

Meeting of:	Public Protection Licensing Committee
Date of Meeting:	Wednesday, 15 July 2020
Relevant Scrutiny Committee:	All Scrutiny Committees
Report Title:	REPORT OF THE OPERATIONAL MANAGER, LEGAL SERVICES IN RESPECT OF THE VALE OF GLAMORGAN COMMONS REGISTRATION AUTHORITY APPLICATION 1/2019/TVG50 – TO REGISTER LAND AT MAES Y FFYNNON, BONVILSTON AS A TOWN OR VILLAGE GREEN UNDER S15 OF THE COMMONS ACT 2006.
Purpose of Report:	To consider an application made under the Commons Act 2006 (“the Act”) for land known as land at Maes Y Ffynnon, Bonvilston (“the Land”) to be registered as a Town or Village Green
Report Owner:	Victoria Davidson, Operational Manager, Legal Services
Responsible Officer:	James Docherty, Principal Lawyer, Legal Services
Elected Member and Officer Consultation:	None
Policy Framework:	None
Executive Summary:	<ul style="list-style-type: none"> The Vale of Glamorgan Council is the Registration Authority for the administrative area by virtue of the Commons Act 2006 (“The Act”). This function is carried out by the Council. On 22 May 2019, an application was received by the Registration Authority to register an area of land at Maes Y Ffynnon, St Nicholas, Vale of Glamorgan (“the Application”). The Land is owned by the Council as part of its housing function and the Council in its land owning capacity registered an objection to the Application, the Council as landowner is referred to in this report as “the Objector”. Due to the Council being the landowner and objector a non-statutory public inquiry was convened for an Independent Inspector to consider the Application and provide a recommendation to this Committee as to how the Application should be determined. The Inspector has recommended that the Application be refused for the reasons set out in his Report (“the Inspector’s Report”) which is annexed to this Report.

Recommendation

1. To accept the recommendations in the Inspector's Report and to determine that the Application to register the Land as a Town and Village Green be refused because the applicant has failed to satisfy the statutory criteria contained in section 15(2) of the Act.

Reason for Recommendation

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

1. Background

- 1.1 The Council initially received an application to register the Land as a town/village green on the 24th April 2019 but that application was not in compliance with the relevant legislation. An acceptable application to register the Land as a town/village green was received on 22nd May 2019. A copy of the Application Form 44 and plan is attached at Appendix 'A'.
- 1.2 On 30th July 2020, the Public Protection Licensing Committee considered a report concerning the Application and determined that in view of the circumstances outlined, namely that the Council was the owner of the Land, a non-statutory public inquiry should be held in order for the Council as Registration Authority to discharge its obligation to adopt a fair and transparent procedure and to determine the application in accordance with the relevant legislation.
- 1.3 Mr James Marwick a barrister with experience of town and village green registration matters, was appointed as Inspector in relation to the non-statutory public inquiry and to produce a report with recommendations. The inquiry was held virtually over the Zoom platform on 19th April 2021.
- 1.4 The applicant and objectors were informed of the non-statutory public inquiry.
- 1.5 The full report of the Inspector is attached at Appendix 'B'. The report sets out the law, the evidence heard and recommendations.
- 1.6 The Inspector's Report has been circulated to the applicant and objectors.
- 1.7 Members determining this application have been provided access to bundles of the Public Inquiry including closing submissions.
- 1.8 The Council cannot delegate the decision making process to the Inspector as the decision is for the Council delegated to the Public Protection Licensing Committee. It should be emphasised that the Inspector's recommendations are not binding on the Committee, and the Committee must consider the Inspector's Report and decide whether it agrees with the Inspector's conclusions on the key

issues. However, should the Committee decide not to follow the Inspector's recommendations it would need to provide detailed reasons for not doing so.

- 1.9** In the Inspector's Report the Inspector makes clear that the burden of proof of satisfying each element of the statutory criteria rests with the Applicant.
- 1.10** The application seeks the registration of the Land by virtue of the operation of section 15(2) of the 2006 Act. Under that provision, land is to be registered as a town or village green where:
 - 1.10.1 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
 - 1.10.2 they continue to do so at the time of the application.
- 1.11** The Inspector has indicated the following issues to be critical in this case:
 - 1.11.1 whether the Land has been used "by right" or "as of right" and the statutory compatibility of the Land as land held under the Housing Act 1985.
- 1.12** The Inspector confirms that there is no dispute with:
 - 1.12.1 the relevant period in this case, the relevant period being 23rd May 1999 to 22nd May 2019;
 - 1.12.2 the locality being the area of Maes Y Ffynnon and Village Farm, Bonvilston as shown on edged in red on the plan;
 - 1.12.3 the user of that part of the land identified in the Inspector's Report as the physical green.
- 1.13** The Inspector found that there was insufficient evidence as to the use of the carriageway and/or hardstanding within the Land to support a finding of use by a significant number of local inhabitants and therefore his consideration of the Application was limited to the "physical "green" referred to in the Inspector's Report which relates solely to the grassed area.
- 1.14** The Inspector considered with reference to relevant case law and the evidence submitted by both the applicants and the objectors in written and oral form, the use of the Land "as of right" and the statutory compatibility of registering the Land as a town or village Green.
- 1.15** As regards Statutory Compatibility the Inspector's opinion was the Land was held as Housing Land under the Housing Act 1985 and had been at all material times for the statutory purpose of the Objectors Housing function. The Inspector also found that the land had not been appropriated to another use and that the ongoing maintenance of the physical green was consistent with the ongoing management of the Land as housing stock.

1.16 The Inspector further found that the registration of the Land as a village green would frustrate the statutory purpose as it would constrain the Objector's ability to erect new buildings under section 12 of the Housing Act 1985.

1.17 As regards the use of the Land "by right" or "as of right" it is the Inspector's finding that the use of the Land as land laid out for recreation of amenity space is "by right" not "as of right".

1.18 The Inspector's overall conclusion is set out in paragraph 56 and states:

"My overall conclusion is the Application must fail because:

(a) Registration would be incompatible with the statutory purposes for which the Land is held by the Objector.

(b) User has been "by right" rather than "as of right" of the physical "green" which is the only part of the Land over which there has been sufficient user for lawful sports and pastimes."

2. Key Issues for Consideration

2.1 The options available to the Committee are:

2.1.1 Accept the Inspector's recommendations and refuse the Application; or

2.1.2 Not accept the Inspector's recommendations and grant the Application in full or in part and register the Land as a town or village green.

3. How do proposals evidence the Five Ways of Working and contribute to our Well-being Objectives?

3.1 The Registration Authority is under a duty to maintain a Register of Town or Village Greens and to consider the Application independently.

3.2 This is a matter for Licensing Committee exercising their delegated powers to make arrangements for the discharge of the statutory registration functions of the Council.

3.3 This is a matter reserved for decision by the Public Protection Licensing Committee subject to the procedure set out in the Regulations.

4. Resources and Legal Considerations

Financial

- 4.1** Registration of a new Town or Village Green is a Corporate Function. The cost of the Inquiry have been met from within the existing Legal Services Budget.
- 4.2** Members should note that if an interested party challenges the Committee's decision legal costs, which could be significant, may be incurred by the Council.

Employment

- 4.3** None

Legal (Including Equalities)

- 4.4** The Application has been made under S15(2) of the Commons Act 2006 and must be considered by the Registration Authority under the procedure set out in the Commons (Registration of Town or Village Green) (Interim Arrangements) Wales (Regulations 2007).
- 4.5** The Council's power in its capacity as the Registration Authority to register a town or village is a Council (statutory registration) function delegated to the Licensing Committee as set out in the Council's Constitution and in accordance with Schedule 1, Regulation 33 of the Local Authorities (Executive Arrangements) (Functions and Responsibilities) (Wales) Regulations 2007.
- 4.6** There is no right of appeal against the Council's decision but interested parties could challenge the decision by applying for Judicial Review. A failure to determine the application in accordance with the law or at all will leave the Council exposed to a Judicial Review or a claim of maladministration by the Public Service Ombudsman for Wales.

