

No.

PUBLIC PROTECTION LICENSING COMMITTEE

Minutes of a remote meeting held on 14th November, 2023.

The Committee agenda is available [here](#).

The Meeting recording is available [here](#).

Present: Councillor P. Drake (Chair); Councillor J.M. Norman (Vice-Chair);
Councillors G. Bruce, L. Burnett, V.P. Driscoll, C.P. Franks, E. Goodjohn, H.C.
Hamilton, W.A. Hennessy, N.B. Marshallsea. M.J.G. Morgan and R. Sivagnanam.

506 ANNOUNCEMENT –

Prior to the commencement of the business of the Committee, the Chair read the following statement: “May I remind everyone present that the meeting will be live streamed as well as recorded via the internet and this recording archived for future viewing”.

507 APOLOGIES FOR ABSENCE –

These were received from Councillors S.T. William and M.R. Wilkinson.

508 MINUTES –

RESOLVED – T H A T the minutes of the meeting held on 17th October, 2023 be approved as a correct record.

509 DECLARATIONS OF INTEREST –

No declarations of interest were received.

510 COMMONS ACT 2006 - APPLICATION TO REGISTER LAND AS TOWN OR VILLAGE GREEN – LAND AT RINGWOOD CRESCENT, ST ATHAN (OMLS) –

The report was presented by the Principal Lawyer for Committee to consider and determine the application to register the land at Ringwood Crescent as a town or village green under Section 15(2) of the Commons Act 2006.

Page 20 of the report showed a diagram indicating that the land was split into two parcels and the detailed report included the applications, materials and objections. An application had been made in February 2023 to the Council in its role as the Commons Registration Authority and there was a delegation to the Committee for making decisions in relation to that function. After being publicised by the Council in accordance with the relevant legislation an objection was raised by Annington Property Limited, who were the owners of the land.

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Paragraph 1.2 of the report set out the legal test that was needed to be considered by Committee in relation to whether an application should be successful or not under Section 15(2) of the Commons Act 2006, specifically that *“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 they continue to do so at the time of the application.”*

For the application, the locality was described as the ward of St Athan, but it was the use of land for lawful sports and pastimes as of right that was the critical point in the application. Officers suggested that as of right meant that the applicant or the people who were claiming the town and village green must have undertaken those lawful pastimes without secrecy, without force or without permission, and it's the without permission element that was to be focused on in the application.

There was evidence within the application of the names of 160 people within the locality, identifying what activities had been undertaken on the land in question in the 20-year period, primarily for walking, dog walking, picnics and ball games. The objection to the application claimed that the applicant failed to identify a proper locality, and then that in any event the user evidence of 160 persons did not amount to a significant number of the inhabitants of the locality.

The objector noted that the use claimed was not as of right, but rather by right, since the use by residents of numbers 1 to 8 Ringwood Crescent was permitted by the express rights contained in the transfers of those properties from Annington property to the owners, examples of which could be found on Page 257 of the report. Furthermore, there were signs on the land which expressly permitted the use by the public of the land for recreational purposes, and that those signs had been present on the land since at least September 2009, which cut across the 20-year period, examples of which could be found on Pages 285 to 298 of the report, as well as a map on Page 284 showing the locations of the signs and the signs themselves and what had been written on those signs. The objection was provided to the applicant who did not seek to challenge the fact that those signs were on the land but did refer to the fact that the signs had not been erected by the property owner. However, the landowner could have removed those signs when the land was purchased and had chosen not to remove them.

The final point of the objection was that the evidence submitted failed to provide sufficient evidence as to the nature and timing of the recreational uses planned and the areas of land to which it related.

Council Officers had reviewed the evidence submitted from both the applicant and the objector and their response was contained within Paragraph 1.12 of the report, and further proposed that the application could be determined by the Council in its capacity as Commons Registration Authority and to refuse the application without a non-statutory public inquiry being convened.

