CITY & COUNTY OF SWANSEA

COMMONS ACT 2006, SECTION 15

APPLICATION TO REGISTER LAND KNOWN AS PARC Y WERIN, GORSEINON, AS A 'TOWN OR VILLAGE GREEN'

FURTHER ADVICE AND REVISED RECOMMENDATION AS TO PROCEDURE

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1. I refer to my earlier 'Advice and Recommendation' in this matter, dated 19th February 2016, to the Council in its 'quasi-judicial' capacity as Registration Authority under the ***Commons Act 2006***. In that earlier document I advised the Registration Authority that, for reasons discussed extensively therein, and based on the evidence and submissions which had

at that stage been provided by the parties, the Applicants' application to register land at Parc y Werin under ***Section 15*** of that Act as a 'town or village green' could be seen to have failed on legal grounds. Therefore (I advised) the application could properly be rejected by the Authority, without the need to convene a local public inquiry into the matter.

2. Clearly, as I have just indicated, that advice and recommendation were based on the exchanges of written material which had taken place by that time as between the relevant parties – the Applicants and the principal Objector to the application – that Objector being of course the Council itself, but in its distinct capacity as owner of the land in question. The normal practice of the Registration Authority, prior to the proposed taking of the final decision on a ***Commons Act*** application by the Council's relevant committee, in the light of any such advice and recommendation, is (I understand) that the advice and recommendation are then made available to the parties for any further observations or suggested factual corrections, etc.

3. In this case, that opportunity for further comment in fact generated a significant number of further representations from the parties, initially from the Applicants' side. The first of these was headed "Applicants' Response to the Inspector (dated 3rd May 2016)", though the same

document also bears the date 4th May 2016 [nothing turns on this minor inconsistency of date].

4. In this Response document the Applicants indicated that they (at that time) accepted my findings in relation to the part of the application site which the parties had called 'the 1921 land' [originally acquired by the Council's predecessor (on lease) in that year]. However they suggested, in relation to the other part of the site known (for these purposes) as 'the 1924 land', that evidence had become available suggesting: (i) that temporary housing had been erected for a period on part of the '1924 land'; (ii) that some of the 1924 land had for a period had an old spoil tip on it; (iii) that parts of the original '1924 land', extending beyond the present application site, had been over the years developed for permanent housing [I summarise the Appellants' main points briefly, but I have read and considered the whole of their representation]. The Applicants also produced some further plans relating to their points.

5. Clearly there was no need for me to comment any further on the Applicants' (then) acceptance of my findings about the '1921 land'. As far as the '1924 land' was concerned, new points had been raised by the Applicants. If the matter had rested there, it would have been appropriate to consider whether a further reply on those points was needed from the

Objector, and if so whether anything more than a further exchange of written submissions was required, in order to do justice to the positions of the respective parties.

6. However, in a later email to the Registration Authority of 8th May 2016, attaching a representation headed 'Further Comments on the 1921 land', it was suggested on behalf of the Applicants that further reasoning had come to light as to why the 'Inspector's current finding in respect of the 1921 land is fundamentally flawed' [the reference to "the Inspector" in both representations being clearly a reference to myself in the context of my earlier Advice and Recommendation]. In addition, the Applicants drew attention (with some supporting documentation) to the point that, in answer to a 'Freedom of Information' request made in November 2015, an answer had been given on behalf of the Council which was completely at odds, factually, with the factual basis on which the Council had made its case as Objector in the present ***Commons Act*** proceedings. The information requested had been as to what statutory power Parc y Werin is held under, and under what statutory power it had been acquired by the Council's predecessor authority.

