

## CITY AND COUNTY OF SWANSEA

### MINUTES OF THE RIGHTS OF WAY AND COMMONS SUB-COMMITTEE

HELD AT COMMITTEE ROOM 2, CIVIC CENTRE, SWANSEA ON  
WEDNESDAY 13 AUGUST 2014 AT 2.00 P.M.

**PRESENT:** Councillor J A Raynor (Chair) presided

**Councillor(s):**

A M Cook  
J E C Harris

**Councillor(s):**

Y V Jardine  
R V Smith

**Councillor(s):**

L J Tyler-Lloyd  
T M White

**Officers:**

S Richards - Principal Lawyer  
M Workman - Rights of Way Officer  
J Parkhouse - Democratic Services Officer

#### 12. APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillors J A Hale, J E C Harries, K E Marsh and P M Meara.

#### 13. DISCLOSURES OF PERSONAL AND PREJUDICIAL INTERESTS

In accordance with the Code of Conduct adopted by the City and County of Swansea, no interests were declared.

#### 14. MINUTES

**RESOLVED** that the Minutes of the meeting of the Rights of Way and Commons Sub-Committee held on 18 June 2014 be signed and approved as a correct record.

The following was highlighted:

##### Minute No. 10 - Countryside Access Budget

It was requested that the Terms of Reference of the External Fund Panel be recirculated to the Committee and it be confirmed whether there are officers within the Authority who can provide details of grants available.

15. **EXTINGUISH RIGHT OF FOOTPATH NO. 88 - COMMUNITY OF LLANGYFELACH**

The Rights of Way Officer presented a report which requested whether to proceed with the Confirmation Order to extinguish Footpath No. 88 or to abandon the Order. It was outlined that on 11 March 2014 the Council made an Extinguishment Order under Section 118 of the Highways Act 1980 to remove the length of path shown between points A-B-C-D-E-F. Footpath No. 88 between points A-X is under the ownership of the Council, the remaining section under the ownership of those who have title to the three separate properties built on the path. The alternative is vested in the Council having been adopted as public ways.

One hundred and twenty four objections were made to this Order and another thirty three from the pupils of Llangyfelach Primary School. The Order was made under delegated authority by officers of the Council. As objections had been made to the Order, there is no authority for officers to decide whether the Order should be forwarded to the Planning Inspectorate or be abandoned. Under the Act, the Council has the discretion to abandon the Order after it has been made if it considers it is not expedient to confirm the Order.

The Committee were provided with the background and the grounds for making an Order under Section 118 of the Highways Act 1980.

The Committee asked a number of questions of the officer who responded accordingly. Members sought clarity on whether the path could be severed and considered as two separate matters.

**RESOLVED** that the item be deferred subject to clarification at the next scheduled meeting as to whether Footpath No. 88 could be severed and dealt with as separate applications.

16. **IMPLICATIONS OF THE CASE OF R (ON THE APPLICATION OF BARKAS) (APPELLANT) -V- NORTH YORKSHIRE COUNTY COUNCIL AND ANOTHER (RESPONDENTS) (2014) UKSC31 ON APPLICATIONS TO REGISTER COUNCIL OWNED LAND AS A TOWN OR VILLAGE GREEN**

The Principal Lawyer provided a for information update on the recent decision of the Supreme Court in the above in the case of Barkas and its implication on village green applications relating to Council owned land.

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It was outlined that in the Barkas case the land was provided and maintained by the Local Authority as recreation grounds under what is now Section 12(1) of the Housing Act 1985. The Supreme Court has determined that whilst the applicant was able to meet the requirements regarding the recreational use of the land by the required users for the required time period, they could not show that they used the land as of right. In these circumstances, the Court determined that the land is used by right by the powers of the Housing Acts. Consequently such land is not registerable as a town or village green on the basis of such use.

The decision has implications for applications for the registration of land as a village green in circumstances where the land is held by a local authority for public recreation purposes pursuant to any statutory power at any time during the relevant 20 year period for the purposes of Section 15 of the Commons Act 2006. The position does not apply to land owned by a private individual or company where there is no legal duty and no statutory power to allocate land for public use and would be expected to protect their own legal rights.

The Committee asked a number of questions of the officer who responded accordingly.

17. **APPLICATION TO REGISTER LAND KNOWN AS CWM GREEN, WINCH WEN, SWANSEA AS A TOWN OR VILLAGE GREEN**

The Principal Lawyer presented a report to consider the determination of the application to register the land in question as a town or village green in light of the recommendation made in the report and addendum of the Inspector.