In order to confirm this understanding, Legal Officers sought external legal advice which was summarised in Paragraph 1.14 of the report, which stated that the Counsel's advice was that the Council had discretion as to how about to decide

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the application, as long as it was satisfied it had enough information to determine the application and if not, to determine the reasonable steps to obtain sufficient information. The subsequent view of Council Officers was that there was clear evidence in relation to the use of the land as of right or by right, by virtue of those signs being in place and having been in place since at least 2009, which cut across the 20-year period required for the applicant to prove that the land should be registered as a town or village green.

The Principal Lawyer referred to the two recommendations within the report and was happy to take questions regarding the report.

The Chair asked if any Members of the Committee had questions for the Principal Lawyer.

- Councillor Bruce asked if by 'inhabitants of any locality' whether that referred to the whole of the ward of St Athan. The Principal Lawyer said his understanding was the application had been made on that basis.
- Councillor Hennessy referred to the list of residents who had identified what activities had been undertaken on the land in question and noted that none of them had said they had never used the land in question and queried why the application had been granted without the need to come to Committee. The Principal Lawyer said that the application only satisfied one part of the legal test to qualify to be registered as a town or village green. The land was being used as of right as there was clear evidence to show that the landowner had given permission for the public to use those areas for the purposes of recreation through the signs that were erected on site. As such, the land in question was not capable of being registered as a town or village green under the strict legal test set out in Section 15(2) of the Commons Act 2006.
- Councillor Norman asked why the matter had come to Committee for determination given that external legal Counsel had been sought and seemed to correspond with the advice of Officers. The Principal Lawyer said that the Committee was the decision-making body for the matter. Officers had made a recommendation, but the Committee had the right to come to its own conclusion in determining the matter, as laid out in the Recommendation to the report.
- Councillor Bruce asked if it was known why the landowner was objecting to the land being registered as town or village green. The Principal Lawyer said it was common for landowners to object to such applications as a successful application would limit the landowner's ability to deal with their own land as they wished to. In this case, the landowner has objected as they felt the application did not meet the statutory tests to be registered as a town or village green.

There were no further questions from Members of the Committee. The Chair then invited the local ward Member, Councillor Haines, to address the Committee.

Councillor Haines thanked the Committee for allowing him to speak on the matter. Page 18 of the report contained a map that showed the area was part of Flemingston, about one and a half miles from any other facilities aside from a

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Church and a private golf club. As such, that land within the community did act as a village green and served one of the poorest communities in the western Vale. Residents were less likely to own cars and so removing green space within walking distance would be detrimental to them. There was also a new development to the north made up of two to three hundred houses. Councillor Haines noted that of the 160 responses received to the application most of them came from within an area of around 300 houses, so it would affect a large proportion of the same community. The Councillor said that he had lived in St Athan and used that site for many years, as had his children, and expressed concern that if the site were not to be registered as a town or village green that the land would eventually be used for housing in an area that did not even have a shop. Jane Hutt MS: Minister for Social Justice and Chief Whip had referred to pockets of poverty within the western Vale and said that facilities needed to be protected for local residents. He added that although signage had referred to not allowing dogs to be walked on the land, that he had received numerous complaints about dog walkers not picking up after those dogs, suggesting that people were using the land without permission, and urged the Committee to support the residents of St Athan and allow the application for the land to be registered as town or village green.

No questions were asked by Members to Councillor Haines and the Chair asked for the advocate, a Planning Solicitor from Eversheds Sutherland acting on behalf of the landowner of the application, to address the Committee.

The advocate noted that the application was made on the basis of Section 15(2) of the Commons Act 2006 as described in Paragraph 1.2 of the report, while the landowner, Annington Property Ltd., submitted that the application failed to satisfy all aspects of the criteria in Section 15. He focused on the as of right element, stating it was evident from the papers that the applicant would never be able to demonstrate that that aspect of the statutory criteria which had to be fulfilled as had already been noted, as of right meant use of the land without forced secrecy or permission. The advocate said it was clear that the use of the land in the application had been with the owner's permission, and therefore the use was by right and not as of right.