5. Background Papers

Appendix A - Application

Appendix B - Inspector's Report

Commons Act 2006: Section 15

Application for the registration of land as a Town or Village Green

Official stamp of registration authority indicating valid date of receipt:

<p>RECEIVED BY LEGAL SERVICES</p> <p>23 MAY 2019</p>
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Application number:

Register unit No(s):

VG number allocated at registration:

1 / 2019 / VG50

(CRA to complete only if application is successful)

Applicants are advised to read the 'Guidance Notes for the completion of an Application for the Registration of land as a Town or Village Green' and to note the following:

- All applicants should complete questions 1–6 and 10–11.
- Applicants applying for registration under section 15(1) of the 2006 Act should, in addition, complete questions 7–8. Section 15(1) enables any person to apply to register land as a green where the criteria for registration in section 15(2), (3) or (4) apply.
- Applicants applying for voluntary registration under section 15(8) should, in addition, complete question 9.

1. Registration Authority

To the

Vale of Glamorgan Council

Note 1

Insert name of registration authority.

Note 2

If there is more than one applicant, list all names. Please use a separate sheet if necessary. State the full title of the organisation if a body corporate or unincorporate.

If question 3 is not completed all correspondence and notices will be sent to the first named applicant.

Note 3

This question should be completed if a solicitor is instructed for the purposes of the application. If so all correspondence and notices will be sent to the person or firm named here.

2. Name and address of the applicant

Name: MAES Y FFYNNON RESIDENTS ASSOCIATION (MYFRA) &
St NICHOLAS AND BONVILSTON COMMUNITY COUNCIL

Full postal address:

c/o
21 Maes Y Ffynnon
Bonvilston
Vale of Glamorgan
Postcode CF5 6TT

Telephone number: [redacted]
(incl. national dialling code)

Fax number: [redacted]
(incl. national dialling code)

E-mail address: [redacted]

3. Name and address of solicitor, if any

Name: [redacted]

Firm: [redacted]

Full postal address:

[redacted]
Post code

Telephone number: [redacted]
(incl. national dialling code)

Fax number: [redacted]
(incl. national dialling code)

E-mail address: [redacted]

Note 4

For further advice on the criteria and qualifying dates for registration please see section 4 of the Guidance Notes.

** Section 15(6) enables any period of statutory closure where access to the land is denied to be disregarded in determining the 20 year period.*

4. Basis of application for registration and qualifying criteria

If you are the landowner and are seeking voluntarily to register your land please tick this box and move to question 5.

Application made under **section 15(8)**:

If the application is made under **section 15(1)** of the Act, please **tick one** of the following boxes to indicate which particular subsection and qualifying criterion applies to the case.

Section 15(2) applies:

Section 15(3) applies:

Section 15(4) applies:

If **section 15(3) or (4)** applies please indicate the date on which you consider that use as of right ended.

If **section 15(6)*** applies please indicate the period of statutory closure (if any) which needs to be disregarded.

5. Description and particulars of the area of land in respect of which application for registration is made

Name by which usually known:

Maes Y Ffynnon, Village Green
(North end of Maes Y Ffynnon.)

Location:

AS detailed in the map marked 'A'. - AS outlined in red.

Shown in colour on the map which is marked and attached to the statutory declaration.

Common land register unit number (if relevant) *

Note 5

The accompanying map must be at a scale of at least 1:2,500 and show the land by distinctive colouring to enable it to be clearly identified.

* Only complete if the land is already registered as common land.

6. Locality or neighbourhood within a locality in respect of which the application is made

Please show the locality or neighbourhood within the locality to which the claimed green relates, either by writing the administrative area or geographical area by name below, or by attaching a map on which the area is clearly marked:

The neighbourhood is predominantly Maes Y Ffynnon, within the locality of Bonvilston and the neighbourhood of Village Farm, also within the locality of Bonvilston.
The map attached outlines the estates of Maes Y Ffynnon and Village Farm within Bonvilston.

Tick here if map attached:

Note 6

It may be possible to indicate the locality of the green by reference to an administrative area, such as a parish or electoral ward, or other area sufficiently defined by name (such as a village or street). If this is not possible a map should be provided on which a locality or neighbourhood is marked clearly.

7. Justification for application to register the land as a town or village green

Note 7

Applicants should provide a summary of the case for registration here and enclose a separate full statement and all other evidence including any witness statements in support of the application.

This information is not needed if a landowner is applying to register the land as a green under section 15(8).

The Village Green to the North end of Maes Y Ffynnon is the area we are applying to register. This area has been used as a Village Green for 'lawful recreational sports and pastimes' for at least 20 years and since the mid 1950's, by Maes Y Ffynnon residents and members of the Village Farm estate and some other members of Bonvilston.

The Village Green has provided a safe area for children to play games on for decades and this continues today. It serves as an open green space for dog walkers and nature watchers, who reside in the estates of Maes Y Ffynnon, Village Farm and other members of the Bonvilston Community. The Village Green has been used as an area for relaxation and socialisation for generations and over 20 years for the residents of Maes Y Ffynnon and Village Farm in Bonvilston.

The Village Green has hosted events, celebrations and social gatherings for the last 20 years and since the 1950s, as it provides the perfect location for group gatherings, events and parties. There has never been a requirement to seek permission to use the Village Green from anyone or the owner, for recreational sports and pastimes, or any other activity. The Village Green situated at the North end of Maes Y Ffynnon, which flanks the hard stands, where 5 garages originally stood has been used in its entirety 'as of right', for the last 20 years and since the 1950s. There has never been any restrictions on the Village Green's usage, or signs or notices preventing residents from using the area for 'recreational sports and pastimes', or any other activity, in its history.

Please See Attached Supporting Statement

Note 8

Please use a separate sheet if necessary.

Where relevant include reference to title numbers in the register of title held by the Land Registry.

If no one has been identified in this section you should write "none"

This information is not needed if a landowner is applying to register the land as a green under section 15(8).

8. Name and address of every person whom the applicant believes to be an owner, lessee, tenant or occupier of any part of the land claimed to be a town or village green

The Vale of Glamorgan.

9. Voluntary registration – declarations of consent from 'relevant leaseholder', and of the proprietor of any 'relevant charge' over the land

None.

Note 9

List all such declarations that accompany the application. If none is required, write "none".

This information is not needed if an application is being made to register the land as a green under section 15(1).

10. Supporting documentation

Note 10

List all supporting documents and maps accompanying the application. If none, write "none"

Please use a separate sheet if necessary.

LIST OF MYFRA MEMBERSHIP
Supporting Statement.
Land Registry map of area - Village Green
Map of/outline neighbourhood using Green.
Appendix 1: Land Registry map of area/USP
Appendix 2: Witness Statements
Appendix 3: Photographs
Appendix 4: Evidence Questionnaire

Note 11

If there are any other matters which should be brought to the attention of the registration authority (in particular if a person interested in the land is expected to challenge the application for registration). Full details should be given here or on a separate sheet if necessary.

11. Any other information relating to the application

Note 12

The application must be signed by each individual applicant, or by the authorised officer of an applicant which is a body corporate or unincorporate.

Date:

22 / 5 / 2019

Signatures:

REMINDER TO APPLICANT

You are advised to keep a copy of the application and all associated documentation. Applicants should be aware that signature of the statutory declaration is a sworn statement of truth in presenting the application and accompanying evidence. The making of a false statement for the purposes of this application may render the maker liable to prosecution.

Data Protection Act 1998

The application and any representations made cannot be treated as confidential. To determine the application it will be necessary for the registration authority to disclose information received from you to others, which may include other local authorities, Government Departments, public bodies, other organisations and members of the public.

Statutory Declaration In Support

To be made by the applicant, or by one of the applicants, or by his or their solicitor, or, if the applicant is a body corporate or unincorporate, by its solicitor, or by the person who signed the application.

¹ *Insert full name (and address if not given in the application form).*



I....., solemnly and sincerely declare as follows:—

² *Delete and adapt as necessary.*

1.² I am ((the person ~~(one of the persons)~~ who (has) ~~(have)~~ signed the foregoing application)) (~~(the solicitor to (the applicant)~~ (³ one of the applicants)).

³ *Insert name if Applicable*

2. The facts set out in the application form are to the best of my knowledge and belief fully and truly stated and I am not aware of any other fact which should be brought to the attention of the registration authority as likely to affect its decision on this application, nor of any document relating to the matter other than those (if any) mentioned in parts 10 and 11 of the application.

