

DATE OF DECISION: 15th April 2019

Officer	Post Designation
Linda Rees-Jones	Head of Administration and Law And Monitoring Officer

SUBJECT:

To consider and determine on behalf of the Carmarthenshire County Council as Registration Authority the application for registration of land at Maespiode, Llandybie dated 4th March 2017 as a Town or Village Green under section 15 of the Commons Act 2006.

DECISION MADE:

That the application be refused on legal grounds and that no part of the land to which the application relates should be added to the statutory register of Town or Village Greens maintained under the Commons Act 2006.

Signed:

Linda Rees-Jones

HEAD OF ADMINISTRATION AND LAW & MONITORING OFFICER

Reason(s) for decision:

The Applicant, Mr. Melvyn Thomas, has not made out his case for registration under section 15(2) of the Commons Act 2006 because the use of the land is determined to be "by right" ie. with the permission of the Council, rather than "as of right", as per the precedent of the Supreme Court in the case of R (on the application of Barkas) v North Yorkshire County Council and Another 2014.

IMPLICATIONS

Policy and Crime & Disorder	Legal	Finance	ICT	Risk Management Issues	People Management & Performance	Physical Assets
NONE	YES	NONE	NONE	NONE	NONE	YES

2. Legal

This decision has been taken by the Head of Administration and Law and Monitoring Officer under the authority delegated to her by the Scheme of Delegation to Officers.

The decision is one which may be Judicially Reviewed through the Courts, should the Applicant so opt.

6. Physical Assets

The land, being an open space held for housing purposes, will continue to be held by the Council for that purpose and will not be registered as a Town or Village Green.

CONSULTATIONS

I confirm that the appropriate consultations have taken in place and the outcomes are as detailed below

Signed:

Head of Administration and Law and Monitoring Officer

2. Local Member(s)

N/A

3. Community / Town Council

N/A

4. Relevant Partners

N/A

5. Staff Side Representatives and other Organisations

N/A

**Section 100D Local Government Act, 1972 – Access to Information
List of Background Papers used in the preparation of this report:**

THESE ARE DETAILED BELOW

Title of Document	File Ref No.	Locations that the papers are available for public inspection
Application and supporting documents	PL-0182	County Hall, Carmarthen
Counsel's Advice	PL-0182	Legally Privileged and not available for inspection

EXECUTIVE SUMMARY:

An application was made by Mr. Melvyn Thomas on the 4th March 2017 to register land at Maespiode, Llandybie as a Town or Village Green under section 15 of the Commons Act 2006. The Carmarthenshire County Council is the Commons Registration Authority for the area in question and the application therefore falls to be determined by the Council.

The Council is also the owner of the land in question, Maespiode being one of its housing estates, built in the late 1960's. The Right To Buy was introduced in the early 1980s and many of the homes have been bought, but others remain tenanted, so the estate is now a mix of privately owned and Council tenanted properties.

For the application to succeed the applicant must show that the use of the land – for activities such as children playing, dog walking, childrens' parties, the Silver Jubilee party, camping out, social gathering and meetings and such like (none of which said activities are disputed) – was / is "as of right" (ie without the Council's permission), as opposed to "by right" (with the Council's permission).

The Council is the sole objector to the application for registration, maintaining that the land is used "by right".

The Supreme Court ruled in 2014 that members of the public using land held by local authorities under a statutory provision use it "by right" and not as trespassers: R (on the application of Barkas) v North Yorkshire County Council and Another 2014. The title deeds to the land show that the land is held by the Council "for the purposes of the Housing Act". The land in question is an open space arising from the development of the site for the purposes of provision of housing, and under Barkas is therefore used for the activities stated "by right" / with the Council's permission.

The applicant therefore cannot show that the use of the land has been "as of right" / without permission and the application therefore fails the required test by reason of the legal precedent set in Barkas.

Detailed explanatory report also attached:

NO