Annington Property Ltd. had been the registered proprietor for the application site since at least 2002. The site itself had originally been part of a larger estate owned by the Ministry of Defence. Annington had sold various plots within the estate in the early 2000s, now known as the properties at 1-8 Ringwood Crescent. There were also signs erected at the property that had been in situ for a number of years and which granted permission to members of the public to use the site for recreational purposes.

The advocate referred to the point made regarding dog walking and that the signs in that area related to the former children's play area which had formerly been in the site but was no longer there after being removed some years ago.

He submitted that the evidence made clear that the use of the application site had been with landowner's permission and that the statutory criteria relating to as of right could therefore not be satisfied, with the applicant not disputing the use of the

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land for recreational purposes. He submitted that to submit the proceeding to a public inquiry would be an unnecessary cost and supported by the view of the independent legal advice that the Council obtained that the recommendation of Officers in Recommendation 1 to the report be followed, and the application be refused.

The Chair asked if any Members of the Committee had questions for the advocate.

- Councillor Hennessy asked if the application were to be refused, would his client intend to build on the pieces of land. The advocate was not aware of his client's intentions for the land. He was aware that there were rights reserved to use that land for amenity purposes in the transfer, however that question was not relevant to the statutory tests for constituting a village green. If there were to be a future proposal to develop the land, it would be subject to a separate planning application which would be determined on its own merit by the Council and was not relevant to the land satisfying the criteria to be a town or village green.
- Councillor Franks asked about the play area that had been removed, when it was removed, who had removed it and why it had not been replaced. The advocate was not aware of the detail, but it had not been there since 2009 and had been grassland since its removal.

As no further questions were asked by Members to the advocate, the Chair asked for the representative of the Ringwood Crescent residents to address the Committee.

The representative asked Committee, on behalf of the residents of Ringwood Crescent in St Athan to agree to the village green application and not to accept the conclusions of the Officers and refer the application to a non-statutory enquiry. That would include the appointment of a legally qualified and suitably experienced independent Chairperson to hold such an inquiry.

It was considered that the application land had been used by a significant number of inhabitants and the 160 questionnaires confirming the use of the land was sufficient for the application to be valid. Many people who had submitted questionnaires had used the land as of right and as a result the application was valid. No signage had been erected by Annington Homes, and the signage that was there was old, hard to read and not in plain sight. The 160 responses demonstrated that the land had been used frequently over a period of over 20 years up to the date of the application. The applicants considered that their supporting evidence clearly demonstrated that the use of the land met the tests for the land to be registered and that the objection did not stand up to scrutiny and should be rejected as the use of the application land had been as of right for at least 20 years. As such, the Council should therefore register the application land as a new village green.

The conclusions of the legal advice obtained by the Council were not binding and the Committee were asked to consider the concerns and issues of local residents and allow the matters to be addressed in detail as a public enquiry in order to

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support and protect the interests of local people who use the land for recreation, leisure and sport. The protection of the land for the local community was very important and the community were faced with the loss of access to an important and beautiful green space.

The Chair asked if any Members of the Committee had questions for the representative.

- Councillor Norman referred to the statement regarding the eligibility of the signs and referred to Pages 285-298 of the report which showed that the signs were legible in both English and Welsh. The representative said that he had spoken to people using the field and they had never even noticed the signs were there. Most people would not see the signs when accessing the field.
- The representative then asked the advocate about a consultation the previous year concerning housing on the site. The advocate said he was not aware of any proposed plans, however there were rights reserved in transfers for the use of that land for recreational purposes and ultimately not relevant to whether the application satisfied the criteria to be a town or village green.

The Principal Lawyer made some further points for clarification.

