



## COUNCIL – 7TH MARCH 2017

**SUBJECT: VILLAGE GREEN APPLICATION – SNOWDON CLOSE FIELDS  
RISCA**

**REPORT BY: INTERIM HEAD OF LEGAL SERVICES AND MONITORING OFFICER**

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### **1. PURPOSE OF REPORT**

- 1.1 To report to Council the outcome of a formal process undertaken by a Barrister acting as an Independent specialist appointed to consider the merits of an Application to register land (the Land) as a village green referred to as Snowdon Close Fields Risca shown edged black on the plan attached at Appendix 1.

### **2. SUMMARY**

- 2.1 Following consideration of a Village Green application in relation to land at Snowdon Close Fields Risca and representations made by both the Applicant and Landowner, the Barrister has issued his final report which is attached at Appendix 3 (and which refers to the earlier advice provided attached at Appendix 2). Members will note the Report recommends that the Application is rejected however the final decision rests with the Council as the Registration Authority.

### **3. LINKS TO STRATEGY**

- 3.1 The Council in its capacity as Registration Authority has a duty to dispose of village green applications in accordance with the relevant legislation.

### **4. THE REPORT**

- 4.1 The Council received an initial application to register land at Snowdon Close Fields Risca as a Village Green. Following contact with the applicant, the application was revised and formally submitted on 15th September 2015. The Land the subject of the application is shown edged black on the plan in Appendix 1. Save for two small strips of Land (one of which is unregistered land, the other of which is in private ownership) the Land is owned by the Council in its Housing capacity.
- 4.2 The Council in its capacity as Registration Authority has an obligation to consider and determine village green applications.
- 4.3 Following due process as required under the Commons (Registration of Town or Village Greens) (Interim Arrangements) (Wales) Regulations 2007, (the Regulations) the Council as Landowner objected to the Application. No representations were made by any interested party in relation to those other parts of the Land referred to in paragraph 4.1 above.

- 4.4 As the Council in its capacity as land owner raised a positive objection to the Application this gave rise to a direct conflict with its role as Registration Authority. It is well established that where there is such a conflict, a Registration Authority ought to appoint an independent expert to consider the application for registration. As such the Interim Head of Legal Services by virtue of delegated powers authorised the appointment of an independent specialist, in this case a Barrister, Mr James Marwick to consider the Village Green application and objections and to advise whether the Application could be rejected, whether a non-statutory public inquiry was justified on the evidence together with any other pertinent issues.
- 4.5 Mr Marwick's initial Advice included at Appendix 2 concluded that there was a prima facie basis that the application would fall to be dismissed on summary determination on the basis that the Land appeared to have been laid out by Risca Urban District Council and held by the Council as its successors under the prevailing Housing legislation. Notwithstanding the extent of user of the Land by local residents, such user would have been "by right" and not "as of right" at material times during the relevant 20-year period (whether preceding October 2013 or September 2015).
- 4.6 The dates referred to in paragraph 4.5 are of note as the Applicant had initially sought registration of the Land pursuant to an application received on 2nd October 2013. There was a delay in considering this application until 2015 where the Applicant was advised that the application was not duly made in certain respects. This led to the receipt of the Application on 15th September 2015 which was a perfected version of the original application. The Applicant criticised the delay from October 2013 onwards in her amended Application and reserved her right to argue that the material test for registration ought to be applied on the basis of the facts as they were in late 2013/early 2014 rather than September 2015 with particular regard to any subsequent planning events which might prejudice her application. The Barrister was of the opinion that the material issue to be considered was whether the land had been held by the Council pursuant to Housing legislation and therefore on the face of it was not an issue which was impacted by the delay.
- 4.7 The initial Advice recommended that the matter could be considered on the basis of written representations with the provision of material evidence and a final report to be prepared thereafter for consideration by the Council as Registration Authority.
- 4.8 In accordance with the Directions set out in the initial Advice at Appendix 2, the Council as landowner provided additional information in the form of a Conveyance dated 24th June, 1964 a copy of which was provided to the Applicant and Mr Marwick. The Applicant did not make any further comments at this stage.
- 4.9 Mr Marwick issued his final Report (attached at Appendix 3) which concluded as follows.
- 4.9.1 *User of the Land has been "by right" and not "as of right" at material times in circumstances where qualifying user must be shown in the 20-year period prior to the date of the Application.*
- 4.9.2 *I recommend that the Application be rejected for the reasons I have given and for the reasons for rejection to be recorded as those stated in this report read in conjunction with my advice dated 2nd August 2016.*
- 4.9.3 *This report should be circulated to the interested parties with an opportunity to make comments. I understand that the report will be then be considered by committee.*
- 4.10. With regard to the reasons referred to in paragraph 4.9.2 members will note the detail contained in the final Report which are outlined as follows.
- 4.10.1 In his initial Advice Mr Marwick identified that question of whether the Land had been laid out and held as open space under powers prescribed by the Housing Act 1957 (and subsequent housing legislation) was potentially determinative of the Application.

