

IN THE MATTER OF:

**AN APPLICATION TO REGISTER LAND KNOWN AS ERW GOCH FIELD
AS A TOWN OR VILLAGE GREEN**

**OBJECTION
ON BEHALF OF CEREDIGION COUNTY COUNCIL
(LANDOWNER)**

Introduction

1. This is the objection of Ceredigion County Council (“**the Council**”) in respect of an application dated 24 February 2021 made by Sian Elin Richards to register land adjoining Hafan y Waun, Waunfawr, Aberystwyth SY23 3AU (known as Erw Goch Field) as a town or village green.

2. The Council, as the owner of the land, objects to the application in its entirety. In summary, the land is not capable of meeting the tests in s. 15(2) of Commons Act 2006 because:
 - (i) It was acquired and held by the local authority for education purposes which is incompatible with registration as a TVG;
 - (ii) Recreational use of the land was with the express / implied permission of the Council until 2013/2014;
 - (iii) There have been significant interruptions in the use during the relevant period;
 - (iv) The vast majority of the alleged use (which was not expressly or impliedly permitted by the Council) has been walking and dog walking along defined paths which can only amount to the creation of a Public Right of Way, rather than a TVG right;
 - (v) Any remaining use has been too trivial or sporadic to amount to the assertion of a public right and / or by an insignificant number of local inhabitants;

- (vi) The Applicant has failed to establish a qualifying neighbourhood within a locality.

The Land was Acquired by the Council's Predecessor Authority for Education Purposes and has been held as such thereafter. There is a statutory incompatibility between a local authority holding land for education purposes and registration as a TVG.

3. The Council has conducted an extensive review of its archive material in relation to the Erw Goch Fields and a chronology is prepared and attached to this objection letter to assist the registration authority.
4. Beginning in March 1965, there was discussion by the Joint Buildings Committee of the Council's predecessor authority, Cardiganshire County Council, of the acquisition of the Erw Goch Fields as the site for a new Secondary School and it was resolved that the matter be referred to the Education Committee for a decision. The Education Committee resolved to authorise negotiation for the purchase of the Erw Goch land (17 March 1965) and, by 8 April 1965, it was reported that the Education Committee had agreed to buy Erw Goch as a site for the proposed new 'Ardwyn' Grammar School, and contracts had been exchanged. The land was conveyed to the Council on 29 June 1965. The conveyance specifically states on its title page: "New Site for Ardwyn Grammar School" and it is referenced on the plan as well.
5. Local authorities are creatures of statute and their powers to acquire, hold and use land are governed by statute. Thus, as was common ground in the High Court case of R (on the application of Malpass) v The County Council of Durham [2012] EWHC 1934 (Admin) at [41], even if there is no unequivocal evidence spelling out under what authority the land is held, it is proper to assume that the holding of it is lawful provided that the use to which it is put is permitted by some appropriate enabling legislation (and see also Lord Scott in R (Beresford) v Sunderland County Council [2004] 1 AC 889 at [30]).
6. Allied to this is the presumption of regularity which ought to apply where there is no evidence one way or the other as to whether part of formal local government processes

in fact took place, so that if a particular document is 'missing' from the evidence base, it will be presumed to have existed, unless rebutted by a party.

7. In this case, all the evidence points to the land having been acquired and held for educational purposes, i.e. for a new secondary school. It was made clear by the Supreme Court in R (Lancashire County Council) v Secretary of State for the Environment, Food and Rural Affairs [2021] AC 194 that the lack of express resolutions setting out the enabling power was not relevant (at [32]). Local authorities are provided with powers to acquire land for the purposes of their functions (e.g. s. 120 of the Local Government Act 1972). At the time, the then Cardiganshire County Council would have been subject to s. 8 of the Education Act 1944 which imposed a duty on local education authorities "to secure that there shall be available for their area sufficient schools" for providing primary and secondary education, sufficient in number, character and equipment. The current powers are contained in ss. 13 and 14 of the Education Act 1996 which require local authorities to contribute to the development of the community by securing efficient primary and secondary education. Accordingly, it is clear (and the Council submits clearer than on the facts of the Lancashire case) that the land was acquired for educational purposes.
8. Land is continued to be held for the purpose for which it was acquired unless validly appropriated for an alternative statutory purpose, when no longer required for the first (s. 122 of the Local Government Act 1972).
9. Although it is clear from the Council's minutes that, in the end, Erw Goch Fields was not required to construct the new Ardwyn Grammar School, there is no evidence of any appropriation of the land to any other use. There were discussions during the 1960s about use of the land for both Ardwyn and Dinas schools. Then, in 1971, consideration was given to implementing an interim scheme of two tier reorganisation side by side with establishing a bilingual secondary school and there was further discussions in the 1970s regarding a new comprehensive school on the site.
10. On 12 June 1985, the (by now named) Dyfed County Council resolved to lease Erw Goch fields to Ceredigion District Council for use as community playing fields. This was on the basis that: "it was not envisaged that this land would be developed as a

