

No.

## PUBLIC PROTECTION LICENSING COMMITTEE

Minutes of a Remote meeting held on 15<sup>th</sup> June, 2021.

The Committee agenda is available [here](#).

The meeting recording is available [here](#).

**Present:** Councillor J.W. Thomas (Chairman); Councillor Mrs. P. Drake (Vice-Chairman); Councillors Ms. J. Aviet, Mrs. J.E. Charles, R. Crowley, , O. Griffiths, K.F. McCaffer, M.J.G Morgan, Mrs. J.M. Norman, Mrs. R. Nugent-Finn, S.T. Wiliam and Mrs. M.R. Wilkinson.

### 114 ANNOUNCEMENT –

Prior to the commencement of the business of the Committee, the Chairman read the following statement: “May I remind everyone present that the meeting will be live streamed as well as recorded via the internet and this recording archived for future viewing.”

### 115 APOLOGIES FOR ABSENCE –

These were received from Councillors V.P. Driscoll and Mrs. A. Moore.

### 116 MINUTES –

RESOLVED – T H A T the minutes of the meeting held on 18<sup>th</sup> May, 2021 be approved as a correct record.

### 117 DECLARATION OF INTEREST –

Councillor Mrs M.R. Wilkinson declared an interest on Item 4, “Report of the Operational Manager, Legal Services in Respect of the Vale of Glamorgan Commons Registration Authority: Application 1/2019/TVG50 – To Register Land at Maes y Ffynnon, Bonvilston as a Town or Village Green Under S15 of the Commons Act 2006” as the Cabinet Member for Housing and Building Services, and would withdraw from the meeting during discussion of the item.

### 118 REPORT OF THE OPERATIONAL MANAGER, LEGAL SERVICES IN RESPECT OF THE VALE OF GLAMORGAN COMMONS REGISTRATION AUTHORITY: APPLICATION 1/2019/TVG50 – TO REGISTER LAND AT MAES Y FFYNNON, BONVILSTON AS A TOWN OR VILLAGE GREEN UNDER S15 OF THE COMMONS ACT 2006 (OMLS)–

The Principal Lawyer presented the report which detailed that the Vale of Glamorgan Council was the Registration Authority for the administrative area by virtue

of the Commons Act 2006 ("The Act"). On 22 May 2019, an application was received by the Registration Authority to register an area of land at Maes Y Ffynnon, St Nicholas, Vale of Glamorgan.

The Land was owned by the Council as part of its housing function and the Council in its land-owning capacity registered an objection to the Application." Due to the Council being the landowner and objector a non-statutory public inquiry was convened for an Independent Inspector to consider the Application and provide a recommendation to this Committee as to how the Application should be determined.

The Inspector had recommended that the Application be refused for the reasons set out in his report which was annexed to the report.

The Principal Lawyer advised Committee that:

- The report came before Committee as part of the Council's role as Commons Registration Authority.
- The matter came before Committee previously in July 2020 where it was requested to appoint an independent Inspector to hear a non-statutory public enquiry as the landowner was the Council's Housing Department.
- Mr James Marwick, a barrister from St John's Chambers in Bristol was appointed and the non-statutory public enquiry held on 19<sup>th</sup> April, 2021.
- Evidence was heard from the application and objector, and the independent Inspector subsequently submitted a report to the Council as Commons Registration Authority setting out the evidence as he heard it and giving his recommendation.
- The Inspector recommended that the application be refused on the grounds set out in Appendix B to the report.
- The Officer's recommendation to Committee was to agree with the Inspector's recommendation to determine the application by way of refusal.

The Chairman subsequently invited representatives of the applicants who were present at the meeting to address the Committee.

Miss Hunt, the representative and Treasurer from the Maes Y Ffynnon Residents Association, addressed the Committee first and asked for the following points to be taken into consideration:-

- The Residents Association had clearly shown in excess of the twenty years statutory use of the land in question as recreational space.
- The green remained excluded from development in the 1950s to be used as amenity space for local residents and it was strongly felt that the land should be protected for this purpose
- The Council had planted trees on the land, 7 of which were now protected.
- Many local residents' children play on the green on a daily basis during the spring and summer months.
- The space was seen as essential to the growth and development of children, with the last 15 months showing the importance of the availability of outdoor space and access to the countryside as essential for mental health and wellbeing.

- Some additional play equipment that had been added over recent months had further encouraged the use of the space by local residents and recreated a community.
- The Council should make a commitment to this area for future generations, as without protection of this land, there would be no remaining green space in Bonvilston apart from a small garden to the rear of the Reading Room which lay adjacent to the A48 and was not safe for play.
- Until recently, Maes Y Ffynnon was inhabited almost entirely by residents who had lived there since the houses were built around the village green and the demographic was now changing to a younger demographic who wanted to protect that green space.
- The Residents Association urged the Committee to go against the Inspector's recommendation. The Inspector had acknowledged that based on previous Supreme Court rulings that the application would face difficulties with 'by right' and 'as of right' technicalities but had not disputed the community usage.
- The Residents Association therefore urged the Committee voted to reject the Inspector's recommendation and accept the application for village green registration.

