CITY AND COUNTY OF SWANSEA
(Registration Authority)

COMMONS ACT 2006, SECTION 15

Re: LAND AT CAERGYNYDD ROAD, WAUNARLWYDD, SWANSEA

INSPECTOR'S REPORT

into an

APPLICATION TO REGISTER THE ABOVE-NAMED LAND AS A 'TOWN OR VILLAGE GREEN'

1. I have been appointed by the Council, in its capacity as Registration Authority under the ***Commons Act 2006***, to act as Inspector to assist the Council in determining an application made by Mr Glenn Young ("the Applicant"), of 89 Bryn Road, Waunarlwydd, Swansea, to the Registration Authority under ***Section 15(2)*** of the ***Commons Act***, that certain land to the north side of Caergynydd Road, Waunarlwydd, should be registered as a 'Town or Village Green'.

2. The application was originally received by the Registration Authority on 18th February 2013, but then resubmitted on 3rd April 2013. The application as submitted appeared to be lacking in a number of respects, notably that the plan which accompanied the application did not very clearly identify the boundaries of the site to which the application was intended to relate, and also that the application did not identify a 'locality' or 'neighbourhood' whose inhabitants were claimed to have used the site in significant numbers for 'lawful sports and pastimes' over the relevant period.

3. Both of these 'defects' in the application were in principle capable of correction, and the Registration Authority very properly invited the Applicant, by a letter dated 31st May 2013, to make the appropriate changes or additions to the application, so as to remedy the observed

deficiencies. This resulted in a plan being agreed which did clearly identify the intended boundaries of the application site. However the Applicant has not then or since taken up the opportunity which was given to him to identify a locality or neighbourhood in respect of whose inhabitants the application was being made.

4. The land of the application site, as thus identified, is in fact in the freehold ownership of the Council itself (the Council of the City and County of Swansea). In its capacity as landowner, the Council objected to the application, by a letter dated 30th August 2013. The Council as landowner was the only objector to the application, and I shall therefore refer to it as "the Objector".

5. The Objector did not dispute that the land in question (the application site) is an area of open space to which the public have had (and continue to have) access, but maintained that such access was enjoyed by virtue of an implied licence granted to the residents of the area by virtue of a right under ***Section 12(1)(b)*** of the ***Housing Act 1985***, the site being land used for the purpose of recreation. In these circumstances, the Objector argued, such lawful sports and pastimes as local people had indulged in on the land were carried on with the benefit of a statutory ***right*** to do so. The land therefore could not have been used "*as of right*", as ***Section 15*** of the ***Commons Act*** requires. This is because it is clearly established as

a matter of law that ‘as of right’ means ‘as ***if*** of right’, and turns on the relevant people having used the land concerned *as if* they had a right to do so, but when they did *not* in fact have such a right.

6. The Objector also pointed out (correctly) that many of the supporting statements by local residents which accompanied the application had been made on the basis of objection in a town and country planning context to possible development of the land concerned, rather than on any basis relevant to a determination under ***Section 15*** of the ***Commons Act***.

7. In the circumstances thus outlined there appeared to be an unresolved dispute between the Applicant and the Objector, which in principle might be resolved in favour of either party, once those parties had been given the opportunity to provide further relevant evidence and submissions.

8. The Registration Authority, following its normal procedure in such cases, offered to the parties (i.e. the Applicant and Objector) the opportunity of appearing or being represented at a non-statutory local public inquiry, at which such further evidence and submissions (together with the evidence and submissions already submitted on paper in connection with the application) could be considered and evaluated.

9. In this connection I myself was prospectively appointed by the Registration Authority for the purposes of holding and reporting on such an inquiry, with appropriate recommendations in the light of it as to how the application should be determined.

10. However latterly the Applicant, in spite of being offered the opportunity of such an inquiry, and considerable flexibility as to the timing of it, has expressly indicated to the Registration Authority in writing that neither he nor the other people involved with the application are available at any time for the purposes of an inquiry. He has said this in an email of 28th August 2015 to Mrs Richards, the officer of the Registration Authority appointed to deal with the administrative aspects of this matter.