replacement school for Penweddig for at least seven years” and therefore the District Council were offered a lease for a period of seven years for the purposes of providing community playing fields. Thus, the Council submits, it is clear that the Council were still holding the land for educational purposes, albeit they were prepared to lease it to another public authority for a limited period for an alternative purpose on the understanding that its educational needs were held in abeyance for that seven year period. There was no formal appropriation away from educational use. The lease was dated 29 September 1987 and contained an express covenant on the part of the District Council: “To use the premises for the purpose of the community area for the local community with such sporting and other events as may be required, sporting events to be held as and when ground conditions permit and for no other purpose whatsoever”.

11. When the lease came to an end in 1994, the occupation of the land reverted to the County Council. Although, by then, plans for a replacement secondary school had been abandoned, the land remained held by them for educational purposes (and Ceredigion County Council as successor in 1996). The fact that no educational use was actually made of the land, or contemplated in relation to the land, during the latter period (and the relevant 20 year period for the purposes of the TVG application) is neither here nor there. The point is that, had the Council wished to utilise Erw Goch Fields for educational purposes during that period, there would have been nothing stopping them from so doing and no appropriation would have been required.
12. Accordingly, all the evidence demonstrates that the land was acquired and consistently held thereafter for educational purposes.
13. The consequence of this is that the land is incapable of registration as a TVG. As has been held by the Supreme Court in Lancashire, land held for educational purposes is incompatible with TVG registration. This is because TVG registration would prevent the construction of new school buildings or playing fields, and there would also be safeguarding concerns with children and members of the public using the land (see Lancashire at [65]).
14. Critically: “It is not necessary ... to show that [the land is] currently being used for such purposes, only that [it is] held for such statutory purposes (see Newhaven, para 96).

The 2006 Act was not intended to foreclose future use of the land for education purposes to which it is already dedicated as a matter of law” (at [65] per Lord Carnwath). Accordingly, it is irrelevant that the Council is neither currently actively using Erw Goch Fields for educational purposes nor has any plans to use it for such. All that matters is that the land remains held for educational purposes and thus TVG registration is excluded since it would foreclose the Council’s potential future ability to build a school on the Fields, or create playing fields, should it wish.

Express or Implied Permission for Recreational Use

15. In any event, from 1987 onwards, when the land was leased to the District Council for recreational purposes, any recreational use of the land was with the Council’s express or implied permission. After the lease ended (which it is accepted was before the start of the relevant period for the TVG application), it is clear that the Council still permitted recreational use of the field to the extent that football league matches were held with Council officers’ permission, goal posts were erected (and only removed in 2013/2014 as a result of health and safety concerns and following the cessation of formal use of the field for football tournaments around that time). The Council will provide witness evidence to support this, if necessary.

16. Accordingly, much of the user evidence, in particular relating to football use, during the earlier part of the relevant period from 2001 until 2013/2014 will have been with the Council’s express or implied permission.

Inadequate User Evidence

17. In the event that the registration authority rejects the statutory incompatibility argument and finds that there was no permission for recreational use during the relevant period, then the Council still argues that the statutory test in s. 15(2) of the 2006 is not met. In particular:

- (i) There have been significant interruptions in the use of Erw Goch Fields during wet periods, particularly during the last 6-7 years, when the land has often been inaccessible.

- (ii) As can currently be seen on the site, in the latter part of the relevant period (since the Council stopped maintaining the land for formal sport in 2013/2014), the site has only been capable of use for walking and dog walking along defined paths (currently being mowed, the Council understands, by a local resident). The TVG application form itself refers (at Section 7) to: "Evidence of its continued use can be clearly seen by the number of pathways around the perimeter of the field that have been created by walkers / users." This use is more akin to the establishment of a public right of way rather than a TVG right and case law establishes that, in such instances, the less onerous PROW right should be preferred (see Oxfordshire County Council v Oxford City Council & Robinson (2004) Ch 253 at [102] – [103]). Thus, the vast majority of use of the land can be discounted.
- (iii) The remaining use that has been made of Erw Goch Fields by local people has been too trivial or sporadic when viewed throughout the 20 year period to establish a prescriptive right and / or it has not been by a significant number of local inhabitants.

