

PUBLIC PROTECTION COMMITTEE: 2<sup>nd</sup> December 2014

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**DETERMINATION OF AN APPLICATION TO CARDIFF CITY COUNCIL BY THE LLANDAFF SOCIETY TO REGISTER LAND AT THE ARLS FIELD LLANDAFF AS A TOWN OR VILLAGE GREEN**

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**Report of the County Solicitor on behalf of the Council in its capacity as Registration Authority for the purposes of the registration of land in the Register of Town and Village Greens maintained by the Registration Authority**

**Purpose of report**

1. Under the Commons Act 2006 the Council is the Registration Authority for the registration of land in the Register of Town and Village Greens maintained by the Council in its capacity as Registration Authority.
2. An application dated 19<sup>th</sup> February 2014 (“the Application”) was lodged by Mr Geoffrey Barton-Greenwood on behalf of the Llandaff Society (“the Applicant”) with Cardiff City Council for the registration of land at the Arls Field Llandaff (“the Application Land”) as a town or village green in the Register of Town and Village Greens maintained by the Council.
3. The applicable law is complex. For this reason and the fact that there is no formal right of appeal against a decision of the Registration Authority, a decision can be particularly vulnerable to legal challenge by means of judicial review. It is therefore essential for a Registration Authority to be able to demonstrate that it has acted in accordance with the principles of natural justice and proper administration so as to enable it to refute any suggestion or implication of bias.
4. In processing and deciding upon the Application the Registration Authority must act in accordance with the principles of natural justice and proper administration (“Wednesbury Principles”) in addition to observing formal statutory procedures and requirements.
5. Consideration needs to focus exclusively on legal issues rather than amenity or property issues and the decisions to be made need to turn on evidence and not on policy considerations.

6. The evidence produced by the Applicant and by the Cardiff Metropolitan University as objector has been considered as set out in the Appendix to this report and after applying the relevant legal tests to that evidence the recommendation is that the Council should not register the Application Land as a town or village green. The Public Protection Committee is therefore asked to determine the Application submitted by the Applicant under Section 15 of the Commons Act 2006.

### **Background documents**

7. The following documents disclose important facts on which the recommendation is based and have been relied upon in preparing the report. Copies of these documents are available for inspection.

8. Application dated 19 February 2014 from Mr Geoffrey Barton-Greenwood on behalf of the Llandaff Society to register land at the Arls Field as a town or village green with supporting documentation.

9. Letter of objection dated 23 May 2014 from the Objector with supporting documentation.

10. Response to the letter of objection from the Applicant dated 14<sup>th</sup> July 2014.

### **Introduction**

#### **The Land**

11. The Application Land is in Llandaff Cardiff. Llandaff Cathedral and the residential areas of Llandaff lie to the south. The River Taff lies to the north and west. The Objector's playing fields lie to the east. There is an adopted public footpath which runs between the Application Site and the Objector's Land and which links the Cathedral and residential areas with riverside walks.

#### **Role of the Council**

12. The Council is appointed by law as the Authority responsible for the registration of village greens. The constitution of the Council delegates this responsibility to the Public Protection Committee.

13. The Council must determine whether the Application Land is, in fact, a town or village green. The law on this is explained in this report. If the Application Land satisfies the requirements for a town or village green then the Council must register it.

## **The law of village greens**

14. The test for determining whether the Application Land should be registered as a town or village green is set out under s15 of the Commons Act 2006 ('the Act') which states:

- (1) Any person may apply to the commons registration authority to register land to which this part applies as a town or village green in a case where subsection (2), (3) or (4) applies [*subsection 2 is relevant in this application*]
- (3) this subsection applies 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 20 years.
  - (b) they continue to do so at the time of the application

It should be noted that the Act gives the registration authority no discretion. If all the conditions set out in section 15 are met then the Application land must be registered as a village green.

## **The Application**

15. The Application submitted by Mr Geoffrey Barton-Greenwood on behalf of the Llandaff Society asserts that all of the conditions set out in s15 of the Act for the establishment of a town or village green have been met. The Application includes a bundle of signed witness statements from members of the public relating to their use of the Application Land. The claim is based on an assertion that the Application Land has been used by a significant number of local inhabitants, as of right for an unbroken period of 20 years up to the date of the Applicant's application.

## **Letter of objection**

16. The letter of objection submitted by the Objector makes various contentions including the assertion that a significant number of inhabitants have walked the pathway which abuts the Application Land for the relevant period, but there has not been use of the Application Land which would satisfy the legal requirements for registration of a Town & Village Green.