11. Indeed the Applicant (in the same communication) has gone further than that, and has said that he "will no longer be related to this matter", and that he did not wish to take it any further. He also said that he did "not see the need now to pursue this matter, as it looks as if planning will go in favour of leaving it a green space". He concludes by requesting the Registration Authority to "close this case, as there is no longer a need to make it a village green".

12. Those recent statements by the Applicant appear effectively and clearly to communicate a desire on his part to withdraw the application to which

this Report relates. However, there is a 'public law' aspect to ***Commons Act*** applications, which potentially relate to the rights of a community at large, rather than there just being an issue between two competing private interests; also a considerable number of other individuals in the Waunarlwydd area did in fact take the trouble to produce written statements in support of the application. In the light of these factors the Registration Authority has properly taken the view that it ought to receive a Report as to how the matter stands, on the basis of the material already put before it, before the Applicant expressed his wish not to participate any further in the proceedings.

13. Leaving aside for the moment the Applicant's present stance in this particular case, the general position is that, for an application under ***Section 15*** of the ***Commons Act 2006*** to succeed, the applicant, where the matter is disputed, must prove his case on all the relevant aspects of the statutory criteria, to the 'balance of probability' standard of the civil law burden of proof.

14. Looking now at this particular case, it does seem to be established (and in fact agreed) on the papers that significant numbers of local people have used this piece of open land recreationally over a period which probably is long enough to meet the '20 years' aspect of the statutory criteria. However, as noted above, the Applicant in fact (in spite of being invited

to do so) made no effort at all to identify a 'locality' or 'neighbourhood' to whose inhabitants the town or village green claim could be said to relate, and no-one else who provided material supporting the application had in fact made good this deficiency.

15. Clearly a question of this particular kind *might* have been capable of resolution in favour of the Applicant through the inquiry process, but in the circumstances here it has to be concluded that the Applicant's case on this point has not been established or proved on the balance of probability test.

16. On the question of the status of the land concerned, in the hands of the Objector as a local authority, and whether it was provided for public use as a matter of right (or at least implied licence), the following can be said. It seems probable from the totality of the written material provided that this land was in origin a piece of open land provided within what was originally a municipal housing estate area; it was thereafter left and kept in a state which allowed for its recreational use by the public, including in particular local residents.

17. The Council as landowner/Objector asserts that the land concerned was enjoyed by the local public by virtue of a statutory right under the ***Housing Act 1985***, relating to the power of local authorities to provide

recreational land in association with housing areas. Similar provisions existed in earlier versions of the housing legislation, and have indeed been the subject of consideration by courts up to the level of the Supreme Court, in the specific context of 'town or village green' claims.

18. It is reasonable to conclude, in my judgment, that this explanation by the Objector as to the basis on which the application site was provided for public use is at the very least a plausible and reasonably likely one. Had the matter proceeded to a public inquiry it would have been possible for the Applicant, had he so wished, to challenge this view of the matter, and seek to establish that the land concerned was *not* held by the Objector in a way which gave rise to some right or licence to use it.

19. However in the circumstances here it must be concluded, in my judgment, that the Applicant has most clearly *not* established on the balance of probability that the land concerned was used over the relevant period, by relevant inhabitants, "as of right", as ***Section 15*** of the ***2006 Act*** requires.

20. It therefore follows that, even without taking account of the Applicant's recent stance that he no longer wishes to pursue the matter, the application in this case must fail, because on the basis of the material provided by the parties to the Registration Authority, it has not been

established on the balance of probabilities that the statutory criteria of ***Section 15(2)*** of the Act have been met. This is in relation to the requirements to establish 20 years' use by the inhabitants of an identified "locality" or "neighbourhood within a locality", and that such use was "as of right".

Conclusion and recommendation

21. My conclusion therefore is that this application cannot succeed, for the reasons I have given in the discussion above. My recommendation to the Registration Authority accordingly is that its decision should be that no part of the application site here should be added to the Statutory Register of Town or Village Greens, for the reasons given in my Report.

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