

**MINUTES OF A MEETING OF THE PLANNING, TAXI LICENSING & RIGHTS OF WAY COMMITTEE HELD AT TREFEGLWYS VILLAGE HALL, TREFEGLWYS, CAERSWS, POWYS SY17 5PH ON WEDNESDAY, 10 OCTOBER 2018**

PRESENT

County Councillor K Lewis (Chair)

County Councillors E M Jones, L V Corfield, L George, M J Jones, F H Jump, K Laurie-Parry, H Lewis, I McIntosh, D R Price, K S Silk, D H Williams, J Williams and R Williams

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| <b>1. APOLOGIES</b> |
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Apologies for absence were received from County Councillors David Selby, Elwyn Vaughan and Gwilym Williams. Councillors Gareth Pugh and Jonathan Wilkinson have not yet received the relevant training for village green applications so did not attend the hearing. County Councillor H Hulme, being the local member, was not allowed to participate in the meeting.

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| <b>Rights of Way</b> |
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| <b>2. COMMONS REGISTRATION ACT 1965 / COMMONS ACT 2006 - APPLICATION 16-001VG TO REGISTER A NEW TOWN OR VILLAGE GREEN</b> |
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2.1 Day 1 – 10 October, 2018 - Welcome, fire arrangements and introductions

The Chair welcomed the public to the meeting and explained the fire arrangements and introduced the Committee and officers.

2.2 Declarations of interest

County Councillor Heulwen Hulme had declared an interest because she is the Local Member for the ward affected by this application and could not take part in the decision-making process.

2.3 Timetable for the hearing

The Committee received opening statements from the applicant and objector. The Committee heard from the applicant's witnesses who were questioned by the objector, applicant and Committee.

2.4 Officer's report

2.5 Documentation

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| <b>3. WELCOME, FIRE ARRANGEMENTS AND INTRODUCTIONS</b> |
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Day 2 – 11 October, 2018 - The Chair welcomed the public to the meeting and explained the fire arrangements and introduced the Committee and officers.

### 3.1 Timetable for the Hearing

The Committee heard from the objector who was questioned by the applicant and Committee.

The Committee received closing statements from the objector and applicant.

### 3.2 Public Hearing closes at 11.00 a.m.

## 4. CLOSED SESSION FOR THE COMMITTEE TO DEBATE EVIDENCE

The Committee considered the application in private. The Definitive Map and Commons Registration Officer advised that the Committee needed to make a decision based on the legal criteria, namely whether:

(Section 15 (2) of the Commons Act 2006)

- (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.

(herein referred to as “the statutory purpose”)

The Definitive Map and Commons Registration Officer advised that the applicant and objector would be provided with the Committee’s decision and reasons. The Committee noted that in his closing statement, the applicant requested that the Committee refer to Council Tax records. However, this was not possible, as the Committee had to consider only the information with which it had already been provided by the applicant and objector.

In response to Members’ questions the following advice was provided:

- The Definitive Map and Commons Registration Officer advised that the Commons Act 2006 does not provide any specific guidance as to what “frequency” of usage is required, but usage does not have to be every day. However, it does need to be enough to indicate general use of the land, rather than occasional use by individuals as trespassers. The Committee needs to consider the body of evidence over the 20 years, using the written statements and the individual testimonies at the hearing and then form a picture. The Solicitor advised the Committee that due weight should be given to witnesses giving evidence at the Hearing and thus being available for cross-examination.
- The Solicitor advised that the comments made by the objector about people dumping rubbish and the alleged non-payment of sewerage charges were irrelevant and should be ignored by the Committee.
- The Definitive Map and Commons Registration Officer advised that the bar for the burden of proof was that for a civil case, being ‘on the balance

of probabilities.’ The Solicitor advised that this meant that the Committee had to consider whether an issue was “more likely to be the case than not.”