- 4.10.2 Following compliance with directions on the part of the Council as Landowner and the Applicant the Council as Landowner disclosed a copy of the material conveyance dated 24<sup>th</sup> June 1964 (the Conveyance) which was provided to the Applicant to make representations. No representations were received.
- 4.10.3 Mr Marwick was satisfied that the Applicant had been afforded a reasonable opportunity to make further representations as required by the Regulations and therefore issued his final Report. The issue was whether user of the Land had been “as of right” at material times. The final Report sets out the factors he considered in reaching his decision.
- 4.11 The final Report confirms that:-
- 4.11.1 The Land was laid out by Risca Urban District Council and subsequently held by the Council as its successor(s) in title under the statutory housing legislation. At all material times, a local authority was entitled to lay out open space in connection with the laying out of the housing estate: section 107 of the Housing Act 1957 and later provided for by sections 12 and 13 of the Housing Act 1985 which was the relevant statute in force during the 20-year period.
- 4.11.2 He was satisfied that the Land was laid out as open space in connection with the laying out of the housing estate generally. It has at all material times been an area of open space used by the public on the Applicant’s own case.
- 4.11.3 It has been established in Case Law that any member of the public using land laid out and held as open space under section 12 of the Housing Act 1985 does so by right.
- 4.11.4 The relevant 20-year period in the present case is that immediately preceding the date of the Application. Whichever date is taken (whether under the original application in 2013 or the later perfected application in 2015), he is satisfied that user of the Land has been “by right” rather than “as of right” at material times, and the Application must therefore fail as qualifying user cannot be shown during the relevant 20-year period.
- 4.12 The Final report was duly circulated with both parties given the opportunity to comment. The attached observations at Appendix 4 were received from the Applicant. Members will note that the Applicant accepts the conclusions set out in the report of Mr Marwick but has also raised other issues, including a request for the Council to voluntarily register the Land as a village green together with reference to a public footpath crossing the Land.
- 4.13 Views were sought from the Chief Housing Officer regarding the comments of the Applicant, who advised that he was not inclined to agree to the voluntary registration of the Land and that any issues regarding rights of way would be considered separately.
- 4.14 Members will note that in light of the objection raised to the Application by the Chief Housing Officer it is implicit that there is no intention to voluntarily register the Land as a Village Green. In addition any public footpaths would be dealt with accordingly as and when necessary should the Land be developed.
- 4.15 In view of the formal process undertaken by Mr Marwick, Council is asked to endorse the recommendation that the Application be rejected for the reasons set out in his Final Report.

## **5. WELL-BEING OF FUTURE GENERATIONS**

- 5.1 Not applicable, as the Council in its capacity as Registration Authority has a duty to dispose of village green applications in accordance with the relevant legislation.

## **6. EQUALITIES IMPLICATIONS**

- 6.1 There are no equalities implications. The Council has a duty to dispose of village green applications in accordance with the relevant legislation.

## **7. FINANCIAL IMPLICATIONS**

- 7.1 There are no financial implications. The cost of the advice provided by the Barrister will be met out of existing funds.

## **8. PERSONNEL IMPLICATIONS**

- 8.1 There are no personnel implications arising out of the report.

## **9. CONSULTATIONS**

- 9.1 Members are asked to consider the Report in its capacity as Registration Authority.

## **10. RECOMMENDATIONS**

- 10.1 For the reasons set out in Mr Marwick's final report Council is asked to endorse the recommendation that the Application be rejected for the reasons given in this report read in conjunction with his advice dated 2nd August 2016.

## **11. REASONS FOR THE RECOMMENDATIONS**

- 11.1 As set out in the Barristers Final report in Appendix 3.

## **12. STATUTORY POWER**

- 12.1 Commons Act 2006  
Registration of Town or Village Greens (Interim Arrangements) (Wales) Regulations 2007.  
This is a Council function.

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### Appendices:

Appendix 1 Plan identifying the area of land the subject of the village green application  
Appendix 2 Initial Advice of Mr Marwick, dated 2nd August, 2016  
Appendix 3 Final Report of Mr Marwick, dated 31st October, 2016  
Appendix 4 Correspondence from the Applicant