Failure to Establish a Qualifying Locality of Neighbourhood within a Locality

18. At Section 6 of the application form, the Applicant relies on the locality or neighbourhood within a locality of: "Waunfawr and Llanbadarn, Aberystwyth. Electoral wards Faenor & Padarn".
19. It is accepted that the electoral wards are recognised administrative areas.
20. However, the alleged neighbourhoods of Waunfawr and Llanbadarn are not considered to be adequately defined to demonstrate a "sufficient degree of cohesiveness" as per Cheltenham Builders [2003] EWHC 2803 (Admin) at [85].

Conclusion

21. The Council submits that the first point, concerning statutory incompatibility, is a 'knock out blow' to the application, and ought to be determined by the registration

authority as a preliminary point. This will save time and resources and ensure that further evidence is only required should that point be rejected.

ANNABEL GRAHAM PAUL

**Francis Taylor Building
Inner Temple
EC4Y 7BY**

28 September 2021

Land at Erw Goch Fields, Waunfawr, Aberystwyth

TVG Application Ref: LA 1651/LEH

Chronology of Council Minutes

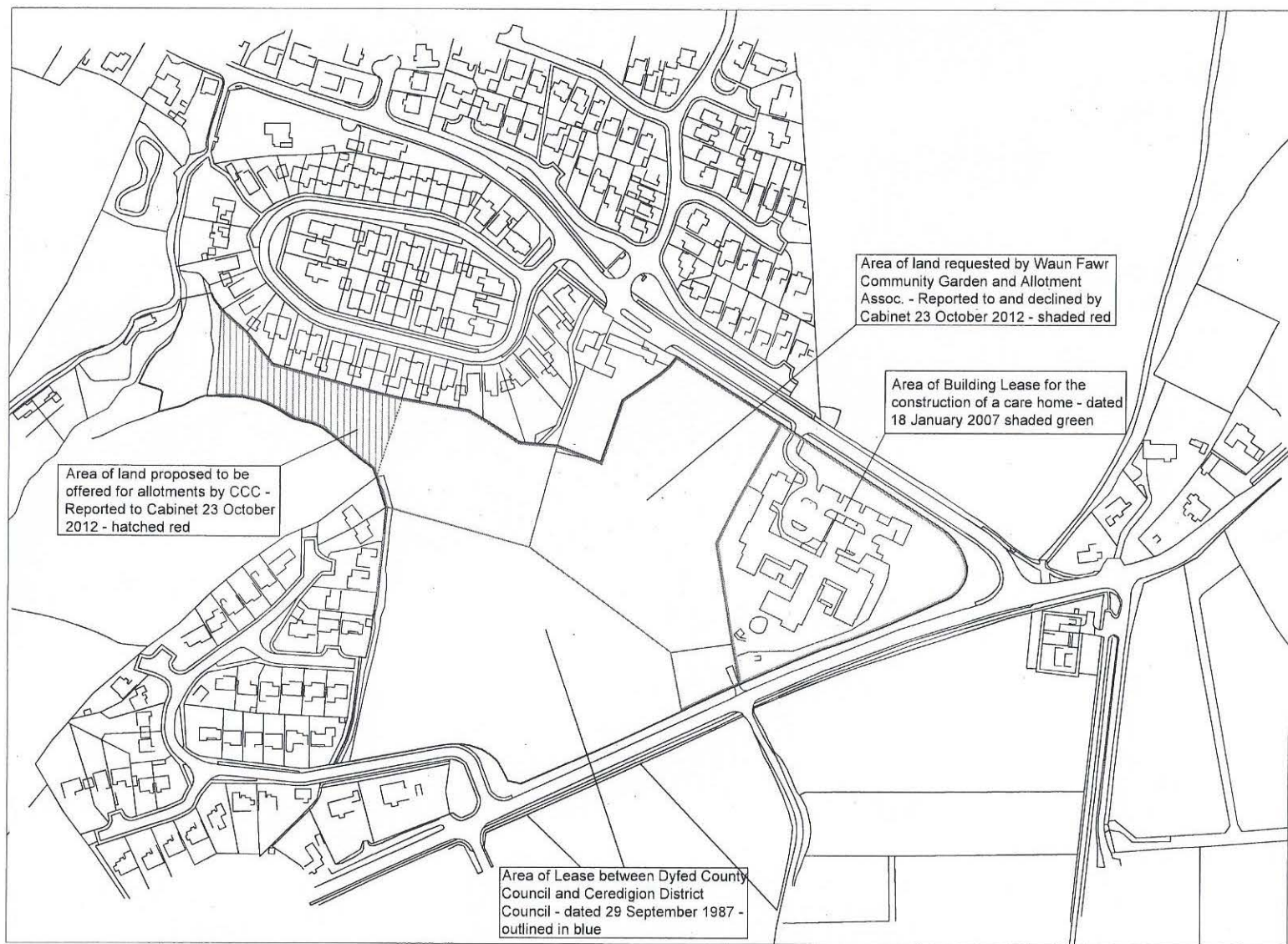
BUNDLE TAB	DATE	COMMITTEE	SUMMARY
1	17/03/1965	Joint Buildings	Discussion of acquisition of Erw Goch site for new Ardwyn school. Referred to Education Committee for decision.
2	17/03/1965	Education	Resolution to authorise negotiation for the purchase of the Erw Goch land.
3	31/03/1965	Special Education	Discussion over part of the site not being available for sale but other land offered in substitution. A sub-committee is to be convened on site.
4	08/04/1965	Joint Buildings	Reported that Education Committee had agreed to buy Erw Goch and contracts exchanged. Owner requests to graze land until end Sept 1965.
5	27/05/1965	Education Joint Buildings	Discussion over prior to preparing sketch plans for the new Ardwyn school, consideration should be given to the circular from the Department of Education and Science on plans for Secondary Education.
A	Conveyance dated 29 June 1965 between (1) Hugh Hughes Davies and (2) Richard Stanley Davies and William Trevor Davies to (3) Cardiganshire County Council		
6	13/01/1966	Education Joint Buildings	Reporting on the loan from the Welsh Office in respect of the Erw Goch land.
7	21/04/1966	Education Joint Buildings	Approving the purchase amount for a piece of land connecting Dinas and Erw Goch.
8	29/09/1966	Education Joint Buildings	Request from Mr Howells who rents the Erw Goch site for a guarantee on an extension to the term. No guarantee given but will consider a re-letting at the end of the term.
B	Conveyance dated 31 May 1968 between (1) Brickworth Developments Limited to (2) Cardiganshire County Council		
9	03/07/1968	Higher Education	Resolution that the possibility of preparing the Erw Goch fields for use by both Ardwyn and Dinas schools be investigated.