3. The map now produced as part of this declaration is the map referred to in part 5 of the application.

⁴ *Complete only in the case of voluntary registration (strike through if this is not relevant)*

4.⁴ I hereby apply under section 15(8) of the Commons Act 2006 to register as a green the land indicated on the map and that is in my ownership. I have provided the following necessary declarations of consent:

- (i) a declaration of ownership of the land;
- (ii) a declaration that all necessary consents from the relevant leaseholder or proprietor of any relevant charge over the land have

Cont/

⁴ Continued

been received and are exhibited with this declaration; or
(iii) where no such consents are required, a declaration to that effect.

And I make this solemn declaration, conscientiously believing the same to be true, and by virtue of the Statutory Declarations Act 1835.

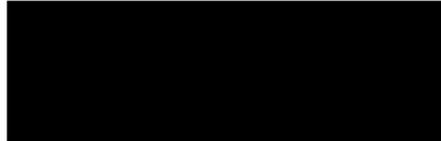
Declared by the said

DEBORAH SAN CLARKE

at 4 MAES Y FELN
Llandow Gwent

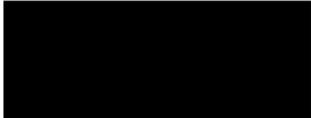
this 22nd day of May 2019

Signature of Declarant



Before me *

Signature:



Address:

4 MAES Y FELN
Llandow Gwent
CF71 7PD

Qualification:

Solicitor.

* The statutory declaration must be made before a justice of the peace, practising solicitor, commissioner for oaths or notary public.

Signature of the statutory declaration is a sworn statement of truth in presenting the application and accompanying evidence.

REMINDER TO OFFICER TAKING DECLARATION:

Please initial all alterations and mark any map as an exhibit

HM Land Registry Current title plan

Title number **CYM410667**
Ordnance Survey map reference **ST0674SE**
Scale **1:1250 enlarged from 1:2500**
Administrative area **The Vale of Glamorgan / Bro Morgannwg**



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This copy of the title plan is incomplete without the preceding notes page.

Mae'r copi hwn o'r cynllun teitl yn anghyflawn heb y dudalen flaenorol o nodiadau.

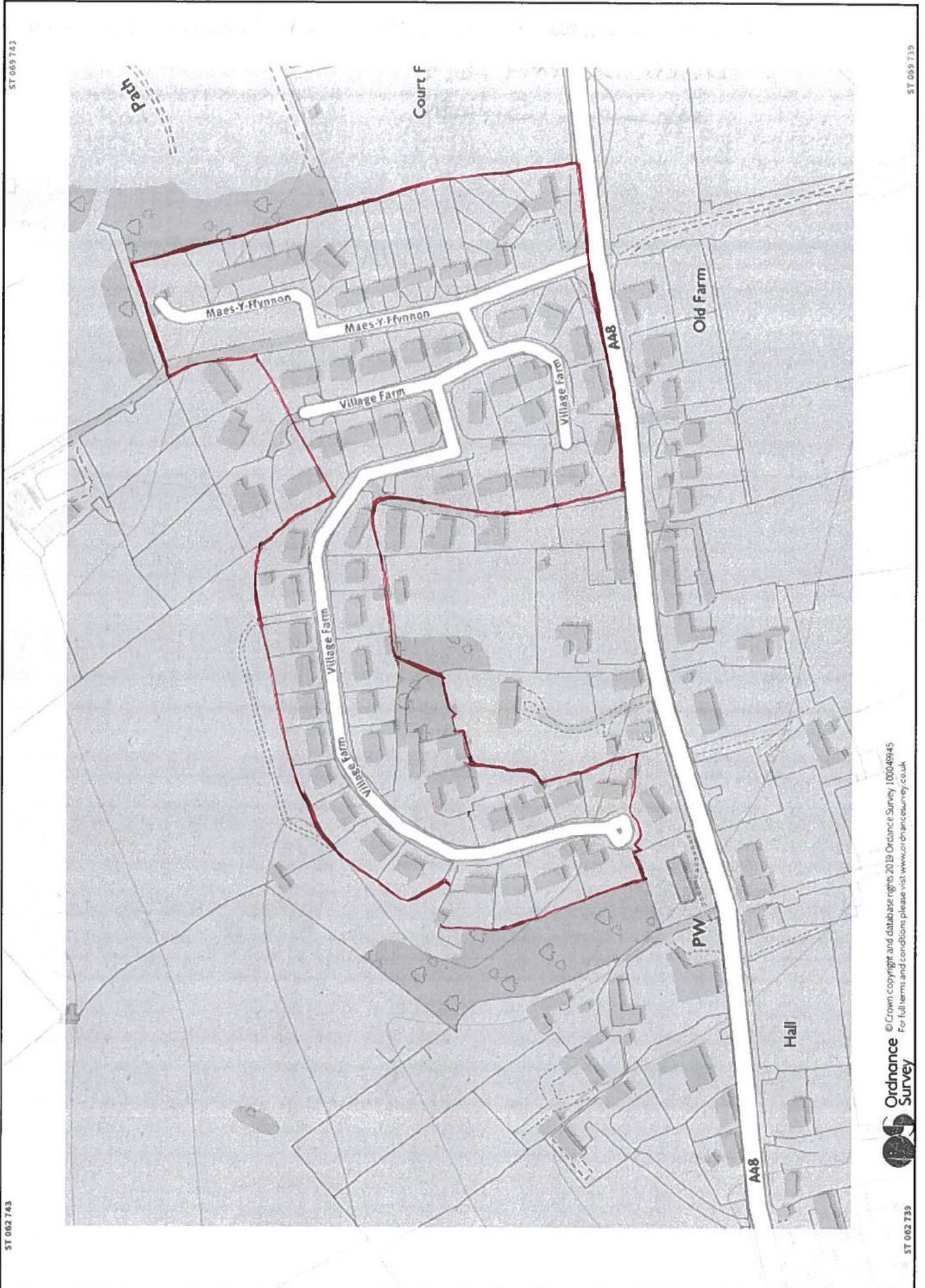
THIS IS THE EXHIBIT MARKED 'A'
REFERRED TO IN THE STATUTORY DECLARATION
OF DEBORAH SIÂN CLARKE MADE THIS
17 APRIL 2019 BEFORE ME



Redated 22nd MAY 2019



OUTLINED IN RED - LOCALITY OF THE NEIGHBOURHOOD USING THE VILLAGE GREEN, MAES Y FFYNNON - PREDOMINANT USE AND VILLAGE FARM.



THIS IS THE MAP REFERRED TO IN PART 6
OF THE STATUTORY DECLARATION OF DEBORAH SWAN CLARKE
DATED 22 MAY 2019



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Supporting Statement for The Protection of The Village Green at Maes Y Ffynnon, Bonvilston

This statement is evidence required for the submission of the application to protect the village Green in Maes Y Ffynnon, Bonvilston. To support this statement there a number of 'witness statements', and photographs provided by residents of Maes Y Ffynnon and Village Farm in Bonvilston, many of which are supported by photographic evidence of activities, sports and pastimes and events that have taken part on the Village Green. **(Appendix 2 and Appendix 3).**

The earliest memories of the green have been provided by a number of residents who have resided in Maes Y Ffynnon since the beginning, when it was first developed. The first houses were built in 1948 in a post second world war Britain that was seeking to re-build communities destroyed through conflict. A number of our long-standing residents can site memories and recollections from the last 50 years, including, Cecil Mustow, Thelma Whiting and Kath Lougher. As time served residents they can reminisce about life and their experiences of using the village green at Maes Y Ffynnon, dating back to the 1950s. It is therefore not surprising that they passionately support the application to protect Bonvilston's Village Green space, located to the North end of Maes Y Ffynnon.