The Chairman thanked Miss Hunt and asked Members if there were any questions.

A Member asked if residents had recently purchased play equipment. Miss Hunt responded that the community had placed a swing on the land but was not a permanent structure.

As there were no further questions, the Chairman thanked Miss. Hunt for her representations and invited Councillor Perry, Chairman of St Nicholas with Bonvilston Community Council, to address the Committee who made the following points to be taken into consideration:-

- The Community Council had put aside money to attend the public enquiry but realised that the 'by right' / 'as of right' issue would make it impossible to get past the Inspector.
- The Community Council were urging Committee to go against officer recommendations.
- Councillor Perry drew the Committee's attention to the Nolan principles of leadership and reminded Committee about the Wellbeing of Future Generations Act, Planning Policy Wales 11 and the Welsh Government publication called Building Better Places.
- Planning Policy Wales 11, 4.5.3 stated that formal and informal open green spaces should be protected from development.
- Resilient Wales stated that access to green space should be protected.
- At the inquiry, the Vale of Glamorgan Council raised alternative green space in Bonvilston as there was a small area of recreational space behind the Reading Room. Planning Application 2020 004/964 had been approved for a new dwelling where the garden and driveway would go through the Reading Room car park and would remove that recreation space.
- The new development at Cottrell Gardens was supposed to offer public open space to Bonvilston but since going on the market in 2018 had only sold 10

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houses out of the possible 120 and open space would not be available until the completion of the site.

- The open space under consideration today was currently therefore the only available open space in the area and had to be protected.

The Chairman thanked Councillor Perry and asked Members if there were any questions; none were forthcoming.

The Principal Lawyer advised Committee that:

- For the purpose of a town and village green application, reference to the Planning Application and available open space around the Bonvilston area, were not relevant as it was a strict legal test.
- A number of points raised today had also been raised and fully consider by the Inspector in making his recommendation.
- Where an independent Inspector had been appointed and made recommendations, there would be an opportunity for a judicial review of any decision by either party (applicant or objector).

The Chairman acknowledged that there were a lot of legal precedents discussed that showed that the area could not be considered as a village green and Committee had to consider that going against the recommendation of the independent Inspector could lead to a judicial review.

A Member felt that there was merit to the village green application but that accepting the application would go against the recommendation and opinion of the Inspector. Bonvilston did not have a great deal of amenity space and the application reflected that, but the land in question had been held for housing purposes at all material times.

Councillor Perry said that were the application to be successful and the matter taken to judicial review, the Vale of Glamorgan Council would have to take itself to judicial review. The Principal Lawyer advised that it was possible for one arm of the Council to judicially review another.

The Chairman felt it was a difficult decision but was reluctantly happy to accept the recommendation based on the legal opinion provided and would vote to refuse the application.

A Member asked for clarification as to whose decision it would be whether to make the area into question a village green. The Principal Lawyer advised that it was a Council decision in its role as the Commons Registration Authority under the Commons Act 2006, and the decision was delegated to the Public Protection Licensing Committee to make on behalf of the Council. Where the Council was also the landowner, as in this case, it was accepted practice to appoint an independent Inspector to hold a non-statutory public enquiry on behalf of the Commons Registration Authority for independence and transparency. The Inspector would then make a recommendation to the relevant Committee in order to take a decision on behalf of the Council.

Committee would be able to go against the recommendation of the Inspector, but that decision would have to be based against the legal evidence. The landowner could

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argue that Committee had made an incorrect decision in law and judicially review that decision.

A Member said there was a need to establish the correct criteria and asked where this was referenced in the report, as establishing the correct criteria could have led to a better outcome for the residents. The Member was advised the criteria were set out in Section 15 (2) of the Commons Act and the Inspector had gone through those in his report. The Inspector referred to the grassed area, a section of adopted highway and a section of land that was formerly the site of 5 garages and was now a hardstanding. The Inspector found based on those areas that there was no evidence to support the application for a town or village green as they did not comply with the tests. Some of the tests were met in the case of the physical green, however as the land had been held for housing purposes by the Housing Department since its acquisition it was therefore incompatible with the village green application.

A Member said that the hardstanding was circumstantial as at one time that area had been garages that were used by the local residents and they had been removed, showing that there was scope for the area to change. As such the Member asked if there was future potential for the area to meet the criteria as a village green. The Principal Lawyer said that the test was strict and applied from the date of the application and for the 20 years preceding that application. Future changes would not have been relevant to the decision-making process in this case.

