

Report of the Head of Legal, Democratic Services and Procurement

Rights of Way and Commons Sub-Committee – 18 June 2014

APPLICATION TO REGISTER LAND KNOWN AS THE GREEN, ACCESSED OFF Y LLWYNI, LLANGYFELACH, SWANSEA AS A TOWN OR VILLAGE GREEN

APPLICATION NO. 2729(S)

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| Purpose: | To inform the Sub-Committee of the proposal to hold a non-statutory inquiry. |
| Policy Framework: | None |
| Statutory Tests: | Section 15 Commons Act 2006 |
| Reason for Decision: | For information |
| Consultation: | Legal, Finance, Access to Services. |
| Report Author: | Sandie Richards |
| Finance Officer: | Sarah Willis |
| Legal Officer: | Nigel Havard |
| Access to Services Officer: | Phil Couch |

1.0 Introduction

- 1.1 The Council has received an application made by Mrs. Margaret E. Boyter under Section 15(2) of the Commons Act 1996 in respect of land known locally as The Green, Accessed off Y Llwyni, Llangyfelach, Swansea. The application seeks to register the land as a Town or Village Green. A plan of the land in question appears as Appendix 1.

2.0 History of the Application

- 2.1 The land is predominantly owned by this Council and the Council has made an objection to the application.
- 2.2 The Head of Legal, Democratic Services and Procurement has used the delegated authority granted by this Committee on 15th February 2012 to instruct Counsel to advise on the application and the appropriate procedure to be adopted in determining the application.

2.3 Counsel has advised that there are issues of fact and law in dispute and that it would be appropriate to hold a non-statutory inquiry. The holding of such an inquiry will ensure that evidence from both the Applicant and the Objectors can be heard and tested and the issues examined and argued over.

2.4 Once the inquiry has taken place Counsel will issue a report with recommendations for this Committee to consider and make a decision upon.

3.0 Equality and Engagement Implications

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 predominantly owned by the City & County of Swansea and a conflict arises as the Council is both the Commons Registration Authority and the objecting owner of the land. 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. Financial Implications

5.1 The cost of each inquiry varies as it is dependent on the complexity of each individual application. There is no specific budget identified for the expenditure incurred for the determination of applications but expenditure will need to be incurred from existing budget provisions.

5.2 If the land is designated as a Town or Village Green it will not be available for sale or development in the future.

Background papers: Application file.

Appendices: Appendix 1: Plan of the application site