10	11/07/1968	Education Joint Buildings	Deferral of decision on re-letting the fields pending report on the Higher Education Committee resolution on 03/07/1968.
11	21/10/1968	Education Joint Buildings	Received report on the issue of a notice to the Electricity Board to remove pylons at Erw Goch following the request from Ardwyn Governors.
12	04/12/1968	Education Joint Buildings	Report on gas mains and electricity cables at the site.
13	29/01/1969	Education Joint Buildings	Report on easement to the Gas Board.
14	20/03/1969	Education Joint Buildings	Report on deferring a decision on re-letting as the Committee has approved use of the fields by Dinas and Ardwyn. Also report on electricity lines at site.
15	26/06/1969	Education Joint Buildings	Report on use of part of site by Dinas and Ardwyn and to re-let the remainder.
16	27/08/1969	Education Joint Buildings	Resolution not to extend the term of the grazing letting and to defer a decision on advertising the land for grazing at present. Sub-committee will meet shortly regarding future use of site.
17	25/09/1969	Education Joint Buildings	Report authorising the use of part of the field by the children of Waunfawr and also for the remainder of the field to be let out for grazing.
18	29/08/1969	Education Joint Buildings – Meetings of Sub-committees	Resolution to grant use of part of the Erw Goch fields to Waunfawr residents as a football field.
19	16/10/1969	Education Joint Buildings	Resolution of tidying of hedge and also letting out of part of Erw Goch for grazing.
20	12/11/1969	Education Joint Buildings	Expediting hedge works and also that the Committee will inform Highways that it will allow some land for highways widening purposes.
21	16/01/1970	Education Joint Buildings	Resolved to allow the football team use of alternative part of Erw Goch due to field being water-logged.
22	26/03/1970	Education Joint Buildings	Resolution in principle to allow football team to erect portable hut subject to comments of the tenant.