## **The Applicants response**

17. The Applicants responded to the letter of objection on the 14<sup>th</sup> July 2014 challenging the assertions made by the Objector.

#### **18. Appendix**

19. The appended report summarises the evidence produced by the Applicant and the Objector and applies the relevant legal tests to that evidence. The amount of evidence which refers to walking and dog walking along the adjacent pathway is considered to be a significant factor and the recommendation is that the Applicant has not established the matters required by s15(2) of the Act and that the Authority should register the land as a town or village green. That is to say that the Applicant has not shown that the Application Land has been used for lawful sports and pastimes throughout the relevant 20 year period to a sufficient extent and continuity to have created a town or village green.

#### **Legal advice**

20. The Committee must determine the matter and in doing so must have careful regard to the appended report, which applies the relevant legal tests to the evidence. Members of the Committee are reminded that it would be irrational in a legal sense not to accept the conclusions and recommendations in the appended report unless there are very good grounds for doing so. It is a matter for Committee but Members are advised to accept the report.

#### **Financial advice**

21. There are no financial implications arising from this report, save in so far as there could be a challenge to the committee's decision.

#### **Recommendation**

22. That on behalf of the Council as the Registration Authority, the Committee determine the application to register Ridgeway Green as a Town or Village Green under s15(2) of the Commons Act 2006.

**Shaun Jamieson, County Solicitor, 6<sup>th</sup> November 2014**

This report has been prepared in accordance with procedures approved by Corporate Managers.

The following appendix is attached

- Appendix 1 Report

**APPLICATION TO REGISTER LAND AT  
THE ARLS FIELD, LLANDAFF, CARDIFF  
AS A TOWN OR VILLAGE GREEN**

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**REPORT**

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**1. REPORT**

This Report relates to an Application (“the Application”) made under Section 15(1) of the Commons Act 2006 (“the 2006 Act”) to register land at the Arls Field, Llandaff, Cardiff (“the Land”) as a town or village green. Under the 2006 Act, Cardiff City Council, as the Registration Authority, is required to register land as a town or village green where the relevant statutory requirements have been met.

**2. THE APPLICATION**

- 2.1 The Application was made by Mr Geoffrey Barton-Greenwood on behalf of the Llandaff Society (“the Applicants”) and is dated 19<sup>th</sup> February 2014. Part 5 of the Application Form states that the Land sought to be registered is usually known as “the Arls Field, Llandaff Meadow”. A map was submitted with the Application attached to a Statutory Declaration which showed the Land subject to the Application outlined in red. In part 6 of the Application Form, the relevant “locality or neighbourhood within a locality” to which the claimed green relates is stated to be the “Llandaff Community” which is in effect the electoral ward of Llandaff shown edged green on a plan supplied.

- 2.2 The Application is made on the basis that Section 15(2) of the 2006 Act applies and the justification for the registration of the Land is set out in Part 7 of the Form. The Application is verified by a statutory declaration made on 19<sup>th</sup> February 2014. A statement in support was submitted with the Application and 35 witness statements and other documentary evidence has been received in support. Various copy planning objection letters were received, and those have not been considered as part of the application .
- 2.3 The Application was advertised by the Registration Authority as a result of which an objection together with supporting documentation was received on 23<sup>rd</sup> May 2014 (“the Objection”) on behalf of Cardiff Metropolitan University (“the Objectors”) who are the owners of the Land. The Applicants duly responded to the objections made on 14<sup>th</sup> July 2014. The Objectors replied to that response on 19<sup>th</sup> September 2014 saying that they had no further comments to make.
- 2.4 The writer of this report walked the public footpath adjoining the Land at lunchtime on 10<sup>th</sup> October 2014. A number of joggers ran past on the footpath. On one side of the path, were the open, grassed sports pitch areas of the Objector. On the other was the Land, which is fairly heavily overgrown with brambles and similar weeds

### **3. THE APPLICATION LAND**

- 3.1 The Land is identified on the map submitted with the Application on which it is outlined in red.
- 3.2 It is a rectangular shaped parcel of land measuring approximately 0.9 hectares within Llandaff. It is an undeveloped site which generally comprises rough grassland with areas of bramble, knotweed and oak trees at the edges. Llandaff Cathedral and the residential area of Llandaff lies to the south. The River Taff is to the north and west. Cardiff Metropolitan University and its playing fields lie to the east. An

adopted footpath divides the eastern edge of the Land from the University playing fields. There is an adopted footpath around the whole circumference of the Land with four connecting paths to the west, south west and east.