In 1948 the first houses were erected and following on from this, there were additional houses built in Maes Y Ffynnon from the late 1940s through until 1956, which make up properties number 1 - 24. Many of these are still occupied by the original residents, including properties 10, 14, 17, 19 and 20. It should be noted here that the design and quality of the architecture for these houses was recognised on many levels and they become award winning properties. The properties 1 – 24 include in their design two Village Greens, (one is located at the North end of Maes Y Ffynnon, the other at the front alongside properties 1 – 6). The Green at the North site extends from the end of number 24, around the hard stands, (that were previously the garages) and then runs directly in front of the houses 15 – 24 in Maes Y Ffynnon. **(Appendix 1.1, Land registry Title Plan, Green to the North of Maes Y Ffynnon outlined in red).**

The evidence that Bonvilston has 2 Village Greens is supported by the 1996 – 2011, Vale of Glamorgan Unitary Development Plan (UDP), which was adopted by the Vale of Glamorgan Local Authority and described Maes Y Ffynnon as, "a group of estate houses set around two "village greens". **(Appendix 1.2, P 17, 6.3.3).** This application applies to the Village Green located to the North end of Maes Y Ffynnon, as outlined in red on the attached map. The UDP report also clearly highlights the need for "The protection and enhancement of the two rural housing estates at Maes Y Ffynnon". **(Appendix 1.2, p17, 6.3.5).**

The design of the Maes Y Ffynnon houses allows the residents to enjoy the traditional principles of community life, integrated design, comprising of shared access to the properties, via communal paths and side passages. The Green space is integral to supporting community spirit and traditional family and village values. This has historically contributed to a better quality of family life and community togetherness. The houses and the Village Green were designed to complement each other and serve to support a lifestyle that promoted community activities, including recreational sports and pastimes.

It has always been evident from the 1950s, through the 1970s, 1980s, 1990s, 2000s, to the present that the Village Green has served to fulfil the principles of community living and function fully in line with its intended purpose. This Village Green has been used as an area for 'recreational lawful sports and pastimes, 'as of right' by the residents since the 1950s. It's inclusion in the overall design and layout of Maes Y Ffynnon, was for the sole purpose of providing a Village Green space for the local community to use. Over the decades the Local Authority have recognised this area as a Village Green

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and protected it as such and aimed to preserve and protect the space, with preservation orders on many of existing trees.

From the beginnings of the Maes Y Ffynnon development, residents took full advantage of the Village Green space, which is evidenced in the Witness Statements from Cecil Mustow and Thelma Whiting, who have lived in their houses from when they were first built. Cec moved in to Maes Y Ffynnon in the 1950s and in his words 'the Green existed on day one'. Cecil Mustow can provide many stories about his son, Kelvin who was 5 when they moved to Maes Y Ffynnon, playing with Sheila Whiting on the Green from the year they first moved in. **(Appendix 2.1, Witness Statement / Appendix 3.1 Photograph)**

He along with other residents such as Thelma Whiting have witnessed decades of activities on the Green, some of which were annual events tying in with Bank Holidays, or Bonfire night and others that involved unique one-off celebrations, such as the Queen's 1977 Silver Jubilee. **(Appendix 2.2, Witness Statement)**. During the 1960s the Green was used to hold annual Carnivals on the August Bank Holiday not just for the residents of Maes Y Ffynnon, but for all of the Bonvilston villagers to attend. By this time the Green was 'in full swing' and functioning as the centre of the community, with events and Carnivals being held on the May Day and August Bank Holidays as well. **(Appendix 2.2 Witness Statement / Appendix 3.2 Photograph)**.

During the 1970s there was one of the most significant changes to the village of Bonvilston in its history. In 1976 building started on the houses at Village Farm, which were being constructed on the area known as the 'sports field'. Historically this site had been a space for playing local club football, cricket and hosting Pony Gymkhanas for the residents of Bonvilston and neighbouring village of St Nicholas. There was also a building which is now long gone, on the 'sports field', that was known as The Pavillion. The loss of this green space known as the 'sports field' and site of so much activity, meant that the focus for outdoor community activities centred around the Village Green to the North end of Maes Y Ffynnon, that flanks the garages on both sides. **(Appendix 2.1, Witness Statement)**. This became the primary green space as it was that was safe for to children to play and large enough for adults to socialise with each other and Fetes and other activities be held. The development, which involved such a significant loss of green space, was able to go ahead because there was the Village Green space in Maes Y Ffynnon. This Village Green was considered a sufficient and appropriate space to serve the residents of Village Farm as well, as Maes y Ffynnon. The fact that if offered the scope for social activity, was also an important factor with the loss of the Pavillion. A bench was donated by John Ferry following sale of his 'sports field' for the Village Green, when the houses were built in Village Farm, (this was in recognition of the Village Green space at the North of Maes Y Ffynnon having the capacity to serve the community of Bonvilston with a place for recreational sports and pastimes, as so much land space was lost due to the housing development). The evidence provided supporting this application includes and describes testimonials and pictures of the bench being used by the residents of Bonvilston. **(Appendix 2.1 and 2.2, Witness Statements / Appendix 3.3 Photographs)**.

Village Farm was built during the 1970s and 1980s and was completed in 1985. This saw an influx of families moving into Bonvilston and an increase in the number of children who played on the Village Green and also attended the community events. The new Village Farm Estate also attracted families with younger children, as it was in the catchment area of Cowbridge school and Bonvilston children could attend St Nicholas Primary School. Another significant contributing factor for the increase of the usage of the Village Green, from the late 1960s, into the 1970s and through to the 1980s, was that a number of the residents that first moved in had young families, so Maes Y Ffynnon had a growing population of small children and young people living there. There was Lynne and Gareth Morgan, Andrew and Linda Morgan, David and Christine Lougher to name a few of the children that played

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daily on the Village Green. All of these children, who are now adults either still reside in the village of Bonvilston or return regularly to visit their parents and relatives. Their continued connection with Maes Y Ffynnon, has allowed them to share their memories of daily playing on the Village Green with ball games, cricket and climbing trees. The children would also build dens and practice sports for the school teams that they represented. **(Appendix 2.3, Witness Statement).**

As well as the daily play there was always something to look forward to that would take place on the Village Green. Every year for decades, residents built a bonfire for Guy Fawkes night, they also in October gathered in their Halloween costumes before parading around the village. The annual Bonfire was at the North end of the Village Green to the left of where the garages and hard stands are situated. **(Appendix 2.1, 2.2 ,2.3 Witness Statements).** The residents also held Fetes and celebrations throughout the 1970s and 1980s, including a party on the Green to celebrate the Queens Jubilee. The attendees for this event were between 80 and 100 and the residents all congregated on the Village Green for the Royal celebrations. The photographic evidence provided from 1977, clearly shows the residents celebrating in style and fancy dress on The Green. The area to the right of the garages backing onto number 24, has stalls and stands with festive bunting residents wearing their Red, White and Blue. **(Appendix 2.1, 2.2, 2.3, Witness Statements / Appendix 3.4, 3.5 Photograph).**

It was during the 1970s that the Council decided to plant the Sycamore Trees that are now mature and an integral part of supporting the wildlife, that is in abundance on the Green. A significant number of these have existing Preservation Orders applied to their conservation. Residents both in the past and present enjoy the birdlife which can be observed, including an abundance of Woodpeckers, finches and tits to name a few. The trees also serve to support the local Bat and Owl (both Tawny and Little) populations that can be seen and heard on a daily basis, further adding to the Greens charm. **(Appendix 2.1, 2.5, Witness Statements).** Spurred on and inspired by the planting of the trees, the residents decided to further enhance the area and began planting bulbs and shrubs on the Village Green. Many of these daffodils can still be seen today around the bottom of the trees and around the bench at the front of the Green.

In 1978, 1982 and then later in 1990s the big freezes descended, and residents had weeks of snow, with the schools closed, public transport at a standstill and also regular power cuts. The residents of Maes Y Ffynnon, during all of these decades pulled together to clear the roads and the children in Bonvilston took full advantage of their time off school, by building snowmen and having snow ball fights on the Green, sledging down the slope at the front of the Green to the road and walking along the top of the hedges which separates the Village Green from the lane. There are Witness Statements and photographs provided from the 1990s of Rhys and Jordan Ivory sledging and building igloos on the Green. **(Appendix 2.1 Witness Statement / Appendix 3.6, 3.7, 3.8, 3.9, 3.10, 3.11, 3.12, 3.13, 3.14, 3.15, 3.16 Photographs).**

From the early days of the Green and throughout the 1980s to 2019, it has been a favourite spot for dog owners to let their pets chase a ball and stretch their paws. Eve Morgan, Lynne Morgan, Chris and Alex Brown and Thelma Whiting who are all animal lovers have exercised their dogs on the Green for many years. In the 1980s Eve had her first dog, which was called Tegwen, a picture of her has been provided holding Teg on the Village Green. She walked Teg daily on the Village Green and on weekends her daughter joined them with her dog, Non and they threw balls at the front, around the garages on both sides, up to and behind number 24. Eve also walked her last dog Lucy on the Village Green and this continued until 2011 and residents and family can recall seeing her out there throwing the ball and chatting with her neighbours. Her dog walking on the Green spanned over four decades and can be remembered by residents of all ages. **(Appendix 2.2, 2.3,2.5,2.6,2.7, Witness Statements / Appendix 3.17, 3.18, Photographs).**

