

CEREDIGION COUNTY COUNCIL

Report to:	Council
Date of meeting:	20 October 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 Cabinet Member:	Councillor Clive Davies, Member for Economy and Regeneration

1. Background

Application

On the 24th February 2021 an application was submitted to the County Council as Registration Authority by Ms Sian Richards, 3 Cefn Esgair, Llanbadarn Fawr, Aberystwyth 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 (“TVG”) (under Section 15 of the Commons Act 2006).

The application along with all the supporting evidence submitted to the Council as Registration Authority is available to view on the Council’s website. The following link takes you to the Common Land and Village Green webpage; *scroll to the bottom of the page and click on “Town or Village Greens”, scroll down further to “Erw Goch field”, where there is a zip file containing all relevant documentation. Please note that the documents received as part of the application and consultations are numerous and may take a few minutes to download.*

**Link: <http://www.ceredigion.gov.uk/resident/coast-countryside/common-land-and-town-village-greens/>

Council as Landowner

One of the Council’s objections to the application acting in its capacity as landowner is that the land is not capable of meeting the tests in section 15(2) of the Commons Act 2006 because it was acquired and held by the local authority for education purposes which is incompatible with registration as town or village green.

A copy of the objection on behalf of Ceredigion County Council as landowner made to the Council as Registration Authority during the consultation period is located on the Council’s website at (please see directions under “Application” above for accessing the documents):

**Link: <http://www.ceredigion.gov.uk/resident/coast-countryside/common-land-and-town-village-greens/>

Council Meeting 8th July 2022

A report was presented to Council at its meeting on 8th July 2022 and details of the background to the application can be found within that report, the link to which is:

<https://council.ceredigion.gov.uk/ieListDocuments.aspx?CId=149&MId=274&Ver=4&LLL=0>

<https://council.ceredigion.gov.uk/documents/g274/Printed%20minutes%2008th-Jul-2022%2010.30%20Council.pdf?T=1&LLL=0>

8) Report on the Application to Register Land as a Village Green at Erw Goch field adjoining Hafan y Waun, Waunfawr, Aberystwyth

Council RESOLVED to:

- “a) authorise 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.”

2. Current Position

This report is prepared and presented to the Council by the Council’s Registration Authority, acting pursuant to the Commons Registration Act 1965 and Commons Act 2006.

In order to avoid potential conflicts of interest, there is a separation of roles within relevant services.

Independent Assessor

Following the Council’s resolution on 8th July 2022, a solicitor of the Council’s Legal service acting for the Council as Registration Authority provided instructions to a Barrister to act as an independent assessor.

This is in compliance with resolution (a).

These instructions were accompanied by documentation comprising of the submissions made to the Council as Registration Authority during the consultation period. The Independent Assessor instructed is Katherine Barnes, Barrister, of 39 Essex Chambers.

The submissions to the Registration Authority can be found at:

<http://www.ceredigion.gov.uk/resident/coast-countryside/common-land-and-town-village-greens/>

The Independent Assessor for the Council as Registration Authority has provided an initial report which is attached as **Appendix 1**. This is in compliance with Resolution (b).

The Independent Assessor, at paragraph 7 of the attached initial report, states that the note contains her advice further to the Council's resolution (b) made at the meeting on 8th July 2022 as referenced above.

The initial report at paragraphs 8 and 9 states as follows:-

8. *"I have reviewed the Application and the representations made for and against the Application. In light of this:*
 - (a) *I confirm that I have not identified any reason why the Application has not been validly made and why it should not – therefore – be determined on its merits.*
 - (b) *With the exception of the point addressed at (c) immediately below, my recommendation to the Registration Authority as to how it should determine the Application will depend how I consider various disputes of fact should be resolved. This means that it is appropriate for the evidence to be tested through cross-examination at a public inquiry. Indeed, as per the Guidance above, the robust testing of the evidence is particularly important in this case given that Ceredigion County Council is both decision-maker (in its capacity as Registration Authority) and landowner. As such, I do not consider it would be helpful, or fair, for me to comment further at this early stage on the apparent strength of the evidence in support of and/or against the Application.*
 - (c) *One of the Landowner's objections to registration is based on the "statutory incompatibility" doctrine developed by the courts in a series of relatively recent cases. This is essentially a question of law (as confirmed by the Supreme Court in Lancashire County Council v Secretary of State for the Environment, Food and Rural Affairs [2019] UKSC 58) and so will not benefit from cross-examination. Rather, as a point of law it is best addressed through legal submissions. Further, if the Landowner's objection in this regard succeeds, the law requires that the Registration Authority reject the Application. Accordingly, it seems to me that the Landowner's proposal of dealing with the question of statutory incompatibility as a preliminary issue is sensible. Furthermore, I see no reason why the issue cannot adequately and fairly be dealt with in writing. This will benefit all parties, as well as the Registration Authority, since if my advice is that the statutory incompatibility defence succeeds (and the Registration Authority goes on to accept my advice in this regard), the time and expense of a public inquiry can be avoided.*
9. *Accordingly, I recommend that the Registration Authority authorises the following way forward in respect of determining the Application:*
 - (a) *The independent barrister assessor to consider as a preliminary issue, and by way of written representations (unless the barrister subsequently considers that a hearing or inquiry would be more appropriate), whether the doctrine of statutory incompatibility prevents registration of the Land as a TVG;*
 - (b) *The independent barrister assessor to write a report setting out her recommendation as to whether the Landowner's statutory incompatibility*