7. The answer which had been given (dated 15th December 2015) to the 'Freedom of Information' request made reference to a conveyance of July

1949 between the old Llwchwr Urban District Council and the old Glamorgan County Council, and to two transactions, in 2011 and 2013, between the present Council and a local health board, which were said to have given rise to some restrictive covenant considerations. However no reference at all was made to any of the substantial information which was later provided by the Council as Objector in these present proceedings, in relation to the acquisition and subsequent history of what became called (by all parties) the '1921 land' and the '1924 land'. Conversely the representations and evidence of the Council as Objector in these proceedings had made no reference to the conveyance of 1949, or the matters from 2011 and 2013, to which the 'FOI Response' had referred.

8. The first part of the Applicants' 'Further Comments' of 8th May again gave rise to a need to consider whether points had been raised which required a further reply from the Objector, and if so as to the best manner procedurally to provide for any consequential exchange of submissions.

9. However the matter which the Applicants raised in relation to the 'Freedom of Information' response of December 2016, and its inconsistency with the factual basis of the Council's previously lodged case in these present proceedings, clearly merited immediate further investigation, with a view to elucidating the true position. Whatever view

may have been ultimately taken as to the various new legal submissions which had been raised by the Applicant, it would clearly in my view have been unsatisfactory and legally questionable for the Registration Authority to have contemplated taking the final decision in the present proceedings, without this very puzzling apparent inconsistency in the factual background having been clarified.

10. The Registration Authority had (as is proper) drawn the attention of the Objector (i.e. the Council as landowner) to the various further representations received from the Applicants, including the query about the 'Freedom of Information' response having been inconsistent with the Objector's earlier submissions in the present case. An email dated 20th May 2016 was sent to the Registration Authority by Mr Mathew Joyce-Brown of (I understand) the Council's Property Department, which suggested that the Freedom of Information Request (and its answer) had related to other neighbouring land, and not to land subject to the present ***Commons Act*** application. Accompanying the email were attachments including a copy of the conveyance of 20th July 1949, to which the 'FOI Response' had referred, and also a copy letter of 1944, relating to the (then proposed) acquisition of the freehold of the previously (1921) leased area of the park, citing the statutory authority for the acquisition as being the ***Public Health Act 1875***.

11. In a later email of 26th May 2016, Mr Joyce-Brown informed the Registration Authority that he had been in contact with the officer who had been responsible for the December 2015 'FOI Response', who had admitted that the answer given on 15th December was an error, based (it seems) on the re-use of material which had originally been available in a different context, relating to the adjoining piece of land.

12. I understand that the Registration Authority provided the Applicants with copies of both of Mr Joyce-Brown's communications on behalf of the Objector, and their relevant attached documents, and invited them to make any further comments or representations which they wished to, in relation to them.

13. However, in addition to doing that, it transpired that the Applicants had undertaken further research into the case more widely, and had come up with a series of additional points, and 'new' information, which they set out in a series of documents, in some cases accompanied by 'exhibits' (generally 'historic' documents or photographs). On 24th May 2016 they submitted a document headed 'Further submissions on the 1921 land'. Then on 7th June 2016 they submitted a document headed 'Comments on the Objector's new evidence', and another one (with exhibits) headed

‘Further information regarding residential accommodation on Parc y Werin’.

14. All of these documents were of course provided to the Objector. I have now seen a document (with several appendices) dated 16th August 2016, headed ‘Supplementary Objection Statement’, which has been received by the Registration Authority from the Objector (the Council as landowner). In its terms this statement indicates that it is seeking to respond to the Applicants’ “Further information regarding residential accommodation on Parc y Werin”.

15. The first thing which needs to be said is that, whatever else is done, no determination could properly be made on the current application until the Applicants had been given an adequate opportunity to respond properly, on the facts and on the law, to this latest objection statement, and its exhibits. The experience of what took place in May and early June 2016, following the Applicants’ being given sight of my original Advice and Recommendation, makes it highly likely (in my judgment), and perfectly reasonable in the circumstances, that the Applicants’ could be expected to take advantage of their right of reply to make further relevant submissions, and possibly provide yet further historical evidence. It is not inappropriate to observe that, as matters have progressed so far, various pieces of the

potentially relevant historical background have been emerging in 'dribs and drabs' from both sides.