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During the 1980s, other special activities that took place on the Village Green, notoriously a rock music concert with a temporary stage, amplifiers and a local band. Gareth Morgan, from number 20 had now progressed from playing children's games such as, 'rat a tat ginger' to leading and playing bass in his newly formed band. In 1981/1982 following weeks of practice Gareth on bass and his band, with fashionably long hair and 'cut off denim' played their first public gig on the Village Green at Maes Y Ffynnon for the residents of Bonvilston to enjoy. This was attended by those living in both Maes y Ffynnon and Village Farm and as his Sister recalls the neighbours were very patient and supportive of pre-concert practicing leading up to the 'gig'. Lynne, Gareth's Sister witness statement describes this perfectly. **(Appendix 2.3, 2.4, Witness Statements).**

During the 1990s a new generation of children started to play on the Village Green. Rosemary Fisher, who moved to Maes Y Ffynnon in 1993, with her husband Paul, did so to give her children a village life upbringing. She recalls their three children playing on the Green and how it also offered a social point for her to meet the other residents. This allowed her to become friendly with many people living in Maes Y Ffynnon and she felt comforted that they would keep an eye on the children playing on the Village Green. Rosemary has provided a witness statement that describes her children, playing ball games, riding their bikes and playing football. Her sons played with other children from number 23 and 24 Maes Y Ffynnon and number 26 Village Farm, as well as other children in Bonvilston. Both Rosemary and her Daughter Alice have provided evidence of how she played with Zach and Georgia Usher in number 24 Village Farm building dens and making up games. Her three children played sports and used the Green recreationally as teenagers as well, so this spanned across two decades and up until 2010. **(Appendix 2.10, 2.11).**

Leigh and Tracy Ivory's children Rhys and Jordan (Number 23 Maes Y Ffynnon, who are referred to by Rosemary), played football and games on the Village Green after school and on the weekend. They learned to ride their bikes on the Village Green and Leigh has fantastic video footage of this from 1997. **(Appendix 3.36, DVD containing Video Footage).** Tracy has described how her children not only played traditional games but also 'slip and slide' and even camped out on the Village Green creating their own adventures, as both children and teenagers. They continued to play on the Village Green for many years, Rhys has early memories of learning to ride his bike, as well as playing with his Brother and Sister and children from Village Farm. He recalls playing, football and cricket on the Village Green after breakfast and also his favourite game which was Mob. Throughout their teenage years they continued to use the Village Green to play football and to also camp out with their friends, making them very popular boys. They played on the Village Green for over two decades up until 2010. These days Rhys can be seen playing football with his Nephews on the Village Green, especially on Sundays and school holidays while his Mum, who is a now Granny is cooking roast dinner for the whole family. The family place great importance on this generation having the same experience that Rhys and his siblings had and this generation of children cannot wait to come to Maes Y Ffynnon to play, as they do not have a Village Green of their own. **(Appendix 2.5, 2.8, 2.9, Witness Statements / Appendix 3.19, Photographs)**

When Rhys is not there to play football with his Nephews they can be seen playing together and with Oliver Hunt who lives in number 13. Oliver is 11 and enjoys the freedom of being able to go out to play with his neighbours and his parents, Nick and Ceri Hunt have piece of mind knowing that he is safe and can be observed by the other residents, including relatives Sian and Steve Clarke, at number 21 and Leigh and Tracy Ivory at number 23. Oliver regularly brings his friends to play on the Village Green and like so many children today they love the freedom and space they have to run around with a football or climbing trees, as the community where they live, does not have a Village Green. In the summer Oliver also used to play with his three Cousins who come and stay with their Aunt and Uncle

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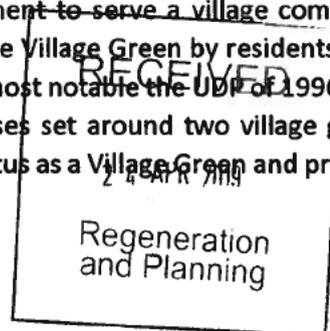
at number 21 and we have watched them inventing new games and planning adventures around the Village Green and trees. Over the last couple of years Oliver's little Brother Tommy has also started to join in with playing on the Village Green, practicing his football skills with Mum, Dad and his Brother, whilst throwing the ball for Max their Springer Spaniel. **(Appendix 2.9, 2.12,2.7. Appendix 3.25, 3.26, 3.27, 3.28, Photographs).**

Dog walking has been a common and ongoing theme for the usage of the Village Green and this still continues today with Alex and Chris Brown from number 24, training Lyra their rescue dog on the Village Green, with photos provided to illustrate this. Other photographs of residents with their dogs on the Green, have also been provided, including Ceri Hunt with her Spaniel Max and Steve Clarke with Ebony a black Labrador. Residents from the flats and houses 1 – 14 and Village Farm, are also regularly seen walking their dogs on the Green. Buddy and Noodles who are very regular visitors to stay at number 23 Maes Y Ffynnon, can be seen running around on the Village Green, sniffing out the local cats, before visiting Cec in number 17 for a rest and discipline. **(Appendix 2.5, 2.6, 2.7, 2.13 / Witness Statements, Appendix 4, Questionnaire / Appendix 3.27, 3.28,3.29 3.30, Photographs)**

The Maes Y Ffynnon, Village Green, has not only served for children to play but offered recreational and social opportunities for the adult community. There are photographs of residents mixing with their neighbours and fellow villagers on the Village Green. **(Appendix 3.20, 3.21, 3.22, 3.23, 3.24, Photographs).** For over sixty years it has been the place for villagers to engage in, lawful sports and pastimes. It continues to host special events on notable occasions, such as St David's Day celebrations, with Welsh Cake competitions, fancy dress and children's games. On 2nd March 2019, the local residents of Maes Y Ffynnon and Village Farm gathered together to celebrate St David's Day and had refreshments and cakes on the Village Green. There were games for the children, such as 'hide and leek' along with drawing activities and football being played. There were also some fellow villagers from St Nicholas and The Downs in attendance, such as Anne Walklate and Therese Hunt who came to enjoy the celebrations. It was also great to see some of the original Maes Y Ffynnon residents there enjoying tea and cake, including Cec and Thelma, (mentioned above). This is evidenced in the photographs provided to support this statement. **(Appendix 2.7, Witness Statement. Appendix 3.20, 3.21, 3.22, 3.23, 3.24, 3.25,3.28, 3.31, 3.32, 3.33,3.34,3.35,3.37, Photographs).**

It is clear from the narrative above reflecting residents experience and the supporting evidence, of witness statements, photographs and official documentation, that there has been a continued use of the Village Green by generations of residents, many of which are part of the same family. It has served as a multi-functional and multi-generational green space that has united the community for decades. When the houses were built its inclusion in the design of the Maes Y Ffynnon development was for the sole purpose of being a Village Green to serve the community. It has clearly fulfilled and exceeded its intended purpose. It has been used and referred to since the 1950s, as 'The Village Green' providing a place to host a diverse range of activities, over many years. The Village Green at Maes Y Ffynnon also as already mentioned hosts a wealth of wildlife, including Newts, Bats, Owls and Snakes that further add to its charm and qualities. This provides constant opportunities for many of the residents, to nature watch.

The original residents describe the Village Green as being there from 'day one', as part of Maes Y Ffynnon. It clearly was not added at a later date because it was never meant to be added, as it was an integral original feature, tying together the overall development to serve a village community. **(Appendix 2.1, Witness Statement).** It has always been called the Village Green by residents and as previously noted, is referred to as such in a range of documents, most notably the UDP of 1996 -2011, where Maes Y Ffynnon is described as, "a group of estate houses set around two village greens." **(Appendix 1.2).** The council has encouraged over the years its status as a Village Green and protected



it from any change of use, development or building and has recognised the need for it to be kept as an area for childrens play, dog walking and a central space for socialising. This space has been used as a village Green 'as of right', since the 1950s and this continues today in 2019.

