

Ty Sgwylfa
Aberhafesp
Newtown
Powys
SY16 3JH
7 September 2018

Commons Registration, Countryside Services
Powys County Council
The Gwalia
Ithon Road
Llandrindod Wells
Powys
LD1 6AA
Your ref: RCCS/TVG/SB/16-001VG

Dear Sirs

Commons Registration Act 1965 & Commons Act 2006 – Section 15 (1)
Form 44 Application for the registration of land as a Town or Village Green
Land: land at Hillcrest, Aberhafesp, Newtown

I write further to your letter dated 3 May 2018 to confirm that I intend to give evidence at the hearing into the application for the registration of a Town or Village Green on the Land on 10 and 11 October 2018. This letter and the enclosed documents contain the evidence upon which I intend to rely at the hearing, and are limited to factual evidence. Legal matters relevant to the application will be dealt with in later submissions.

Before I comment on the documents submitted to date, I wish to comment on the current planning status of the Land. Planning permission was originally granted for the whole Hillcrest site in 1964, including permission for the erection of 3 dwellings on the Land (see attached planning permission no 6676). A subsequent permission (ref M4066, also attached) relating to the layout of Phase 2 of the development (which included the 3 plots on the Land) was granted in 1977. Those permissions were duly implemented by the erection of several dwellings. Whilst no dwellings have yet been built on the three plots located on the Land, it is my view that because these permissions were implemented, that planning permission for the erection of dwellings on the three plots on the Land remains extant.

My comments on the application form and the applicant's Evidence Questionnaire, Fuller Summary and Exhibits A, B and C:

At section 7 of the application form, the applicant says that the Land has been used for sports, recreation, social gatherings and meetings for 28 years. Counting back from 2016, which is the date of the application, means that the applicant's claim is that these activities have been occurring since 1988 at the latest.

However, the applicant's claim is disputed. In the early 1980s the Land was effectively a dumping ground with piles of soil on it. The Land was levelled off with the soil in the early to mid 1980's. Grass and thistles then grew on the Land, up to approximately 1 metre high, and from the mid 1980s the Land was cut approximately once per year with an agricultural mower. This cutting was organised by Lyn Jones, for which he was paid by way of a reduction in the amount we charged him in respect of the sewers/drainage to his property.

After the land was cut by the agricultural mower, the grass and thistles were not taken away but were left on the land, which made the Land inaccessible given there was a great deal of foliage left. The Land was then left for at least a year until it was cut again, during which time the grass and thistles grew back, and again grew to approximately 1 metre high, which made the Land inaccessible for much of the year until it was cut again with the agricultural mower. This continued until 2003, at which point Lyn Jones started cutting the grass on the Land regularly. From 2003 the Land was grassed and has been grassed ever since. Mr Jones cut the grass until 2014 when he had to stop because he was having an operation. In 2014 my brother and I took over the cutting of the grass and have cut it regularly ever since. Since my brother passed away in early 2018 my son has helped me cut the grass.

In response to the Questionnaire:

Question 9: I have never seen the applicant on the Land.

Question 18: the applicant says that the activities he has engaged in on the Land include firework displays and resident's association meetings. As to the firework displays, I have not seen the displays myself, and have not seen any evidence to suggest that they have taken place. There would be no physical evidence on the Land of those having been let off after the event in the same way as a bonfire. I note, in any event, that at question 26.c of the Questionnaire the applicant says that fireworks have not been let off from the site every year.

Question 20: the applicant says that, at the date the Questionnaire was completed, he was partaking in social gatherings and resident's association meetings. As to the social gatherings, I was not aware of any taking place at the time the Questionnaire was completed, and judging by other comments submitted (which I deal with below), any social gatherings were occurring very rarely.

Question 21.c: the applicant says that at the date the Questionnaire was completed, his children no longer used the Land, because they got too old to play. This has happened with many other residents' children, in that their children once did play on the Land but have since grown up and many have moved off Hillcrest, such that the use in later years has primarily been by residents' grandchildren who do not live on the estate.