defence succeeds. The report is to be shared with the parties, and made publicly available;

- (c) *If the independent barrister assessor's report referred to at (b) advises that the statutory incompatibility defence succeeds, such that recommendation made to the Registration Authority is that it should not so register the Land as a TVG, the Application shall at that stage be considered by the Registration Authority for decision;*
- (d) *If the independent barrister assessor's report referred to at (b) advises that the statutory incompatibility defence fails, she shall go on the hold a public inquiry to examine the remaining issues. Following the public inquiry, the independent barrister assessor shall provide the Registration Authority with a report which sets out her analysis of the evidence and recommendation as to whether the Land should be registered as a TVG. The Application shall then be considered by the Registration Authority for decision."*

3. Decision Making

The role of the Barrister acting for the Registration Authority is that of an independent assessor and it is an advisory role rather than that of a decision-maker.

The Independent Assessor's role is to:

- consider the Application and the evidence for and against it
- and make a recommendation to the Registration Authority as to how it should determine the Application.

Determination of an application for registration as a Town or Village Green under section 15 of the Commons Act 2006 has not been delegated pursuant to Ceredigion County Council's Constitution.

Accordingly, the Council acting as a whole, is the decision-making body for the Council on behalf of the Registration Authority.

It is ultimately for the Council in its capacity as Registration Authority to determine the Application (including the statutory incompatibility defence referred to above),

as it sees fit, having taken into account:

- the recommendation of the Independent Assessor acting for the Registration Authority and
- the reasons for it.

4. Conclusion

The course of action proposed by the Independent assessor (Barrister) as outlined above, will benefit all parties as well as the Registration Authority since:

if her "advice is that the statutory incompatibility defence succeeds (and the Registration Authority goes on to accept the advice in this regard), the time and expense of a public inquiry can be avoided." (para 8(c)).

Conversely, if the statutory incompatibility defence does not succeed, the Barrister advises that she shall go on to hold a public inquiry to examine the remaining issues and her advice further to that process would be reported back to the Council as

Registration Authority for decision (para 8(d)). This is in compliance with Resolution (c).

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

Wellbeing of Future Generations:

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

Recommendation(s):

Council resolves that:

- (a) The independent barrister assessor is authorised to consider as a preliminary issue, and by way of written representations (unless the barrister subsequently considers that a hearing or inquiry would be more appropriate), whether the doctrine of statutory incompatibility prevents registration of the Land as a Town or Village Green;
- (b) The independent barrister assessor is authorised to write a report setting out her recommendation as to whether the Landowner's statutory incompatibility defence succeeds. The report is to be shared with the parties, and made publicly available;
- (c) If the independent barrister assessor's report referred to at (b) advises that the statutory incompatibility defence succeeds, such that recommendation made to the Registration Authority is that it should not register the Land as a Town or Village Green, that the Application shall at that stage be considered by the Registration Authority for decision;
- (d) If the independent barrister assessor's report referred to at (b) advises that the statutory incompatibility defence fails, she shall go on to hold a public inquiry to examine the remaining issues.
- (e) Following the public inquiry, the independent barrister assessor shall provide the Registration Authority with a report which sets out her analysis of the evidence and recommendation as to whether the Land should be registered as a Town or Village Green. The Application shall then be considered by the Registration Authority for decision.

Reasons for decision:

- To enable consideration of the Village Green Application,

- To ensure that appropriate processes are be in place.
- To ensure clarity and transparency

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:	Potential saving of public funds if Public Inquiry not required
Legal Implications:	Failure to comply with the Commons Act 2006 The Countryside Access (Local Access Forums) (Wales) Regulations 2001 Potential for judicial review
Staffing implications:	N/A
Property / asset implications:	N/A
Risk(s):	Failure to ensure that the Application is determined in accordance with legal advice and appropriate processes
Corporate Lead Officer:	CLO Highways & Environmental Services on behalf of Economy & Regeneration Service
Reporting Officer:	Eifion Jones
Date:	20/10/2022