23	27/05/1970	Education Estates Committee	Resolution to grant erection of hut as tenant has no objection.
24	14/10/1970	Education Estates	Resolution approving size of hut erected.
25	14/04/1971	Education Estates	Resolution approving letting of Erw Goch fields to Welsh Agricultural College on temporary basis.
26	29/04/1971	Development Committee	Resolution to recommend Education Committee to take steps to implement interim scheme of two tier reorganisation side by side with establishing a bilingual secondary school, and that the ultimate aim should be a campus comprising a unitary comprehensive school and a bilingual secondary school sharing certain facilities on the Erw Goch site. Further resolved that details be investigated and a further meeting held.
27	21/09/1971	Development Committee	Resolution to receive report of Deputy Director on steps taken to implement interim scheme of two tier reorganisation and a bilingual school within the campus of the Erw Goch site. And to authorise officers to issue Section 13 Notices.
28	14/06/1972	Estates Committee	Resolution that the Director of Education should take up the matter of building a Youth Wing adjacent to the comprehensive school on the Erw Goch/Dinas Site with the Department of Education and Science.
29	12/07/1972	Estates Committee	Resolved to recommend the project to build a Youth Wing adjacent to the school on the Erw Goch/Dinas site be given priority in the 1973/4 Locally Determined Pool Allocation.
30	07/02/1973	Special Education	Resolution to refer to Estates Committee request to transfer land from Erw Goch to new comprehensive school.
31	14/02/1973	Education Estates	Resolution for a sub-committee to meet Aberystwyth Rural District Council to discuss use of the Erw Goch fields for recreational purposes. Also separate minute resolving to transfer land at Erw Goch to new Comprehensive School.
32	14/03/1973	Estates Committee	Resolved that request for the erection of a sectional timber building at Waunfawr to be

			considered in conjunction with the request made by the Rural District Council for recreational facilities on the Erw Goch land.
34	14/11/1973	Estates Committee	Resolution in relation to development of Erw Goch Playing Fields – resolved to await a detailed report on costs, finance the Sports Hall from the Locally Determined Pool, thank Aberystwyth R.D.C for their offer of financial contribution and to confirm County Architect's action in arranging removal of all hedges.
35	12/06/1985	Education Committee - Development and Finance Sub-Committee	Resolution to lease Erw Goch fields to Ceredigion District Council for use as community playing fields. Confirmed that the land would not be redeveloped as a replacement school for Penweddig for at least 7 years.
36	01/04/1987	Education Committee - Development and Finance Sub-Committee	Report showing the lease to Ceredigion District Council in progress.
37	18/09/1986	Policy & Resources Committee - Estates Sub-Committee	(Minute 3.5) Approval of terms to lease Erw Goch fields to Ceredigion District Council for use as an amenity area for the local community.
C	Lease dated 29 September 1987 between (1) Dyfed County Council and (2) Ceredigion District Council		
38	01/04/1992	Policy & Resources Committee – Finance & Property Sub-Committee	Resolution to approve rent review terms of lease to Ceredigion District Council.
39	08/02/2005	Report to Cabinet	Cabinet Report regarding the proposed dementia care facility on part of Erw Goch fields.
40	08/02/2005	Cabinet	(Minute C326) Resolution to grant lease of part of Erw Goch to a care home provider with a further report to be brought back regarding rental amount.
41	05/07/2005	Cabinet	(Minute C78) Resolution to waive rental component of Hafan Y Waun care home lease and that the service provider submits infrastructure costs to the Council.

See Tab 43	23/10/2012	Cabinet	Report regarding the request by Waunfawr Community Garden and Allotment Association to lease Erw Goch and also a request from the owner of Erw Goch Farmhouse to acquire the same land.
42	23/10/2012	Cabinet	(Minute C186) Resolved to defer consideration of a request by Waunfawr Community Garden and Allotment Association pending further investigation and also to decline the request from Erw Goch farmhouse.
43	01/04/2014	Cabinet	A further report on the request by Waunfawr Community Garden and Allotment Association to lease Erw Goch (also containing initial Report to Cabinet dated 23 rd October 2012).
43	01/04/2014	Cabinet	(Minute C350) Resolved to decline request from Waunfawr Community Garden and Allotment Association to lease the entire site and to offer a lease of a smaller area of Erw Goch.



-  Area of Lease between Dyfed County Council and Ceredigion District Council - dated 29 September 1987 - outlined in Blue
-  Area of land requested by Waun Fawr Community Garden and Allotment Assoc. - Reported to and declined by Cabinet 23 October 2012 - shaded Red
-  Area of land proposed to be offered for allotments by CCC - Reported to Cabinet 23 October 2012 - hatched Red
-  Area of Building Lease for the construction of a care home - dated 18 January 2007 - shaded Green

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Erw Goch Fields, Aberystwyth

Approx. Scale 1:2500 @ A3

Plan Showing Areas of Land for which leases were Granted or Requested - For identification purposes only