- The Definitive Map and Commons Registration Officer advised that the Committee needed to consider whether the users had established a use “as of right”, being without force, without secrecy and without permission. In deciding whether any permission might have been given, the Committee needed to consider what the users of the land would have understood from the owner’s actions.
- From the written and verbal evidence officers provided the Committee with a brief summary of usage over the 20 year period in question i.e. November 1996 – November 2016. It was noted by the Committee that as the social gatherings by adults had been infrequent, the application was primarily based on use of the land by children. From October 1996 – 2007 and from 2014-2016, the witnesses had identified specific children who had used the land. For the period from 2007 - 2013 no names had been provided, but general statements had been made by a number of witnesses indicating usage by children during that time. The Committee had to consider what impact this had on their view as to whether there had been continuous use of the land over this period. The Committee noted that they had to consider whether it was “more likely than not” that the land was continually used over this period for the statutory purpose.
- The Definitive Map and Commons Registration Officer advised that “significant” numbers using the area is not defined as being a specific number, or proportion of people in the neighbourhood or locality. The Committee could take into account the defined area from which the witnesses came, the number of houses and the population of this area. The Solicitor referred the Committee to the judicial discussion in *R (Alfred McAlpine Homes Ltd) vs Staffordshire County Council [2002] EWHC 76 (Admin)*. This case clarified that ‘significant’ does not mean considerable or substantial. What matters is that the number of people using the land in question has to be sufficient to indicate that their use of the land signifies that it is in general use by the local community for informal recreation, rather than occasional use by individuals as trespassers.
- The Definitive Map and Commons Registration Officer advised that the Committee’s decision could be challenged in the High Court on legal grounds i.e. that procedures were not followed correctly or that the legal criteria were not considered correctly.
- The Definitive Map and Commons Registration Officer advised that toleration of usage by the owner could give rise to prescriptive rights. The Committee considered the grass cutting and queried whether this might imply permission to use the land. The Definitive Map and Commons Registration Officer referred the Committee to the *Beresford* case (2004 1AC 889). This case clarified that permission can be implied, but ‘not by inaction or acts of encouragement by the landowner.’ Permission needs

to be revocable or time-limited and the landowner has to do something positive to communicate that permission to the users of the land.

The Committee then considered the legal criteria.

### **Locality and Neighbourhood**

The site visit to the area enabled the Committee to consider the locality and neighbourhood. The green was surrounded by houses and access was off the main road into the estate.

| <b>RESOLVED that</b>   | <b>Reason for decision</b>                                 |
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| <b>the applicant has shown that the area to which use of the land relates is a “neighbourhood defined as Hillcrest within the “locality” being Aberhafesp community.</b> | <b>The cohesiveness of the area has been demonstrated.</b> |

### **The relevant 20-year period and the use of the land for lawful sports and pastimes**

The Committee considered that the evidence showed a pattern of usage by children and that even though there were no named children or numbers using the green over the period 2007 – 2013, using the test of “balance of probabilities” there was a continuous pattern of use by children over the relevant 20-year period.

| <b>RESOLVED that</b>   | <b>Reason for decision</b>   |
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| <b>The land has been in continuous use over the 20-year period i.e. November 1996 – November 2016.</b> | <b>On the “balance of probabilities” there was a continuous pattern of use by children of the land over the relevant 20-year period.</b> |

The Committee noted the range of activities undertaken on the green by children and adults and considered whether they were ‘lawful sports and pastimes.’

| <b>RESOLVED that</b>   | <b>Reason for decision</b>   |
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| <b>the use of the land was for lawful sports and pastimes.</b> | <b>The range of activities identified by the applicant and witnesses constituted lawful sports and pastimes.</b> |

### **Use “as of right”**

The Committee noted that there were no barriers to stop people accessing the green and that it was used openly. Although permission was never sought to use the land, the owner did not stop usage and it was considered that there was clear use “as of right”.

| <b>RESOLVED that</b>                          | <b>Reason for decision</b>  |
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| <b>the use of the land was “as of right”.</b> | <b>The evidence demonstrated that use was made openly i.e. without force, without secrecy and without permission.</b> |

**Use by a significant number of inhabitants of the locality**

The Committee noted that the applicant referred to 13.3% of the population of Hillcrest used the land at the end of the relevant period. The Committee noted that usage levels over the 20-year period would have changed and they needed to consider the overall picture in deciding whether the usage was by a significant number of inhabitants.

| <b>RESOLVED that</b>   | <b>Reason for decision</b>   |
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| <b>the use was by a significant number of inhabitants of the locality.</b> | <b>Although the usage levels over the 20-year period changed the overall usage was by a significant number of inhabitants.</b> |

On the basis that, the Committee considered that, the land in question satisfies all the statutory requirements for registration as a village green, the Committee then considered whether all or part of the land identified in the application should be registered as a village green.

The Committee considered that none of the land was unusable due to the type of land (for example bog) and that the slope of the land was not an impediment to usage. They noted that some witnesses had specifically referred to use of the slope e.g. on mountain bikes.

| <b>RESOLVED that</b>   | <b>Reason for decision</b>  |
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| <b>The application to register the whole of the parcel of land at Hillcrest, Aberhafesp as shown edged red on Notice Plan 16-001VG, be accepted and the land be registered as a 'new' town or village green.</b> | <b>On the basis of the available evidence and on the balance of probabilities the whole area subject of the application has been used for lawful sports and pastimes.</b> |

**County Councillor K Lewis (Chair)**