Question 22.a: the applicant says that others use the Land daily. In his Fuller Summary, he says that he is 'not claiming that the green (i.e. the Land) is in continuous daily use, there are periods in the autumn and winter when very wet or cold weather prevents anyone from wanting to be outdoors'. I have never seen anything on the land which would suggest that it has been used by children. If the use of the Land is as the applicant suggests, I would have expected to have seen some evidence of it, such as play equipment.

Exhibit B: there is no evidence to suggest when the snowy photograph was taken. It does not show children building snowmen or throwing snow balls, as one might expect; instead, it purports to show a knocked over football goal; the photograph, however, is poor quality, and the purported goal cannot clearly be seen. No reliance should be placed on this photo. If what is shown is a goal, I would expect there to be another goal shown in the photo; however there is no evidence of another one.

Exhibit D: the letters of local residents

Several of the residents cannot attest to the use of the land in the requisite way for the requisite period because they have not lived there for a sufficiently long period. The following statements should therefore be disregarded.

1. Mr and Mrs Rawsthorne (who have only lived in their property for 8 months);
2. Gregoria Garcia-Ocana & Melanie Humphreys (who only moved in to their property 2 years ago);
3. John and Diane Law (who have only lived on the estate for 7 years). Their letter also indicates that the social events they have attended are not regular and that there had only been 2 such events in the couple of years preceding their letter.
4. D.R. Jones (who has only lived there for 6 years). There are no specifics in D.R. Jones' letter as to the frequency of the game playing or get-togethers, or what activities either comprise;
5. Mrs M Price (who has lived there for 14 years). Mrs Price says that she has no children, and is not specific as to the frequency of the residents' activities or get-togethers, or what they comprise;
6. Eluned Jones (who lived there for 19 years). Ms Jones is not specific as to the dates that she lived on the estate and thus little reliance can be placed on her letter;
7. Caroline Davies says that she purchased her property in May 1997 and thus by the date of the application (November 2016) she had not lived there for the required 20 year period. Ms Davies also says that the community has conducted various meetings on the Land '*over the past few year's*' [sic], and whilst she is not specific as to dates, the language used does not suggest that those meetings have been for in excess of 20 years. Personally, I have not seen anyone conducting meetings on the land. I have occasionally seen children playing on the land, and people walking across it.

As to the residents who have lived there for in excess of 20 years:

1. Elizabeth Davies is not specific as to the dates of her childrens' use of the Land and we cannot therefore be sure that their use continued for more than 20 years. Her letter says that her grandchildren now play on the Land when they visit; I understand that her grandchildren do not live on Hillcrest;
2. G and PE Fleming are not specific as to the dates the Land was used;
3. Bob Hill is not specific as to the dates the Land was used by the children he refers to;
4. K Pugh is also not specific as to dates. K Pugh has got two young children, and as far as I am aware, they are the only children currently living on the estate;
5. Marie Turner is not specific as to dates;
6. Mrs P Bound says that when she moved on to the estate in 1980 'the grass was so long as it was never cut by the Davies Bros', which supports what I say above. Mrs Bound is also not specific as to

the dates of her (and others') childrens' usage; her letter says that her grandchildren play on the land when they visit; I understand that her grandchildren also do not live on the estate, and that understanding is supported by the fact that her letter says that her grandchildren 'visit' which suggests that they do not live on the estate;

7. Margaret and Robert Jones are also not specific as to the dates on which the Land was used. They say they moved in in 1985, and that at that point their children were 11 and 7; by 1996 their children would have been 22 and 18, and very unlikely to have been playing on the Land; if they were, they would vey likely have ceased playing on the Land shortly after 1996. Mr and Mrs Jones also say that their grandchildren play on the site, and, as with other residents of the estate, I understand that their grandchildren are not resident on the estate;
8. Lynn & Barbara Jones are not specific as to dates of usage of the Land. They also say that grown ups have the 'occasional' barbecue on the Land, which suggests that they are very infrequent;
9. Shirley Blanchard says that she does not have children;
10. Oliver Amy is not specific as to the dates of his usage of the Land;

The letters written by current and former residents are completely lacking in detail and evidence as to what activities took place on the Land and when.

