

COMMONS ACT 2006, Section 15

**CITY AND COUNTY OF SWANSEA
(Registration Authority)**

**RE: LAND KNOWN AS CWM GREEN,
WINCH WEN,
SWANSEA**

**ADDENDUM REPORT
(including FINAL CONCLUSIONS AND
RECOMMENDATION)
OF THE INSPECTOR
MR ALUN ALESBURY, M.A., Barrister at Law**

into

**AN APPLICATION TO REGISTER THE
ABOVE-NAMED AREA OF LAND**

as

TOWN OR VILLAGE GREEN

1. In my Interim Report into this application, dated 9th May 2014, I advised that no final decision should be taken by the Registration Authority until the Supreme Court had issued its judgment in the case of ***R(Barkas) v North Yorkshire County Council***, and both parties in the present case – the Applicant and the Objector – had had the opportunity to comment on that judgment and its potential significance.
2. In the event the Supreme Court handed down its judgment in the ***Barkas*** case on 21st May 2014 – reference [2014] UKSC 31. I have now received and been able to consider the submissions or comments which the two parties in the present case have made in the light of that judgment.
3. In short, the Supreme Court has upheld the decision of the Court of Appeal in ***Barkas***, and indeed gone further than that in holding that the previous House of Lords decision in ***R (Beresford) v Sunderland City Council*** [2003] UKHL 60, [2004] 1 AC 889 had been wrong on its facts [although the reasoning and logic behind many of the *obiter* remarks in ***Beresford***, to which I made reference in my Interim Report, has been upheld].
4. I note that Mr Walters, the present Applicant, is somewhat critical of the Supreme Court’s ***Barkas*** decision in his latest representations, although he does acknowledge that “*we have no option but to accept the ruling*”. Plainly I agree with him on the last point. Mr Walters however goes on to suggest a number of respects in which the factual background at Cwm Green is different from the situation at the land in Whitby, Yorkshire, which underlies the ***Barkas*** litigation.
5. Clearly the facts at Cwm Green are not absolutely identical to those in ***Barkas***, as Mr Walters seeks to point out. However there are striking parallels, such as the point that in both cases there has been land, originally acquired for housing purposes as part of a much larger municipal housing scheme, but which has in fact been deliberately laid out as a recreational area for people from the surrounding housing to use.
6. More significant than that sort of point, however (in my view), is that the two reasoned judgments of the Supreme Court in ***Barkas***, with which the other members of the Court agreed, do not confine themselves to a narrow decision based on the very precise factual

situation at the Helredale playing field in Whitby. They contain extensive discussion of the principles which apply to situations where a local authority landowner has deliberately laid out and maintained a piece of land for (local) public recreation and enjoyment.

7. I have to advise the Registration Authority, having read and considered that discussion and reasoning of the Supreme Court, that in my judgment there is no way in which it could now be correct to hold that the recreational use of Cwm Green by the local people of Bonymaen/Winch Wen has met the 'as of right' test in **Section 15** of the **Commons Act**. Local people's use of this land was most clearly 'by right', which the Supreme Court appears to have regarded as a form of use 'by permission', or '*precario*' [by reference to the oft-quoted Latin maxim set out in paragraph 11.22 of my Interim Report].
8. The application here therefore cannot possibly succeed. I realise that this will be very disappointing to the Applicant and his supporters. I do stress however that my conclusions only relate to the question whether the criteria set by **Section 15** of the **Commons Act 2006** have or have not been met in the case of this land. They have no relevance to the question of what, in planning terms, *ought* to be the future use of this piece of open recreation land. Nor do they have any effect on the requirements under the **Local Government Act 1972** for special procedures to be followed, if at any time in the future there were ever to be proposals that the use of a piece of open land of this character should be changed, or that it should be disposed of to some different owner.

Final conclusion and recommendation

9. My conclusion in this case is that the application fails, because the criteria set out in **Section 15** of the Commons Act 2006 are not met in relation to this land, in particular as to the requirement for 'as of right' use.
10. Accordingly my recommendation to the Council as Registration Authority is that no part of the site to which this application relates should be added to the statutory Register of Town or Village Greens,

for the reasons explained in my Interim Report, as supplemented by this Addendum Report.

ALUN ALESBURY
3rd July 2014

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