Since the mid-1950s there has never any restrictions imposed on the Village Green, in terms of its usage. It has not had any signage put up preventing ball games, play, community functions or dog walking. On the contrary, it has always been encouraged by the respective local authority, currently this is the Vale of Glamorgan Council, to be utilised for social activities and this was previously endorsed by Cardiff Rural District Council, when Maes Y Ffynnon was designed.

At no point has the Village Green ever been fenced off or any area been subject to the erection of a barrier preventing access to any part of the open space. This extends from the front where the bench is, to the north end where the garages once stood and the area of grass that backs onto number 24. All areas of this Village Green have been used by children, teenagers, adults, pet owners and the village at large for over excess of twenty years and this practice continues today. The village Green in Maes Y Ffynnon Bonvilston was designed along the same principles of supporting the need for social housing of the 1950s, as also apparent in the developments of Pendoylan, St Nicholas, Duffryn Close and Button Ride, and Peterston of the same time. All of these villages are supported by the same design and community inclusion principles as Maes y Ffynnon, Bonvilston and have recognised Village Green spaces.

There is a schedule of events planned for this year for activities to take place on the Village Green, including an early Summer event and Celebration for the August Bank Holiday weekend, Halloween and Bonfire night parties. The witness statements and evidence of current Village Green usage included to support this application represent the majority of the 'occupied' properties in the Maes Y Ffynnon estates. This application is also supported by residents of Village Farm and the St Nicholas and Bonvilston Community Council.



**IN THE MATTER OF AN APPLICATION TO REGISTER LAND
AT MAES Y FFYNNON, BONVILSTON AS A TOWN OR VILLAGE GREEN UNDER
SECTION 15 OF THE COMMONS ACT 2006**

**REPORT
Of
James Marwick
6th June 2021**

-Application Number 01/2019/VG50-

**The Vale of Glamorgan Council
Holton Road
Barry
CF63 4RU**

**IN THE MATTER OF AN APPLICATION TO REGISTER LAND
AT MAES Y FFYNNON, BONVILSTON AS A TOWN OR VILLAGE GREEN UNDER
SECTION 15 OF THE COMMONS ACT 2006**

REPORT

Introduction

1. This Report is in respect of an Application made under section 15 of the Commons Act 2006 (the “**2006 Act**”) to register land at Maes Y Ffynnon, Bonvilston (the “**Land**”) as a town or village green (the “**Application**”). I was instructed by the Vale of Glamorgan Council in its capacity as the relevant Registration Authority (the “**Registration Authority**”) to hold a non statutory public inquiry in relation to the Application and to provide my findings and recommendations by way of a written report for consideration by the Registration Authority

2. The Inquiry was held over the course of a single day on 19th April 2021 by Zoom. I had directed that the Application was one capable of being dealt with remotely in circumstances where the COVID-19 pandemic has significantly disrupted the ability of public bodies to hold public meetings and inquiries. There was no objection to that course by the interested parties and I express at the outset my gratitude to the parties for their constructive approach to this matter. I remain entirely satisfied that fair and open justice was achieved by the Inquiry. The Inquiry was publicised in the usual way and members of the Public were able to join the Inquiry by a link upon request to the Registration Authority.

3. The evidence was completed within the allocated single day and I directed sequential exchange of written closing submissions from the parties which were provided in due course following the Inquiry. There were three bundles for the purposes of the Inquiry- Applicant’s Bundle, Objector’s Bundle and Registration Authority Bundle. The bundles should be appended to this Report.

The Application

4. The Application was made by the Maes Y Ffynnon Residents Association and St Nicholas and Bonvilston Community Council (together, the “**Applicant**”) on 22nd May 2019 by application form 44. The Application was made on the basis that section 15(2) of the 2006 Act applies. The Application was verified by a statutory declaration made on 22nd April 2019 by Ms. Sian Clarke.

5. The layout of the Land is clearly identifiable on the ordnance survey plan annexed to the Application as well as in photographs and on google maps. It is an L-shaped section of land adjacent to the residential housing which forms Maes Y Ffynnon and which mainly comprises of a large area of grass and trees. There is a physical carriageway and pavement on Maes Y Ffynnon. It is in part adopted highway but it continues along the line of the adopted highway as an unadopted access road to an area of hardstanding which at most material times formed the site of five garages. The physical carriageway, highway and garages site form part of the Land which is sought to be registered for the purposes of the Application. It is right to observe at this stage that the most substantial user of the Land has been of the grassed areas and my impression from the oral evidence of the Applicant’s witnesses is that they have generally regarded the physical “green” as the grassed L-shaped area as opposed to the hardstanding and carriageway (and subsequent references to the physical “green” in this Report should be read as a reference to the same).

6. For ease of reference, I set out two google map images below which show the general appearance of the Land as of 2009 (in the middle of the relevant period).





7. The Applicant's case is there has been longstanding user as of right of the Land for lawful sports and pastimes by residents of the immediate neighbourhood which is expressed in the application to be residents of Maes Y Ffynnon and the Village Farm estate within the locality of Bonvilston¹ in the twenty years immediately preceding the application. There was a large amount of witness evidence (in the form of letters and questionnaires) to support those propositions filed with the Application.
8. The Application was advertised by the Registration Authority and objected to by the Vale of Glamorgan in its discrete capacity as owner of the Land (and in that capacity, it is hereafter referred to as the Objector) by an objection served under cover of correspondence dated 4th December 2021 (the "**Objection**").
9. The Objector did not seek to argue that there had not been significant user of the Land (at least insofar as it comprised grassed areas as distinct from the carriageway and hardstanding) but rather that such significant user was in fact because the open amenity space had been laid out as such when the housing estate was constructed in the 1950s under powers provided for by Housing Legislation. The Objector has therefore always maintained that user of the amenity space has been "*by right*" rather than "*as of right*" and that registration would also be incompatible with its status as land held for the purpose of the provision of housing and thus that the Land ought not to be registered.

¹ There has been no challenge to the proposed neighbourhood or locality.

Evidence

10. There was limited oral evidence on behalf of both parties at the Inquiry. This reflected that there was not significant conflicts of fact as to the extent of user and I had directed that no more than five witnesses for each side be called to give evidence. In the event there were five witnesses called on behalf of the Applicant (Sian Clarke², Ceri Hunt³, Lynne Price⁴, Chris Brown⁵ and Tracey Ivory⁶) and one witness on behalf of the Objector (Mike Ingram⁷).
11. The witnesses for the Applicant were all residents or former residents of the immediate vicinity. Each had provided a written statement setting out their knowledge of user of the Land which was expanded upon in oral evidence to the Inquiry.
12. Each gave me consistent and credible evidence of widespread user of the physical “green” for lawful sports and pastimes, without challenge or express permission, going as far back as the development of the housing estate in the 1950s up to the present day (albeit I am concerned with the 20 year period immediately preceding the making of the Application).
13. There was sensibly no sustained challenge to the proposition that there has been significant user of the physical “green” at all material times and I accept the evidence of the witnesses for the Applicant as to the level of user of the physical “green”.
14. I was not only satisfied that each witness was open, credible and honest but that the evidence from this selection of witnesses by the Applicant was an accurate representation of the likely evidence that would have been given by those local residents who did not give oral evidence.

² Resident of 21 Maes Y Ffynnon since 2010, witness statement dated 12th January 2021 and Ms. Clarke also adopted the evidential matters set out in the Applicant’s Pre-Inquiry Notes.

³ Resident of 13 Maes Y Ffynnon since 2015, witness statement dated 19th February 2019.

⁴ Formerly resident of 15 & 20 Maes Y Ffynnon from the early 1960s to 1986 and regular visitor due to the presence of the family home, witness statement dated 18th February 2019.

⁵ Resident of 24 Maes Y Ffynnon since 2014, witness statement dated 18th February 2019.

⁶ Resident of 23 Maes Y Ffynnon since 1990, witness statement dated 19th February 2019

⁷ Head of Housing and Building Services for the Objector, witness statement dated 15th January 2021.