Several of the authors of the letters claim that their children have played on the land over the years. It is notable that none of these residents has produced any documentary evidence to support their claims; one would expect them to have taken photographs of their children playing, given that that is often an image captured by a parent. The only photographs of children playing on the Land were taken just prior to the date of the application, or just after, and do not therefore go any way to showing the required level or period of use. The photograph taken on 18 December 2016 shows who I believe to be are the only two children currently resident on the estate, who are the children of K Pugh. I believe that the girl shown in that photograph has since moved off the estate.

Whilst at one point many years ago there were several children living on the estate, at the date of the application it is my understanding that there were only 2 children living there. The evidence submitted in support of the application indicates a decline in the number of children actually living on the estate; several of the letters refer to residents' young children playing on the Land many years ago, and to their grandchildren (who are not resident on the estate) now playing on the Land when they come to visit their grandparents at Hillcrest. That assertion is supported by the following:

1. In his Fuller Summary the applicant himself states that 'a few families have remained after their children have departed for the wider world but even they still use the green when they are taking care of their grandchildren'.
2. Eluned Jones says that she regularly visits Hillcrest with her 3 small children; Ms Jones does not live on Hillcrest and her children, who she says play on the Land when she visits her parents, are not therefore resident on the estate.
3. The fact that the local primary school closed in 2011 (see attached printout from the gov.uk website).

Me and my brother's undated letter

The letter says that we have cut the grass since 2007 every two weeks. That is incorrect. My brother wrote that letter and was mistaken as to dates. As I have explained above, my brother and I took over the mowing regime in 2014 and have cut it regularly since then.

As to the letter from Powys County Council to me dated 13 August 2013, rubbish was being dumped on land which is situated close to Hillcrest but does not form part of the Land, which is owned by my older brother. My understanding is that the rubbish was being dumped by residents of Hillcrest and others, and then set alight by residents of Hillcrest.

The Applicant's submissions dated 16 March 2017

The photograph on the second page of the Applicant's letter shows who I believe to be my son, Ben, on the mower cutting the grass on the Land whilst two children play nearby. I believe that the two children shown in the photograph are the only two children who lived on the estate when the photograph was taken.

The photographs included within the applicant's submissions are not dated but purport to be 'recent'. There is, however, a total lack of photographic or other documentary evidence submitted by the applicant showing children playing on the Land (or indeed other activities taking place on the Land) over the required period. The photos only show recent use.

I do not propose to respond to 'Part 2' of the applicant's submissions dated 16 March 2017, given that they are not relevant.

Summary

The application contains a complete lack of detail as to the dates of use of the Land, and the frequency of that use. There is also a lack of evidence to support the claims made. One would expect more photos of children playing on the Land. Not one photograph of any adult social gathering has been provided. The evidence also suggests that whilst there may have been a level of use by children who lived on the estate some years ago, the majority of the use at the date of the application is by Hillcrest residents' grandchildren who do not live on the estate.

A case summary setting out the legal arguments and authorities upon which I wish to rely will be submitted in due course.

Yours faithfully

A black rectangular redaction box covering the signature of Mr Frank Davies.

Mr Frank Davies

CC The Applicant (Mr Richard Amy at Madryn, Hillcrest, Aberhafesp, Newtown, Powys SY16 3HL)

IMPORTANT—THIS COMMUNICATION AFFECTS YOUR PROPERTY

MONTGOMERYSHIRE COUNTY COUNCIL

Application No. 6676

Town and Country Planning Act, 1962
Town and Country Planning General Development Order 1963.

To Messrs. T.C. Hughes & Powell,
Solicitors,
Newtown, Mont.

acting for:-

Mr. G.H. Woosnam, Warrendale, Aberhafesp.