## **4. CASE FOR THE APPLICANTS**

### **Evidence in Support of the Application**

The actual use of the Land by witnesses can be summarised as follows:

- 4.1 Mr Geoffrey Barton-Greenwood submitted two statements. His activities on the Land involve dog walking, nature study, picnics, play, maintaining an avenue of oaks beside the public footpath, and conducting guided tours around Llandaff.
- 4.2 Mr Martin Higgins has rambled over the Land and says that the Land has never been used as a playing field.
- 4.3 Mr John Higgins submitted two statements. He has walked his dog, nature watched and cycled at the Land.
- 4.4 Mr John L.Prior-Morris does not specify his own activities, but says that football has never been played on the Land.
- 4.5 Mr Karl Johansen does not specify his own activities. He says the Land has never been used for sports. He also refers to “ramblers, runners, cyclists, tourists and Cathedral visitors hoping to see the famous River Taff”.
- 4.6 Mrs Julia Dix refers to dog walking.
- 4.7 Dr Penny Llewellyn refers to walking her dogs “on and through the meadow” and says that it has never been a sports field.



- 4.8 Ms Alys Bryant does not mention her own activities
- 4.9 Ms Denise Micallef doesn't specify her activities.
- 4.10 Mr Jack MacDonald refers to dog walking and playing.
- 4.11 Mr James Cowan refers to walking and ghost walks.
- 4.12 Ms Kay Powell refers to walking for pleasure, viewing the Cathedral from the river and guiding walks for Insole Court.
- 4.13 Mr J. D. H. Gwyer-Roberts refers to dog walking, blackberry picking, picnicking and collecting hay.
- 4.14 Mr D F Paddison refers to dog walking.
- 4.15 Ms Norma Jarboe refers to dog walking and playing with the children.
- 4.16 Mr Bryan Hibbard doesn't specify his activities but says that the Land was never used as a playing field. He says that the meadow is bounded by a footpath and is "a popular circuit for short walking".
- 4.17 Mrs Katherine MacDonald refers to dog walking.
- 4.18 Ms Brenda and Mr John Isaacs say that they have "walked that path most weeks, either as part of a group of Cardiff Ramblers Association or as individuals".
- 4.19 Mr Nick Iles refers to walking the dog and "playing with him and a stick on the footpath and the meadow".
- 4.20 Ms Rosemary Iles refers to dog walking.
- 4.21 Mr William Iles doesn't specify his activities.

- 4.22 Mr Brian Western refers to dog walking.
- 4.23 Ms Alexandra Clifton-Thompson refers to walking and playing with her dog.
- 4.24 Mr Roy Honeywood refers to conducting birds surveys and walking for pleasure.
- 4.25 Dr John R. Kenyon refers to dog walking. He says that “although it may be difficult to cross the field, one can still walk round it”.
- 4.26 Mrs Elinor Back says that she has “regularly walked along the path by the rowing club, along the flood bank, through the woodland area to the bottom of the wood leading to the Cathedral and entered Llandaff Meadow by the kissing gate. I walk through the meadow and around the rugby pitch and then walk along the flood bank to Western Avenue and beyond”. She refers to meeting numerous other walkers, including ramblers, dog walkers, cyclists and joggers all enjoying the views.
- 4.27 Mr Philip Woodington refers to walking to the Cathedral, nature study, blackberry picking and playing cricket.
- 4.28 Ms Muriel Jeremy refers to nature studies and blackberry picking.
- 4.29 Ms Nerys Lloyd-Pierce doesn’t specify her activities, but says that the Land has never been a playing field.
- 4.30 Mr Norman Cunningham says that he has “like many others, enjoyed the very pleasant walk from the cathedral along the path of Arls Field to the river”. He never saw any sporting activity on the Land.
- 4.31 Mr Chris Hunt doesn’t mention his activities on the Land, but says it has never been a playing field.

4.32 Ms Pauline Grainger doesn't specify her activities.

4.33 Mrs Jennifer Cook doesn't specify her activities

### **Evidence Objecting to the Application**

The Objectors evidence as to use of the Land may be summarised as follows:

4.34 Mr Ian Jones says that "it is acknowledged that members of the public (with and without dogs) have used the pathway that runs around the periphery of the land for a number of years and that the University has not taken issue with this usage. However the University does not accept that a significant number of local inhabitants have undertaken continuous oak tree maintenance and daily use of the field for recreational purposes".