15. Whilst there had been some user of the carriageway and the area of hardstanding for recreation, my clear impression was that such user was, unsurprisingly, markedly reduced compared to the physical “green” itself. This was particularly the case after the demolition of the garages in 2018 when there was a period where there was no access at all to the area and the quality of the surface deteriorated to some extent thereafter. This was addressed in some detail in cross-examination with among others Dr. Brown and Ms. Clarke.
16. There was limited evidence advanced as to user of the physical carriageway- and the statements of among others Ms. Price were directed at user of the “green”- and the difficulty in cases of this nature is that where there is user of roads and hardstanding it can also be referable to permitted user for access purposes whether related to the highway or the garages. There are only isolated references in the supporting statements to user of this area (as summarised, I find accurately, in the Objector’s closing submission at paragraph 24).
17. The main conflict of evidence that arose was as regards the maintenance of the physical “green”.
18. Ms. Clarke and Ms. Hunt in particular addressed in oral evidence that there had been a running down of any maintenance provision by the Objector since about 2009 consistent with their impression that the Objector was looking to devalue the Land as amenity space. As set out in the Applicant’s Pre-Inquiry Note, it was their further evidence that that residents themselves often had to organise the tidying of the Land to remove debris which would accumulate and that later drainage investigations in or around 2018 and 2019 had further impacted the useability of the area of the Land in the vicinity of the hardstanding and garages. The evidence of Ms. Clarke was that she did not believe that routine maintenance was provided any more than 2 times a year in recent years, whilst others put it closer to 4 times per cutting season.
19. The evidence of Mr. Ingram on behalf of the Objector was that arrangements were now in place with third party contractors and that the contractual provision was for 8 visits for routine maintenance per annum though he did not have first-hand knowledge of any recent maintenance.

20. His evidence more generally was that maintenance levels reflected available resource levels with primary regard to ensuring health and safety obligations were discharged and that the Objector also operated a reactive system of inspection. This amplified his written evidence which had confirmed that the physical “green” had been laid out as amenity space and maintained as such by the Objector at all material times.

21. I make the following findings in relation to the maintenance issue as it was a point of importance for the Applicant:-
 - 21.1 I generally prefer the Applicant’s evidence on the extent of any maintenance provision. The witnesses were able to give direct first-hand evidence of their experience of the extent of maintenance which suggested that in recent years routine maintenance has been closer to 2 to 4 times per cutting season (outside of the winter months). Mr. Ingram could only convey his understanding of the extent of maintenance and no records have been provided to confirm the position. He was a straightforward witness, undoubtedly trying to assist the Inquiry, but on this issue I prefer the Applicant’s evidence.
 - 21.2 It must however be accepted that there has been maintenance services provided at all recent times and there is insufficient evidence for the suggestion that the Objector has sought to deliberately devalue the Land as amenity space. It is understandable that Ms. Clarke and Ms. Hunt may have formed that impression but I consider that reduced maintenance services (the “basic standard” as it was put by Mr. Ingram) in recent years is very likely directly linked to available resources rather than any form of intention to devalue the amenity space and that any upkeep by local residents does not undermine the fact that this has been maintained land at all material times.

22. It is common ground that the land which is subject to the Application was formally acquired by Cardiff Rural District Council by a conveyance dated 9th January 1956. The conveyance stated that the land was purchased in exercise of the powers given to Cardiff Rural District Council by the Local Government Act 1933, the Housing Act 1936 and other unspecified powers. This is documented in the witness statement of Jocelyn Ham on behalf of the Objector dated 15th January 2021.

23. The Land has not been formally appropriated for any other statutory purpose and remains held by the Objector under the Housing Legislation.
24. There was no oral evidence from Ms. Ham to the Inquiry because her witness statement set out an uncontroversial history of the development of Maes Y Ffynnon by reference to the available records. There is no dispute as to that history of development but rather as to the import and consequences of the purposes for which the Objector has held the Land at all material times. The documented history is entirely consistent with the Applicant's witness evidence namely that the amenity space was laid out at the same time as the development of Maes Y Ffynnon in the 1950s:-
- 24.1 It is common ground that that the Land was purchased for development as part of the design of the wider housing scheme and the Land was subsequently laid out as an access road, garages and open amenity space adjacent to the residential housing⁸.
- 24.2 There has been continuous recreational use of the amenity space since it was laid out with open, unrestricted access to the amenity space.⁹

Relevant Law

25. The Application seeks the registration of the Land by virtue of the operation of section 15(2) of the 2006 Act. So far as is relevant section 15(2) provides that land is to be registered as a town or village green where:-
- “(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 years; and*
- (b) they continue to do so at the time of the application.”*
26. The determination requires the straightforward application of law to the facts. The burden of proving that the Land has become a town or village green lies with the Applicant. The standard of proof is the balance of probabilities.

⁸ A proposition correctly set out by the Applicant in the supporting documentation filed with the Application.

⁹ Applicant's evidence, including that of Ms Price, as well as the Objector's evidence including Mr. Ingram.

27. All the elements required to establish that land has become a town or village green must be properly and strictly proved by an applicant on the balance of probabilities, per the guidance given by Lord Bingham in R v. Sunderland City Council ex parte Beresford [2004] 1 AC 889:-

"As Pill LJ. Right pointed out in R. v Suffolk County Council ex parte Steed (1996) 75 P&CR 102, 111, "it is no trivial matter for a landowner to have land, whether in public or private ownership, registered as a town green..."

"It is accordingly necessary that all ingredients of this definition should be met before land is registered, and decision-makers must consider carefully whether the land in question has been used by the inhabitants of a locality for indulgence in what are properly to be regarded as lawful sports and pastimes and whether the temporal limit of 20 years' indulgence or more is met."

28. The constituent elements of the statutory criteria are not defined in the 2006 Act but have been the subject of extensive judicial consideration in the authorities. I summarise material matters below.

Lawful Sports and Pastimes

29. This is a composite expression and it is sufficient for use to be either for a lawful sport or lawful pastime: per R. v Oxfordshire County Council ex parte Sunningwell Parish Council [2000] 1 AC 335 at 356G onwards.
30. If user for walking is referable to formal or informal paths or straying from such paths, the decisive factor is how matters would have appeared to the reasonable landowner: R. (Laing Homes Limited) v Buckinghamshire County Council [2003] EWHC 1578. The reasonable landowner is entitled to consider that user of the kind referable to the exercise of a public right of way may extend beyond the limits of the right of way but still be referable to right of user, support for which can be drawn from Oxford County Council v Oxford City Council [2004] Ch 253 at 258.

Significant Number of the Inhabitants of any Locality, or of any Neighbourhood within a Locality

31. A "locality" is a division of the County known to the law: MoD v Wiltshire CC [1995] 4 All ER 931 at 937b onwards.

32. A “significant number” means that the number of people using the land in question is 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: R (McAlpine) v Staffordshire County Council [2002] EWHC 76 (Admin) at paragraph 71. In Leeds Group v Leeds City Council [2011] EWCA Civ 1447 it was expressed in terms that there must be use of such an amount and in such a manner as would reasonably be regarded as the assertion of a public right.
33. It is for an Applicant to demonstrate “significance” in relation to the chosen locality and only qualifying user counts for that purpose.

As of Right

34. Use of land “as of right” has been held to be use which is without force, without secrecy and without permission (user *nec vi, nec clam, nec precario*): per R (Lewis) v Redcar and Cleveland BC [2010] UKSC 11. What matters is the outward appearance of user to the reasonable landowner and not the subjective intention of the user.
35. It was established in the Supreme Court decision in R (Barkas) v North Yorkshire County Council [2014] UKSC 31 that any member of the public using land laid out and held as open space under section 12 of the Housing Act 1985 does so “*by right*” (i.e. with permission) rather than “*as of right*”. The Supreme Court in that case was considering whether user of land purchased and allocated as open recreation space pursuant to statutory powers under the Housing legislation (at the relevant time held under the Housing Act 1985 but under powers previously enacted in the Housing Act 1936 and the Housing Act 1957 respectively) by a local authority was user “*by right*” or “*as of right*”.
36. Lord Neuberger held as follows (at para 21):- “*In my judgment, this argument is as compelling as it is simple. So long as land is held under a provision such as section 12(1) of the 1985 Act, it appears to me that members of the public have a statutory right to use the land for recreational purposes, and therefore they use the land “by right” and not as trespassers so that no question of user “as of right” can arise.*”

37. The public's right to use land laid out as open recreation space under statutory powers therefore does not establish user of land "*as of right*" but rather use "*by right*", being user by permission which means that the statutory test cannot be satisfied. Where land is held by a local authority for the statutory purpose of recreation and members of the public use the land for that purpose, then they so use it pursuant to a statutory right to do so.