In pursuance of its powers under the above-mentioned Act and Order, the MONTGOMERYSHIRE COUNTY COUNCIL (hereinafter called "the Council") as Local Planning Authority hereby permits

Site for Residential Development on Part Encl. 846
at Aberhafesp Hall

Conditional Consent - Residential Development.

in accordance with the plan and application submitted to the Council on
22nd September 1964 †(subject to the conditions specified hereunder):-

the submission and approval of detail plans of
the dwellinghouses

†The reasons for the Council's decision to grant permission for the development
subject to compliance with the conditions hereinbefore specified are:-

Planning Considerations

DATED 17th day of December 1964

†Signed _____

(Address to which all communications should be sent.)

COUNTY PLANNING OFFICER
COUNTY OFFICES
WELSPPOOL

† Cross out if not applicable.
‡ Clerk or other authorised Officer of the Council.

IT IS IMPORTANT THAT YOU SHOULD READ THE NOTES ON THE REVERSE OF THIS FORM.

Town and Country Planning Acts, 1971-74**Town and Country Planning General Development Orders, 1973-76**

To Mr. Marie Owen,
Frank Chambers,
Newtown.

Acting on behalf of:-
Mr. G. G. Davison,
(Hillcrest Developments),
John Ealed,
Adfa,
Newtown.

In pursuance of its powers under the above-mentioned Acts and Orders, the MONTGOMERY DISTRICT COUNCIL (hereinafter called "the Council") as Local Planning Authority hereby permits: layout for ten dwellings (Phase II), Hillcrest, Aberhafesp.

In accordance with the application and plan submitted to the Council on 15th July, 1977, subject to the conditions specified hereunder

1. Unless stated otherwise below, the duration of this permission is limited as specified overleaf. The date on which this permission is granted is 2nd September, 1977.
 2. The conditions required by the Highway Authority (copy attached).
 3. Details of the type, colour & texture of all external materials shall be submitted to and approved by the local planning authority prior to any work commencing.
 4. Before development commences, details of the following matters shall be submitted to and approved by the local planning authority:-
 - a) plans & elevations of all buildings or structures to be erected on the site.
 - b) plan showing existing trees to be removed & existing trees to be retained.
 - c) type, colour & finish of all materials to be used on external surfaces.
 - d) precise positions, size, design, colour & materials of all boundary walls & fences.
 - e) plans indicating the landscape treatment of the site, including tree, shrub & hedgerow planting and indicating the size & species of all trees, shrubs & hedgerow plants.
- Such works shall be carried out as may be necessary to give effect to the details of the reserved matters so approved.

The reasons for the Council's decision to grant permission for the development subject to compliance with the conditions hereinbefore specified are:-

- Condition No. 1 - Conditions imposed by the above-mentioned Act.
 Condition No. 2 - In the interests of highway safety.
 Condition No. 3 - To enable the local planning authority to consider details of the proposal not covered by the present application.
 Condition No. 4 - To enable the planning authority to consider details of the proposal which are not covered by the present planning application.

DATED the 2nd day of September, 1977 Signed

(Signed) M. S. BACKHOUSE, Chief Planning Officer.

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Aberhafesp C.P. School

URN: 400463 Welsh establishment

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Details

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Location

Address: Aberhafesp, Newtown, Powys,
SY16 3HT

Local authority: Powys
(<https://www.gov.uk/Establishments/Search?searchtype=ByLocalAuthority&d=196>)
(666)

Headteacher/Principal:

Phase of education: Not applicable

School type: Welsh establishment

ID: URN: 400463, DfE number:
666/2000

Establishment status: Closed

Telephone: 01686688463

Religious character: Not recorded

Number of pupils: Not recorded

Section 41 approved: Not approved

Open date / Reason: Not recorded
Not applicable

Close date / Reason: 31/12/2011
Closure

Percentage of children eligible for free school meals: Not recorded