4.35 Mr Greg Brown says that he has seen "members of the public walking on the footpath". He has "rarely seen anyone (with or without dogs)" on the Land.

4.36 Mr Sean Duggan says that he has "regularly seen people walking around the field on the outer path" but he does "not accept that you could meaningfully walk across the land as it is too overgrown. Sometimes I have seen dogs without their owners in the bushes and shrubs".

4.37 Mr Chris Jennings says that he has witnessed people walking around the periphery of the land with or without dogs.

4.38 Dr John Marsden says that he has recently "witnessed members of the public walking their dogs. I can confirm that those people were not going into the centre of the land, as it is too overgrown. The people were walking their dogs on the path that runs around the periphery of the land or on the cultivated rugby pitch".

- 4.39 Mr Paul Yeoman says that “Apart from seeing people walking on the footpath that runs around the outside of this land...I cannot recall anyone using the land for any other purpose”.
- 4.40. Mr David Hardacre says that “on one occasion a dog did jump out of the bush, but I have never seen anyone on the land itself. The only people I have seen would have been using the footpath around the land.”
- 4.41 John Hodge says “I was also aware that people would walk around the edge of the land”.

## **5. THE LEGAL FRAMEWORK**

### **Commons Act 2006**

- 5.1 The application was made pursuant to the Commons Act 2006. That Act requires each registration authority to maintain a register of town and village greens within its area. Section 15 provides for the registration of land as a town or village green where the relevant statutory criteria are established in relation to such land.
- 5.2 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:-
- “(a) a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years; and*
- (b) they continue to do so at the time of the application”.*
- 5.3 Therefore, for the Application to succeed, it must be established that:-

- (i) the Application Land comprises “land” within the meaning of the 2006 Act;
- (ii) the Land has been used for lawful sports and pastimes;
- (iii) such use has been for a period of not less than 20 years;
- (iv) such use has been by a significant number of the inhabitants of a locality or of a neighbourhood within a locality;
- (v) such use has been as of right; and
- (vi) such use continued at the time of the Application.

### **Burden and Standard of Proof**

5.4 The burden of proving that the Land has become a village green rests with the Applicants. The standard of proof is the balance of probabilities.

### **Land**

5.5 Any land that is registered as a village green must be clearly defined so that it is clear what area of land is subject to the rights that flow from village green registration.

### **Lawful Sports and Pastimes**

5.6 This includes recreational walking, with or without dogs, and children’s play.

5.7 Lightman J. stated at first instance in *Oxfordshire County Council –v- Oxford City Council* at paragraph 102:-

*“Recreational walking upon a defined track may or may not appear to the owner as referable to the exercise of a public right of way or a right to enjoy a lawful sport or pastime depending upon the context in which the exercise takes place, which includes the character of the land and the season of the year. Use of a track merely as an access to a*

*potential green will ordinarily be referable only to exercise of a public right of way to the green. But walking a dog, jogging or pushing a pram on a defined track which is situated on or traverses the potential green may be recreational use of land as a green and part of the total such recreational use, if the use in all the circumstances is such as to suggest to a reasonable landowner the exercise of a right to indulge in lawful sports and pastimes across the whole of his land. If the position is ambiguous, the inference should generally be drawn of exercise of the less onerous right (the public right of way) rather than the more onerous (the right to use as a green)."*

### **Continuity and Sufficiency of Use over 20 Year Period**

- 5.8 The qualifying use for lawful sports and pastimes must be continuous throughout the relevant 20 year period.
- 5.9 Further, the use has to be of such a nature and frequency as to show the landowner that a right is being asserted and it must be more than sporadic intrusion onto the land. It must give the landowner the appearance that rights of a continuous nature are being asserted.

### **Locality or Neighbourhood within a Locality**

- 5.10 A "*locality*" must be a division of the County known to the law, such as a borough, parish or manor.

### **Significant Number**

- 5.11 "*Significant*" does not mean considerable or substantial. What matters is that the number of people using the land in question has to be sufficient to indicate that their use of the land signifies that it is in general use by the local community for informal recreation.

