Act 2006 in respect of land known locally as Picket Mead, Newton, Swansea. The application seeks to register 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. However, the Council has not made an objection to this application.
- 2.2 An objection has been received from Carrington Moore Estates Limited who are owners of neighbouring land at Picket Mead House and beneficiaries of an easement which has been granted by the Council as landowner over the track or access road within the eastern part of the application site.
- 2.3 The land also forms part of a larger area which is already registered with the Authority, initially under the Commons Registration Act 1965, latterly under the Commons Act 2006 as common land. Furthermore, an application had been made by Carrington Moore Estates Limited under Section 38 of the Commons Act 2006 to the Welsh Government for consent for certain physical works to be carried out within the present application site, in connection with the development, pursuant to planning permission, of adjoining land to the south.
- 2.4 Upon an initial assessment of the evidence the Inspector advised that there were issues of fact and law in dispute and that it would be appropriate to hold a non-statutory inquiry.

## **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.
- 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. 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 relevant 20 year period in this application is measured backwards from the date the application was received on 17<sup>th</sup> January 2012.

## **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 and addendum of the Inspector and subsequent comments by the Council and the applicant as objecting landowner 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 5<sup>th</sup> February 2016 (which is attached as Appendix 2) and these are set out below.

### **7.2 “Locality” or “Neighbourhood within a Locality”**

This is addressed in paragraphs 11.19 to 11.27 of the Inspector’s report. He concludes that there is a cohesive neighbourhood of the village of Newton, and that the Electoral Ward of Newton relied upon by the Applicant at the inquiry represents a reasonable definition of its boundaries.

### **7.3 “A significant number of the inhabitants” “lawful sports and pastimes” “at least 20 years” “they continue to do so”**

These four criteria are taken together by the Inspector in paragraphs 11.28 to 11.37 of the report. He concludes that on the balance of the evidence that there was sufficient use of the land, during the period of at least 20 years,

specifically for 'lawful sports and pastimes' on the land as a whole. He finds that general use of the land has continued right through to the date of the Applicant's application.

#### **7.4 "On the land"**

This issue is discussed at paragraphs 11.38 to 11.47 of the Inspector's report.

He concludes that if he were otherwise minded to recommend that Picket Mead generally should be registered as a town or village green, he would nevertheless be recommending that the access track should be excluded from the area so registered due to the lack of substantial or convincing evidence that it had been used to any significant extent for "lawful sports and pastimes" as opposed to being used as a route of passage by people either in vehicles, on foot or on horseback.

#### **7.5 "As of right"**

The issue of most legal significance at the inquiry was whether or not use of the land had been 'as of right' and is referred to in paragraphs 11.48 to 11.54 of the Inspector's report.

It is concluded that the fact that the land had been registered as common land and has subsequently been subject to the express statutory right given to members of the public to use such commons "for air and exercise" granted by Section 193(1) of the Law of Property Act 1925.

As such, the activities which the local people carried out on the land were exercised in a way which was akin to having been given permission to use it.

### **8.0 Formal Conclusion and Recommendation**

8.1 The Inspector's conclusions and recommendations are set out in paragraphs 11.55 and 11.56 of the Report.

8.2 He concludes that the Applicant has not succeeded in making out the case that any part of the application site should be registered pursuant to Section 15(2) of the Commons Act 2006. In particular he failed to establish that any part of the land was used "as of right" for the requisite purposes or period, within the legal meaning of that expression.

8.3 The Inspector 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 Recommendation**

9.1. It is RECOMMENDED that the application for registration be REFUSED for the reasons set out in paragraph 8 above.

## **10.0 Equality and Engagement Implications**

10.1 This paper reports and endorses the report of an external inspector and so there are no equality and engagement implications.

## **11.0 Financial Implications**

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

## **12.0 Legal Implications**

12.1 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 5<sup>th</sup> February 2016