16. The question which now arises for the Registration Authority is the most appropriate way of dealing with the present situation procedurally, having regard to the need for fairness and justice to both sides, and the linked need to bring the matter properly to a ***final*** determination, consistent with that requirement for fairness and justice.

17. In my original Advice, when I believed this matter could properly (and fairly) be determined 'on the papers', without the need for a local inquiry, I said this: *"Clearly, if this were a case where there was a substantial dispute of fact, whose resolution one way or the other is likely to determine the application, as well as the land belonging (as it does) to the Council itself, it is unlikely, given the Registration Authority's adopted procedure for 'village green' applications, that it would* ***not*** *be a case where the normal assumption would be that an inquiry should be held. In reality therefore the present question becomes whether or not, on such of the facts as are undisputed (or not materially disputed), there are clear legal grounds for concluding that, whatever the Applicants may argue, the land concerned cannot as a matter of law be registered under* ***Section 15*** *of the* ***2006 Act****."*

18. At that time it appeared to me, on the material then available, that there was a sufficient basis of apparently undisputed historical information, in relation to the use and status of this land, that an inquiry was not needed to resolve the matter. However the exchanges which have taken place since then have plausibly raised the suggestion that the historical background here was (or might have been) considerably more complicated than then appeared to be the case. It appears to me also from a number of observations in the latest supplementary objection statement from the Objector that there is some recognition there that the background history of the land-holding at Parc y Werin is still not completely clear..

19. The situation which has now been reached is therefore not, I have to advise, one where I feel any longer confident that the position on the facts is so clearly established that no further investigation or consideration by the Registration Authority or the parties is required. I am also no longer satisfied that the matter can be brought to a proper final determination simply by asking the Applicants' side for a written reply to the latest statement from the Objector.

20. In my 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.

21. I do not believe it would be necessary for such an inquiry to spend time hearing lengthy evidence on all aspects of the statutory criteria for a claim under the ***Commons Act***; the concessions on behalf of the Objector as to some of the key aspects of those criteria, which I noted at paragraph 7 of my earlier Advice, mean (for example) that it would not be necessary for an inquiry to hear evidence from local people that they had actually used Parc y Werin for 'lawful sports and pastimes' during the relevant 20 year period. The evidential matters still needing to be clarified definitively could be said to relate more to the longer term history of the park, and the various parts of it, and the implications of that history for its legal status

22. It is however entirely possible (and desirable) for the scope of any proposed inquiry to be controlled by the issue of Directions to the parties, so that time is not wasted dealing unnecessarily with undisputed aspects of the case.

23. I have already said that, in any event, the Applicants have to be given the opportunity of considering and replying to the latest supplementary statement from the Objector. However if (as I advise) the decision is now taken to hold a local inquiry, it is not necessary for that opportunity to be

provided before the parties are invited to prepare for such an inquiry. The Applicants can properly be asked to make what response they consider appropriate to the supplementary statement, as part of the preparation of their evidence and submissions for the inquiry itself.

Revised advice and recommendation

24. I therefore now advise, contrary to the formal Advice I gave on 19th February 2016, that it is no longer appropriate for the Registration Authority to see this application as one which can properly and justly be determined 'on the papers', without the need for a public local inquiry. Clearly this change in my advice is because of all the various further submissions and evidence received from the parties since February, as discussed extensively above. My recommendation therefore is that a public local inquiry should now be held, as speedily as practicable, but that its scope should be limited (through the issue of suitable Directions), so as to avoid time being wasted on the hearing of evidence on undisputed aspects of the case.

25. I am happy to assist further, in any way I can, in relation to this matter, including the drafting of relevant Directions, as well (of course) as answering any queries which may arise from this present advice.

ALUN ALESBURY
2nd September 2016

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