- Councillor Haines had referred to the availability of alternative open space in the St Athan ward. Whereas that may be a consideration for the local community, for the purposes of the application and the determination of the application, those elements were not relevant as the only relevant matters pertained to the specific evidence supplied in relation to the site.
- The provision of public facilities was not within the remit for consideration in terms of the application.
- Whether the landowner was proposing or had plans to propose a planning application for the land in question, or for any other uses, was not a relevant consideration when considering the application for the land to be registered as a town or village green. The application was separate to any other actual or proposed matters and was not a vehicle to stop development, but to enshrine for perpetuity any areas of town or village green that met the relevant tests.
- There had been comments regarding the transfers and the rights granted within those transfers. Again, those were not a matter to be determined as part of the application.
- It was clear in the report that the local signage on site was present and legible in both English and Welsh, and Page 284 of the report shows the seven locations of the signs around the site which were considered sufficient for the landowner to be able to rely on the content of those signs as granting permission for the public to use that land with their permission.
- The view of Officers and external Counsel was that the chances of the application being successful at inquiry was limited and there was sufficient evidence for Committee to make a decision to refuse the application.

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The Chair thanked all parties for their presentations and opened the matter up to Members to debate the application.

- Councillor Bruce said she would like to see further evidence from the applicants and most of the evidence was from the landowner.
- Councillor Hennessy proposed that the Committee go to a recorded vote.
- Councillor Haines raised a point of clarification, in that when he was referring to facilities, he specifically meant at Flemingston rather than in the ward of St Athan. The Principal Lawyer thanked the Member for the clarification and noted that it remained a fact that the provision of public facilities was not within the remit for consideration in terms of the application.
- Councillor Marshallsea asked what the process would be if the matter to be referred to a public inquiry. The Principal Lawyer advised that if Committee were to decide to go with the alternative recommendation and request a statutory public enquiry, Officers would work to appoint an external inspector who would provide a further report and then the non-statutory public inquiry would be held. Such enquiries tended to follow some months after the appointment to accommodate pre-enquiry meetings, setting boundaries for the enquiry, etc. The length of the enquiry would be dependent on the amount of evidence submitted and how many people wished to give verbal evidence. At the conclusion of the enquiry, the inspector would produce an end report which would be brought back to Committee for consideration. There would still be an option for Members to find against any recommendations made, but as there was no strict appeal process regarding village green applications there was potential for the decision to be judicially reviewed. There would be no cost to either party in terms of the process; that would be borne by the Council, aside from each party meeting its own legal costs.
- Councillor Morgan appreciated the matters that had been raised and for the desire to have a village green as a facility for local people, however the legal guidance on the matter seemed to be clear and Committee had to be conscious of that. It seemed clear that there was use of the land but that local people had been given permission to do so, with clear signage to indicate the same. There was no threat of the land being removed from community use currently. Unfortunately, the application did not meet the statutory tests and he recommended that the application be refused.
- The Principal Lawyer did not want Committee Members to be under the impression that there was a guarantee that the land could not be developed in future based on the provisions within the transfers relating to the rights to access. That would be a private matter for the landowner to pursue separately and was not relevant for consideration of the application.
- Councillor Sivagnanam appreciated that local residents were using the land every day and appreciated the aspiration to have the land registered as a town or village green but agreed that Committee had to be guided the law and that taking the matter to an independent inspector would be a significant cost to the Council and was content to follow Officer's recommendations.

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- Councillor Driscoll was of the opinion that in order to help local residents it would be more appropriate to let an independent public enquiry decide the matter for the residents of St Athan, as finances were not a relevant issue.

No further deliberation, questions or points of clarification were sought by Members. The Chair then read out the two recommendations within the report and proposed that the Committee accept Recommendation 1. The proposal was subsequently put to the vote and the proposal carried.

Having fully considered the matter, Committee subsequently:

RESOLVED – T H A T having considered the conclusions in connection with the Application and taken into consideration the debate from all parties at the meeting, that the Application to register the Land as a town or village green be refused because the Applicant had failed to satisfy the statutory tests under section 15(2) of the 2006 Act for the reasons set out in the report.

Reason for decision

In order for the Council as Commons Registration Authority to discharge its duty to determine the Application in accordance with the 2006 Act and the Commons (Registration of Town or Village Greens) (Interim Arrangements) (Wales) Regulations 2007.