It was outlined that the Council had received an application made by Mr Brian Walters under Section 15 of the Commons Act 2006 in respect of land known as Cwm Green, Winch Wen, Swansea which was shown on the plan attached at Appendix 1 of the report. The land in question is in the ownership of the Council. An objection to the registration of the land has been received from the Council in its capacity as owner of the land.

In accordance with the procedure previously approved by this Committee, a Non Statutory Inquiry was held before an Independent Inspector on 25 and 26 February 2014 to consider the application. The Inspector was Mr Alun Alesbury, MA, Barrister at Law.

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Following the Inquiry, the Inspector had written an interim report of his findings. A copy of this report was provided at Appendix 2 of the report. The report was interim in nature because the decision of the Supreme Court in the case of R (Barkas) -v- North Yorkshire County Council was imminently expected. The facts of the Barkas case are very similar to those in the application being considered in this report and have direct consequences upon it. Following the publishing of the decision in the Barkas case, the Inspector invited the parties to comment on the implications of the decision on the application and provided an addendum to his interim report which was attached at Appendix 3 of the report.

The Committee were asked to consider its role in the procedure, the legal test to be satisfied, the burden and standard of proof and the Inspector's findings. The Inspector concluded that:

- (a) Registration of the application for the land as a town or village green is not justified in this case because of statutory criteria set out in Section 15(2) of the Commons Act 2006 are not met in relation to the site.
- (b) In particular, the criteria are not met in relation to the use of the land as of right in the sense required by the Commons Act 2006.

The Inspector therefore recommended that the application site should not be added to the Statutory Register of Town and Village Greens under Section 15 of the Commons Act 2006.

The Committee considered the application.

**RESOLVED** that the application for the registration **BE REFUSED** in accordance with the recommendation of the Inspector.

18. **APPLICATION TO REGISTER DISUSED RAILWAY LAND, NORTH EAST OF STATION ROAD, LLANMORLAIS, SWANSEA AS A TOWN OR VILLAGE GREEN**

The Principal Lawyer presented a report to consider the determination of the application to register the land in question as a town or village green in light of the recommendation made in the report of the Inspector.

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It was outlined that the Council had received an application made by Mr David James Matthews under Section 15(3) of the Commons Act 2006 in respect of disused railway land, north east of Station Road, Llanmorlais, Swansea which was provided in the plan at Appendix 1 of the report. The land in question is held under a long lease by Mr Richard Beynon. After the Council had publicised the application, approximately 40 statements or letters of objection were received by the Commons Registration Authority as well as some communications which were more neutral in character. However, the principal case in opposition to the applicant has been co-ordinated on behalf of Mr Beynon.

In accordance with the procedure previously approved by the Committee, a Non Statutory Inquiry was held before an Independent Inspector on 18-20 March 2014 to consider the application. The Inspector was Mr Alun Alesbury, MA, Barrister at Law.

The Committee were asked to consider its role in the process, the legal test to be satisfied, the burden and standard of proof and the Inspector's findings.

It was outlined that the Inspector's conclusion and recommendation were set out in paragraphs 11.45 to 11.47 of the report. The Inspector concluded that on balance, what took place over the relevant period of time "was no more than sporadic and very intermittent trespass by a small number of individuals" and further "that a great majority of any such use as did take place was more akin to the use of a linear route from A-B (and back to A again) and use of "the land" of the application site as a whole". The Inspector recommended that no part of the land to which this application relates should be added to the Statutory Register of Town or Village Greens because on the evidence it does not meet the criteria required for such registration for the reasons explained in the report.

The Committee considered the application.

**RESOLVED** that the application for the registration **BE REFUSED** in accordance with the recommendation of the Inspector.

19. **DEVELOPMENT AND MANAGEMENT CONTROL COMMITTEE**

The Chair stated that in light of the decision relating to the case of Barkas it would be appropriate for the report to be forwarded to the next available meeting of the Development Management and Control Committee.

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**RESOLVED** that the report relating to Barkas be placed on the next available agenda of the Development Management Control Committee.

20. **DATE OF NEXT MEETING**

**NOTED** that the next meeting be scheduled for 2.00 p.m. on Wednesday 8 October 2014.

The meeting ended at 2.45 p.m.

**CHAIR**