

## Report of the Head of Legal and Democratic Services

Planning Committee – 4 October 2016

### APPLICATION TO REGISTER LAND KNOWN AS PARC Y WERIN, GORSEINON, SWANSEA AS A TOWN OR VILLAGE GREEN APPLICATION NO. 2734(S)

<b>Purpose:</b>	To inform the Sub-Committee of the proposal to hold a non-statutory inquiry.
<b>Policy Framework:</b>	None
<b>Statutory Tests:</b>	Section 15 Commons Act 2006
<b>Report Author:</b>	Sandie Richards
<b>Finance Officer:</b>	Paul Roach
<b>Legal Officer:</b>	Tracey Meredith
<b>Access to Services Officer:</b>	Phil Couch

#### FOR INFORMATION

### 1.0 Introduction

- 1.1 The Council has received an application from Gorseinon Community Councillors James Dunckley and Claire Elizabeth Lewis in respect of land known as Parc y Werin, Gorseinon, Swansea. The application is made by Cllrs Dunckley and Lewis in their personal capacity and not on behalf of the Community Council. The application seeks to register land as a Town or Village Green. A plan of the land in question appears as Appendix 1.
- 1.2 The land subject to the application is owned by this Council. The Council in its capacity as owner of the land and has made an objection to the application.
- 1.3 The Head of Legal and Democratic Services has delegated authority to instruct Counsel to Act as Inspector and to advise on the application and the appropriate procedure to be adopted in determining the application including whether a public inquiry would be necessary to consider the application. Mr. Alun Alesbury, MA, Barrister-at-law was instructed to advise.

## **2.0 History of the Application**

- 2.1 A report to the Planning Committee of 10<sup>th</sup> May 2016 was deferred in order to consider further information submitted by the Applicants. A copy of that report appears as Appendix 2.
- 2.2 The Inspector recommended in that report that the application be refused and that no part of the land of the application site be added to the Register of Town or Village Greens under Section 15 of the Commons Act 2006.
- 2.3 In light of the further information submitted by the Applicants the Inspector has produced Further Advice and Revised Recommendation as to Procedure dated 2<sup>nd</sup> September 2016. A copy of this document appears as Appendix 3.
- 2.4 Members will note that the Inspector states at paragraph 20 of his Further Advice that in his judgment “the dispute between the parties has now become sufficiently complex and unstraightforward that the best way of seeking to resolve it is actually to require both parties to come to a local inquiry, having been required to ‘sort out’, at the same time, exactly what their final position is on all the relevant issues in dispute.”
- 2.5 However, the Inspector also states that such an inquiry should be limited to those aspects which are disputed between the parties.
- 2.6 The holding of such an inquiry will ensure that evidence from both the Applicants and the Objectors can be heard and tested and the issues examined and argued over.
- 2.7 Once the inquiry has taken place the Inspector will issue a report with recommendations for this Committee to consider and make a decision upon.

## **3.0 Equality and Engagement**

- 3.1 There are no Equality and Engagement implications to this report.

## **4.0 Legal Implications**

- 4.1 The Council in its role as Commons Registration Authority has a statutory duty pursuant to Section 15 of the Commons Act 2006 and the Commons (Registration of Town or Village Greens) (Interim Arrangements) (Wales) Regulations 2007 to determine applications for land to be registered as a town or village green.

- 4.2 The effect of registration of land as a town or village green is that it is protected from development for ever and preserved for use by local people.
- 4.3 The land is owned and maintained by the City and County of Swansea and a conflict arises as the Council is both the Commons Registration Authority and the principal objector. These roles have to remain separate as far as possible so as to minimise challenge by way of judicial review. The application must be considered purely on the merits of the case by applying the relevant law and in accordance with the principles of natural justice. The usual way of overcoming the conflict caused by the dual role is by the holding of a non-statutory inquiry.

## **5.0 Financial Implications**

- 5.1 There is no specific budget identified for the expenditure incurred for the determination of applications. Expenditure will be incurred from existing budget provisions.
- 5.2 If the land is designated as Town or Village Green it will not be available for development in the future.

**Background papers:** Application File.

**Appendices:** Appendix 1: Plan of the application site

Appendix 2: Report to the Planning Committee dated 10<sup>th</sup> May 2016

Appendix 3: Further Advice and Revised Recommendation as to Procedure from Mr. Alun Alesbury, Barrister-at-law, dated 2<sup>nd</sup> September 2016.