

# CYNGOR SIR CEREDIGION COUNTY COUNCIL

**Report to:** Council

**Date of meeting:** 26 October 2023

**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 allow Members to consider the report of the independent assessor and determine the application for registration of land as a Village Green at Erw Goch field adjoining Hafan y Waun, Waunfawr, Aberystwyth

**For:** Decision

**Cabinet Portfolio and Cabinet Member:**

Councillor Clive Davies, Cabinet Member for Economy and Regeneration

## **1. Background**

### **Application**

On the 24<sup>th</sup> February 2021 an application (“the 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, 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 8<sup>th</sup> July 2022**

A report was presented to Council at its meeting on 8<sup>th</sup> July 2022, the details of which can be viewed via the links beneath:

<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>

Item 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."

### **Council Meeting 20<sup>th</sup> October 2022**

Following initial feedback from the independent assessor (Barrister) a further report was presented to Council at its meeting on 20<sup>th</sup> October 2022 the details of which can be viewed via the links beneath:

[Ceredigion County Council Agenda for Council on Thursday, 20th October, 2022, 10.30 am](#)

[Minutes Template \(ceredigion.gov.uk\)](#)

Item 9. Report on authorising a procedure for determining an application to register land as a Village Green

Council **RESOLVED** to:

- a) To authorise the independent assessor (Barrister) 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) To authorise the independent assessor (Barrister) 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) That if the independent assessor's (Barrister) 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) That if the independent assessor's (Barrister) 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) That following the public inquiry, the independent assessor (Barrister) 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.

## **2. Independent Assessor's Report**

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.

Acting in accordance with resolution (a) (Council meeting 20<sup>th</sup> October 2022) the Registration Authority instructed Katherine Barnes, Barrister, of 39 Essex Chambers as the independent assessor to consider whether the doctrine of statutory incompatibility prevents registration of the Land as a Town or Village Green.

Further to that, the independent assessor provided a note regarding the procedure for consideration of the Application dated 13 December 2022, attached as **Appendix 1**.

The note on the procedure stated: -

**Paragraph 3:** *“Accordingly, the first stage of the process is for me run a written representations procedure to enable me to make an informed recommendation to the Registration Authority as to whether the doctrine of statutory incompatibility prevents registration of the Land as a Town or Village Green. To facilitate this, I have set out below a timetable for the submission of representations.”*

**Paragraph 7:** *“In accordance with the Resolution [made on 20 October 2022], if my view, having considered the written representations received, is that the statutory incompatibility defence should succeed, then I will provide a report that sets out my reasoning in that regard and which recommends to the Registration Authority that it refuses the application. The matter would then return to the Registration Authority for decision. In contrast, if I consider that the statutory incompatibility defence should fail, then I will set out my reasoning in a report before going on to hold a public inquiry (in all likelihood preceded by a case management conference) to examine the remaining issues. Following the public inquiry, I will provide a report to the Registration Authority with my findings on all the relevant issues and my recommendation as to whether the Application should be granted. It would then be for the Registration Authority to determine the Application.”*

The independent assessor for the Council as Registration Authority has provided a report dated 8 June 2023 which is attached as **Appendix 2**. This is in compliance with Resolution (b) (Council meeting 20<sup>th</sup> October 2022).

The independent assessor's report states:

**Paragraph 20:** *“I therefore conclude that...on the balance of probabilities the Application Land was acquired for educational purposes”.*

**Paragraph 24** – *“Having considered the evidence, I therefore conclude on the balance of probabilities that, having been acquired for educational purposes in 1965, the Application Land has then continued to be held for educational purposes”.*

**Paragraph 25** *“Having concluded that the Application Land was acquired for and continues to be held for educational purposes, the next question is whether these educational purposes are incompatible with TVG use”.*

**Paragraph 26** – *“It seems to me that the Supreme Court’s decision in R (Lancashire County Council) v Secretary of State for the Environment, Food and Rural Affairs [2019] UKSC 58 (“Lancashire”), provides the answer to this. That is because the Supreme Court found that educational purposes (including for example the construction of new school buildings or the provision of playing fields) are inherently incompatible with TVG use (Lancashire at [65]). That conclusion is equally applicable here”.*

**Paragraph 27** – *“For the reasons given above, I conclude that the statutory incompatibility defence is made out. My recommendation to the Registration Authority is therefore that it must refuse the Application”.*

### **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 for the Council in its capacity as Registration Authority to determine the application, having taken into account:

- the recommendation of the independent assessor acting for the Registration Authority and
- the reasons for it.

### **4. Current Position**

Resolution (c) (Council meeting 20<sup>th</sup> October 2022) states:

c)That if the independent assessor’s (Barrister) 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.

The independent assessor recommends:

- that the statutory incompatibility defence is made out/succeeds, and
- has recommended to the Registration Authority that it must refuse the Application to register the Land as a Town or Village Green i.e. that it should not register the Land as a Town or Village Green as the doctrine of statutory incompatibility is made out such that it prevents the registration of the Land as a Town or Village Green.

Accordingly, the Registration Authority submits this report with a recommendation that the Registration Authority **refuse the Application** to register the Land as a Village Green due to the independent assessor concluding that the statutory incompatibility defence is made out.

The Application must now be considered by the Council (acting as the Registration Authority) for decision.

### **Recommendation**

That Council (acting as the Registration Authority) finds that the doctrine of statutory incompatibility prevents the registration of the Land as a Village Green and accordingly Council refuses the Application to register the Land as a Village Green.

If Council approves this recommendation, this will bring the Application process to an end, in accordance with resolution c) (Council 20/10/22).

### **Wellbeing of Future Generations:**

**Has an Integrated Impact Assessment been completed? If, not, please state why.**

N/A – this is not a policy or service change

### **Recommendation(s):**

That Council (acting as the Registration Authority) finds that the doctrine of statutory incompatibility prevents the registration of the Land as a Village Green and accordingly Council refuses the Application to register the Land as a Village Green.

### **Reasons for decision:**

- To determine the Village Green Application, based on the independent assessor's advice (Appendix 2):  
*that the statutory incompatibility defence is made out, and the recommendation to the Registration Authority is therefore that it must refuse the Application* (to register the Land as a Town or Village Green).

**Overview and Scrutiny:** N/A

### **Policy Framework:**

Ceredigion Rights of Way Improvement Plan (2019-2029)

**Corporate Well-being Objectives:**

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

**Statutory Powers:**

Commons Act 2006

**Background Papers:**

Inspectors Report on Preliminary Issue: Statutory Incompatibility

**Appendices:**

Appendix 1:  
Inspector's Note regarding the procedure for consideration of the Application 13/12/22  
Appendix 2: Independent Assessor's report 8/6/23

**Corporate Lead Officer:**

CLO Highways & Environmental Services on behalf of Economy & Regeneration Service

**Reporting Officer:**

Eifion Jones

**Date:**

28/10/2023