### **As of Right**

5.12 Use of land “*as of right*” is a use without force, without secrecy and without permission.

## **6. APPLICATION OF THE LAW TO THE FACTS**

### **The Land**

6.1 There is no difficulty in identifying the Land sought to be registered.

### **Relevant 20 Year Period**

6.2 For the purposes of Section 15(2) of the 2006 Act, the use must continue up until the date of the Application. Hence, the relevant 20 year period is the period of 20 years which ends at the date of the Application.

6.3 The Application Form and the accompanying statutory declaration are dated 19 February 2014. It follows that the relevant 20 year period for the purposes of Section 15(2) is February 1994 until February 2014.

### **Use of Land for Lawful Sports and Pastimes**

6.4 It is contended by the Applicants that the Land has been used for various recreational activities during the 20 year period, such as dog walking, general walking, nature watching, children’s play, jogging, cycling, ghost walks, blackberry picking, picnicking and kite flying. The two consistent uses of the Land amongst witnesses has been walking and dog walking. There is evidence in support of the Application which says that no formal or organised games having taken place on the Land.

6.5 The fundamental issue is whether those activities have taken place on the Land to a sufficient extent and degree throughout the relevant 20

year period to enable town or village green rights to be established over the Land. Was the qualifying use of the Land for lawful sports and pastimes of such a nature and frequency throughout the relevant 20 year period to demonstrate to the Landowners that recreational rights were being asserted over the Land by the local community. It is insufficient for the qualifying use to have been merely sporadic or occasional in nature.

6.6 The Land is adjoined by the adopted public footpath. Walking along that footpath, whether with or without a dog, and for recreational purposes or otherwise, amounts to the exercise of a public right of way. Such use cannot itself be relied upon in support of the registration of a town or village green.

6.7 The footpath was used regularly during the 20 year period. In terms of whether people were walking the footpath with their dog on a regular walk or allowing their dogs to run across the Land, there is evidence from various witnesses.

Dr Penny Llewellyn refers to walking her dogs “on and through the meadow”.

Mr Nick Iles refers to playing with his dog with a stick “on the footpath and on the meadow”.

Those are the only two references to dogs running off the footpath and onto the Land

Mr Bryan Hibbard refers to “a popular circuit for short walks”

Mr & Mrs Isaacs refer to walking the path as ramblers.

Dr John Keynon refers to walking round the field rather than crossing it because it is difficult to cross.



Mrs Elinor Back regularly walked along the path.

Mr Norman Cunningham engaged in pleasant walks along the path.

Ten other witnesses refer to dog walking but do not mention their dogs running off the path and into the Land.

The objector's five witnesses all refer to use of the path but dispute any regular use of the Land.

- 6.8 The use of the Land for exercising dogs where such use merely involved the owners walking on the footpaths or other specific routes whilst their dogs ran over the Land must be discounted, in contrast to where owners themselves went onto the Land generally. Sullivan J. noted in *Laing Homes* at paragraph 103 in relation to dog walking that:-

*“Once let off the lead a dog may well roam freely whilst its owner remains on the footpath. The dog is trespassing, but would it be reasonable to expect the landowner to object on the basis that the dog's owner was apparently asserting the existence of some broader public right, in addition to his right to walk on the footpath”*

- 6.9 The balance of the evidence suggests that the use of the Land for walking and for dog walking was more akin to the exercise of a public right of way along the adopted footpath than the exercise of recreational rights over a village green and such use must be discounted from the qualifying use.

- 6.10 The use of the Land for lawful sports and pastimes has been sporadic and occasional during the relevant 20 year period, and insufficient on the balance of probabilities to demonstrate to a reasonable landowner that recreational rights were being asserted over the Land.

Consequently, that element of the statutory criteria has not been established.

### **Locality or Neighbourhood within a Locality**

6.11 The electoral ward of Llandaff is capable of being a relevant locality for the purposes of Section 15(2) of the 2006 Act.

### **Use of the Land by a Significant Number of the Inhabitants of the Locality**

6.12 The user must have been of such a nature to bring it to the attention of the reasonable landowner that a right of recreation was being claimed by the inhabitants of the particular identified locality,

6.13 Any recreational use, other than walking and dog walking along the adjacent footpath has been sporadic and insufficient to satisfy the test

### **RECOMMENDATION**

That the Land has not been used for lawful sports and pastimes throughout the relevant 20 year period to a sufficient extent and continuity to have created a town or village green.

Geoff Shimell  
Operational Manager  
Legal Services

6<sup>th</sup> November 2014