

CEREDIGION COUNTY COUNCIL

Report to: Full Council

Date of meeting: 7/07/2022

Title: Application to Register Land as a Village Green at Erw Goch field adjoining Hafan y Waun, Waunfawr, Aberystwyth
(Section 15, Commons Act 2006)

Purpose of the report: To authorise a procedure for determining an application to register land as a Village Green.

For: Decision

**Cabinet Portfolio and Member for Economy and Regeneration
Cabinet Member:**

1. Background

On the 24th February 2021 an application was received by the County Council as Registration Authority to register land at Erw Goch Field, Land, adjoining Hafan y Waun, Waunfawr, Aberystwyth, Ceredigion, SY23 3AY (“the Land”) on the Register of Town or Village Greens (under Section 15 of the Commons Act 2006).

The Land subject to the application is shown in the application in Appendix 1. The application was supported by a statutory declaration and the submission of a bundle of supporting evidence comprising of letters, photographs, emails and social media messages gathered by the Applicant from the local community.

The Land is within the ownership of Ceredigion County Council. The Land also forms part of a planning application for residential development and associated works including public open space/play provision, a new spine road from Cefnesgair to Waunfawr Road, engineering and drainage arrangements, ecological mitigation, landscaping and associated works (planning ref A201067). Decision on the planning application was deferred in order to receive the resolution of the Village Green application in a meeting of the Development Control Committee 14th July 2021.

Independent legal advice was sought by the Council acting as Registration Authority for advice on the applicable process for dealing with the application to register the Land as a Town or Village Green.

In order to avoid potential conflicts of interest, there is a separation of roles within relevant services. This report is prepared and submitted by the Council in its capacity as Registration Authority under the Commons Registration Act 1965 and Commons Act 2006.

The application to register the Land as town or Village Green, when received was deemed not to have been made fully in accordance with the applicable legislation and further details were requested and the application was formally accepted on the 20th May 2021.

A Town or Village Green is land which is subject to the right of local inhabitants to enjoy general recreational activities on it.

Under Section 15 of the Commons Act 2006, successful claims to register land as a Town or Village Green need to show that a significant number of inhabitants of a locality, or neighborhood within a locality, have indulged in lawful sports and pastimes 'as of right' (i.e. without permission, force or secrecy) for at least 20 years, and they continue to do so at the time of the application.

The effect of an application for the registration of land as a Town or Village Green may be that the land is protected. Town or Village Greens registered under the twenty year rule enjoy the same level of protection as ancient or statutory greens. In many cases, applications to register land as a Town or Village Green are made by local residents in an attempt to protect land, e.g. from encroachment or enclosure, or to secure as of right an open space in the village for communal activity.

In accordance with The Commons (Registration of Town or Village Greens) (Interim Arrangements) (Wales) Regulations 2007 the application was allotted a distinguishing number (VG 22).

2. Consultation

Section 5 of the The Commons (Registration of Town or Village Greens) (Interim Arrangements) (Wales) Regulations 2007 outlines the procedure in relation to applications to which section 15(1) of the Commons Act 2006 applies.

On the 23rd June 2021 the Registration Authority sent a notice in form 45 to every person (other than the applicant) believed to be an owner, lessee, tenant or occupier of any part of the land affected by the application.

Notice was published in the Cambrian News (appendix 2) and also affixed to fences/posts and gateposts at entry points onto the land in question.

During the consultation period a request was received from external solicitors acting on behalf of Ceredigion County Council as landowner for an extension of time to respond. Following independent legal advice an extension was agreed and all parties were notified that the closing date for submissions would be the 30th

September 2021.

3. Response to consultation

Submissions in support of the application

In total a further 184 individual submissions were received by the Council as Registration Authority either directly via Clic or from Friends of Erw Goch, a group established to support the application for registration of a Town or Village Green. The submissions included photographs, letters, emails and formal evidence questionnaires from local residents and elected officials.

Submissions opposed to the application

The Council as landowner submitted an objection to the application for registration of the Land as Town or Village Green via external solicitors.

4. Applicants comments on objections

The Commons (Registration of Town or Village Greens) (Interim Arrangements) (Wales) Regulations 2007 states that the Registration Authority must send the applicant a copy of every statement it has received or intends to consider and provide the Applicant a reasonable opportunity of dealing with the matters contained within.

All submissions received by the Registration Authority were sent to the Applicant on the 18th November 2021, 21st November 2021 and the 10th February 2022. An original deadline for response of the 17th January 2022 was extended to the 17th February 2022 on the request of the Applicant.

The Applicant submitted their final comments to the Registration Authority via email on the 16th February 2022.

5. Procedure for Determination

There are no formal procedures in place for determining applications for the registration of Town or Village Greens.

Paragraph 42 of Welsh Government guidance notes (appendix 3) on the completion of an application for the registration of land as a Town or Village Green states:

“A hearing or an inquiry is particularly likely if the Registration Authority or another Authority owns the land, so that the evidence may be tested impartially. The Court of Appeal has ruled that in determining applications where there is a dispute the

Registration Authority should consider convening such a hearing or inquiry”.

In order to consider the merits of the application and the application of law, it is proposed that a Barrister now be appointed to consider the application on behalf of the Council as Registration Authority. This approach was also taken in respect to previous applications to register Village Greens at Silian, Cardigan (Maesglas) and Tal-y-bont (Maes y Deri).

The Barrister will be asked to advise on the merits of the application and subject to that advice, hold a public inquiry or such other formal process as the Barrister advises is appropriate to determine the application and subsequently provide a written report on the findings of the application and the Barrister’s recommendations on whether the Council as Registration Authority should accede or reject the application.

Consideration by an independent assessor provides a fair and even-handed way of assessing the issues and providing a detailed legal view of the evidence.

The Barrister’s findings would be reported back to the Council for final decision on this matter.

Has an Integrated Impact Assessment been completed? If, not, please state why	N/A – this is not a policy or service change
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Wellbeing of Future Generations:

Summary:
Long term:
Integration:
Collaboration:
Involvement:
Prevention:

Recommendation(s):

- a. that the Council authorises the appointment of a Barrister to act as an independent assessor;
- b. that the Barrister advises on the merits of the application for registration of the Land as Town or Village Green;
- c. subject to the advice provided in (b), that the Barrister hold a Public Inquiry or such other hearing as advised by the Barrister, the findings of which and recommendation will be reported back to the Council for decision on the application to register the Town or Village Green.

Reasons for decision: To enable fair and transparent consideration of the application, bearing in mind that there are no formal provisions in place for the determination of applications for the registration of Town or Village Greens.

Overview and Scrutiny: N/A

Policy Framework: Ceredigion Rights of Way Improvement Plan (2019-2029)

Corporate Priorities: Boosting the Economy
Promoting Environmental and Community Resilience

Finance and Procurement implications: N/A

Legal Implications: Commons Act 2006
The Countryside Access (Local Access Forums) (Wales) Regulations 2001

Staffing implications: N/A

Property / asset implications: N/A

Risk(s): N/A

Corporate Officer: **Lead** CLO Highways & Environmental Services on behalf of Economy & Regeneration Service

Reporting Officer: Eifion Jones

Date: 7/07/2022