Statutory Incompatibility

38. The Supreme Court in R (Lancashire CC) v SEEFRA [2020] 2 WLR 1 (in a majority decision) held that land held by a public body under statutory powers for a particular purpose could not be registered as a town or village green where the effects of registration would frustrate that statutory purpose.
39. The Supreme Court was concerned with conjoined appeals where land was held respectively for education purposes and for the purposes of the NHS. In both cases registration of land as a town or village green was found likely to frustrate those statutory purposes. The principle applies to land held for general purposes under general powers and not just to land which is the specific object of the statutory powers and duties.
40. In tandem with Barkas, this latest Supreme Court decision markedly constrains the circumstances in which land held for a statutory purpose by a local authority may be registered: if it is laid out as recreational space, the public likely have a right to use the land and any user is not "*as of right*". If it is held for a statutory purpose, in most circumstances registration as a village green may frustrate the purpose for which it was held even if the land has not been the specific object of the power (e.g. it is undeveloped but held under powers which enable a local authority to develop the land if they so desire).

Continuous User for 20 Years of the Land

41. The qualifying user for lawful sports and pastimes must be continuous throughout the relevant 20 year period. The land must be clearly identified so that it is clear what area of land is subjects to the rights established by registration. It is well established that there is no requirement for a piece of land to have characteristics of what might be regarded as the traditional village green to be registered: per Oxford County Council.

Analysis

The Land

42. The relevant land sought to be registered is clear. It is that identified on the plan in support of the Application and referred to as the Land in this Report.

20 Year Period

43. The relevant 20 year period is that immediately preceding the making of the Application on 22nd May 2019.

Neighbourhood/Locality

44. There has been no objection to reliance on the neighbourhood of Maes Y Ffynnon and the Village Farm estate within the locality of Bonvilston. The Bonvilston Ward is a recognised administrative area within the meaning of MoD v Wiltshire Council.

Sufficiency of User

45. My material findings on the evidence of user are as follows:-
- 45.1 I am satisfied that there has been widespread and continuous user of the physical “green” for lawful sports and pastimes throughout the relevant 20 year period (and thus those areas of the Land other than the site of the garages, the associated hardstanding and the physical carriageway/pavement). I accept the evidence of the Applicant’s witnesses to the Inquiry, which was not subject to real challenge in this respect, as supported by the written evidence otherwise provided in support of the Application. I accept that the level of user was by a significant number of local inhabitants of the neighbourhood.
- 45.2 As I have referred to previously in this Report, I am not satisfied that there has been sufficient user of the physical carriageway, and/or any hardstanding that has been in place at material times, to support a finding of user by a significant number of local inhabitants. There was limited evidence of users of such areas for lawful sports and pastimes. I have treated any reference to the user of the “green” in the supporting evidence with caution where my impression from the Applicant’s witness evidence was that primary user was of the physical “green” rather than off on it on the carriageways or hardstanding.

45.3 I also must be satisfied that user of the carriageway, pavements and hardstanding would be objectively referable to assertion of a village green right and user associated with access to the physical green must be discounted; to the extent that user has been made of these areas of the Land (as argued for by the Applicant), I do not accept that it objectively would have been referable to assertion of village green user.

46. The fact that I have found that user of the physical carriageway and hardstanding has not met the evidential threshold does not preclude registration of the physical “green” areas of the Land if the thresholds for registration are otherwise met.

As of Right/Statutory Compatibility

47. This is the core issue in relation to the Application. In its closing submissions, the Applicant makes a series of forceful but cogent points as to why the Land falls to be registered and can be distinguished from Barkas both in terms of its layout but also the manner in which it is has been maintained by the Objector. I am invited to apply real caution before acceding to any of the submissions made on behalf of the Objector. I have had full regard to the closing submissions of the Applicant which I am satisfied have put all arguable points before me for consideration.

48. The first question is for what purpose the Land has been held at material times. The Applicant invites me to find that there is real uncertainty on this issue, however, I am satisfied as follows on the balance of probabilities:-

48.1 I am satisfied that the Land has been held by the Objector at all material times for the statutory purposes of its housing function. This is consistent with the initial conveyance in 1956 and the subsequent provision of the physical “green” as amenity space for use by local residents. The Housing Act empowers a local authority to exercise its housing powers for the purposes of the provision of recreation space in conjunction with the erection of new dwellings as well as to provide access and garages and I consider that the evidence squarely supports that this is what occurred in this case. It is consistent with the Applicant’s own evidence and also the evidence of Mr. Ingram for the Objector in terms of the land being maintained as housing stock land. I accept the Objector’s submissions in this respect.

48.2 The Land has not been appropriated for any other purpose and I am satisfied that the Land has remained held for housing purposes at all material times. I do not consider there is any other evidence from which I can draw an inference that the Land, and in particular the physical “green” has been allocated to some other purpose. I consider that the ongoing maintenance of the physical “green” is more consistent with ongoing management of the Land as housing stock land and that the lack of signs or otherwise does not support any other finding.

48.3 I do not consider that there is a tension at the heart of the Objector’s submissions. The provision of land as amenity space under Housing Act powers (as well the provision of access and garages ancillary to housing provision) is consistent with the Objector’s assertion that the Land has remained held by the Objector for housing purposes at material times. The Supreme Court rejected the suggestion that village green land must have been the object of a specific exercise of the statutory powers and thus it is enough for the Objector to establish that the Land has been held under its general housing powers.

49. The second question is whether registration of the Land would frustrate the statutory purpose which I have found it has been held for, namely housing purposes.

49.1 I accept the Objector’s submissions in this respect. Registration of the Land as a village green would frustrate the statutory purpose as it would constrain the Objector’s ability to erect new buildings including under section 12 of the Housing Act 1985 and to provide access to the existing housing by virtue of the carriageway and its pavements. The Supreme Court in Lancashire provided a low bar for an assessment of the threshold of frustration and I am satisfied that it is met in this case. That finding is not undermined by the fact that the Land has largely been laid out as recreation space as it remains land held under the general housing powers

50. The Application, in my view, therefore fails as registration would not be compatible with the statutory purposes by which the Objector has held the Land. This finding applies to the Land as a whole and overtakes my findings as to the extent of any user of parts of the Land.

51. If I were wrong in this respect, I would also consider that any user of the physical “green” has been “by right” rather than “as of right” on a proper application of Barkas.
52. I repeat my finding that the Land has been held under housing powers and that it is more likely than not that the physical “green” was laid out as amenity space in conjunction with the development of the adjacent housing. It follows, in my view, that user has been by statutory right and I accept the Objector’s submissions in this respect. I do not consider that the situation can be distinguished from Barkas. The particular circumstances of the Land (such as the absence of the grant of express permissions or licences) do not persuade me that I should depart from a straightforward application of Barkas to the facts of this case:-
- 52.1 This is land laid out under the Housing Act legislation now embodied by the Housing Act 1985.
- 52.2 Therefore user for recreation of amenity space is “*by right*” rather than “*as of right*”. I must therefore discount the open user of the physical “green” by local inhabitants as it is not “*as of right*” and this means that the user I have found of the physical “*green*” cannot support village green registration.
53. I am therefore satisfied that the Application should be rejected on this alternative, though interlinked ground- the user of the Land for recreational purposes has been “*by right*”.
54. The Applicant ultimately had to overcome Supreme Court case law which greatly narrowed the circumstances in which local authority land may come to be to be registered as a town or village green. I make clear in reaching my conclusions that I have not had regard to any planning merits issues which are a matter outside the remit of my recommendations for the purposes of this Report.

Continuation

55. I am satisfied that any claimed user continued up to until the date of the Application and I would not have regarded the demolition of the garages in 2018 and the partial closing off of part of the Land as a bar to registration of the physical “green”.

Conclusions & Recommendations

56. My overall conclusion is the Application must fail because:-

- a) Registration would be incompatible with the statutory purposes for which the Land is held by the Objector.
- b) User has been “*by right*” rather than “*as of right*” of the physical “green” which is the only part of the Land over which there has been sufficient user for lawful sports and pastimes.

57. I recommend to the Registration Authority accordingly that the Application be dismissed and the reasons for the dismissal be stated to be those set out in this Report.

JAMES MARWICK

6th June 2021

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