A Member said that the issue seemed to come back to the land being held as amenity space under the Housing Act. Were the application for the land to be a village green not to be approved, he asked was there a further approach that could be taken by the community as an alternative, or further dialogue that the Council could have with the community for the land to become a village green as community transfer and keep the matter on the table.

The Principal Lawyer said that was a separate issue to the determination of the application for a town or village green. The decision as to future use of the land lay with the Housing Department and the Planning Committee in terms of submission and determination of applications for the use of that land. Within such a process, Councillors, the Community Council, the Residents Association and local residents could all make representations with regard any specific planning application and help shape how the community could develop.

A Member said that as she did not have a legal qualification, she had to rely on the advice that was being presented. She morally agreed with the application but had to follow the legal advice that was presented that the application did not qualify.

Upon being put to the vote it was subsequently

**RESOLVED – T H A T** the recommendations in the Inspector's Report to determine that the Application to register the Land as a Town and Village Green be refused because the applicant has failed to satisfy the statutory criteria contained in section 15(2) of the Act be accepted.

Reason for decision

(1) In order for the Council as Registration Authority to discharge its duty to determine the Application in accordance with the Act and the Commons (Registration of Town or Village Greens)(Interim Arrangements)(Wales) Regulations 2007.

119 APPLICATION TO BE RECOGNISED AS A REPRESENTATIVE ORGANISATION FOR THE HACKNEY CARRIAGE AND PRIVATE HIRE LICENCE TRADE (DEH) –

(Councillor Mrs. Wilkinson returned to the meeting)

The Licensing Policy Officer advised Committee that Vale Taxis Unite had requested that they be acknowledged by the Licensing Authority as an authorised body representing the Hackney Carriage and Private Hire trade in the Vale of Glamorgan.

Vale Taxis Unite had listed their founding representatives in their submission (attached at Appendix A to the report) which included Rhys Morgan as Chair and John Lewis as Secretary. The request had been submitted by Alan McCarthy who had advised that he would be working in support of the branch.

The Licensing Authority put forward to some question to Vale Taxis Unite (attached at Appendix B). Committee were advised that no response had been received to a further request for clarification that was sent to Vale Taxis Unite concerning the requirements to become a member of the trade body wishing to be formed and recognised by the Council, such as was being or becoming a Member of the Unite Trade Union a pre-requisite for acceptance to the trade body, but information received implied that membership would be required but would not affect any existing arrangements for consultation with any other recognised groups

The Vale Taxi Association were invited to comment on the application for recognition by Vale Taxis Unite and their response was attached at Appendix C to the report.

Committee, having considered the report and all the issues and implications contained therein,

RESOLVED – T H A T the application to be recognised as a representative organisation for the Vale of Glamorgan Hackney and Private Hire trade from Vale Taxis Unite be accepted.

Reason for decision

(1) To ensure that any Council trade organisations are truly representative of members of the Hackney Carriage and Private Hire trade and are not just acting in the interests of individuals.

120 EXEMPTION FROM RELEVANT HACKNEY CARRIAGE VEHICLE LICENCE CONDITIONS (DEH) –

The report sought approval for all fully electric, wheelchair accessible hackney carriage vehicles involved in the Welsh Government Green Fleet Pilot scheme to be exempted from the relevant Hackney Carriage Vehicle licence vehicle conditions.

The Vale of Glamorgan had been allocated two of the fully electric accessible vehicles and the initiative would allow taxi drivers to trial the vehicles for 30 days, including free electric charging, insurance, vehicle licensing and breakdown cover funded by Welsh Government and supporting the Welsh Government target for decarbonising the taxi fleet.

Appendix A to the report detailed the full livery that had been requested for the hackney carriages involved in this pilot scheme to ensure the initiative was advertised across the area and to encourage others to be a part of the scheme, but required some relaxation of some of the current licence conditions under Conditions 4, 10, 13 and signage conditions 31 to 36.

As the matter constituted a change to vehicle conditions the Council had undertaken a two-week consultation with the taxi trade via email to Operators, with one supportive response received.

Committee, having considered the report and all the issues and implications contained therein,

RESOLVED –

(1) T H A T the amendment to the relevant Hackney Carriage Vehicle Licence conditions in respect of livery, placement of the Licensing Authority's identification door stickers, roof sign and advertising, to those vehicles which are licensed under the Welsh Government Green Fleet Pilot Scheme be approved.

(2) T H A T delegated authority be granted to an Operational Manager of the Shared Regulatory Services to determine matters of details in respect of livery, advertising and door stickers should they arise during the period of the Green Fleet Pilot Scheme.

Reason for decision

(1&2) To encourage the taxi trade to participate in a scheme aimed at switching to zero emission vehicles which formed part of the Welsh Government objective of achieving air quality improvements.