



RHONDDA CYNON TAF

**RECORD OF DELEGATED OFFICER DECISION**

**SUBJECT: Section 13 Commons Registration Act 1965  
Application to Register Land Known as Prospect Place, Treorchy as a Town or Village Green**

**PURPOSE OF REPORT: To consider the advice and further advice of Mr. Anthony Porten QC prepared in respect of the application to register the land known as Prospect Place, Treorchy as a Town or Village Green (as shown on the plan).**

**DELEGATED DECISION:**

- That the application to register the land as a Town or Village Green be refused In accordance with the recommendation of Mr. Anthony Porten QC for the reasons Detailed in the Advice and Further Advice attached at Appendix 2 and Appendix 3
- To appropriate the site under Section 122 Local Government Act 1972 as an open space under the Open Spaces Act 1906.

  
**Chief Officer Signature**

PAUL LUCAS  
**Print Name**

Date 25/3/2014

The decision is taken in accordance with Section 15 of the Local Government Act, 2000 (Executive Functions) and in the terms set out in Section 5 of Part 3 of the Council's Constitution

M. Webber

25/3/2014

CONSULTEE CABINET MEMBER SIGNATURE

DATE

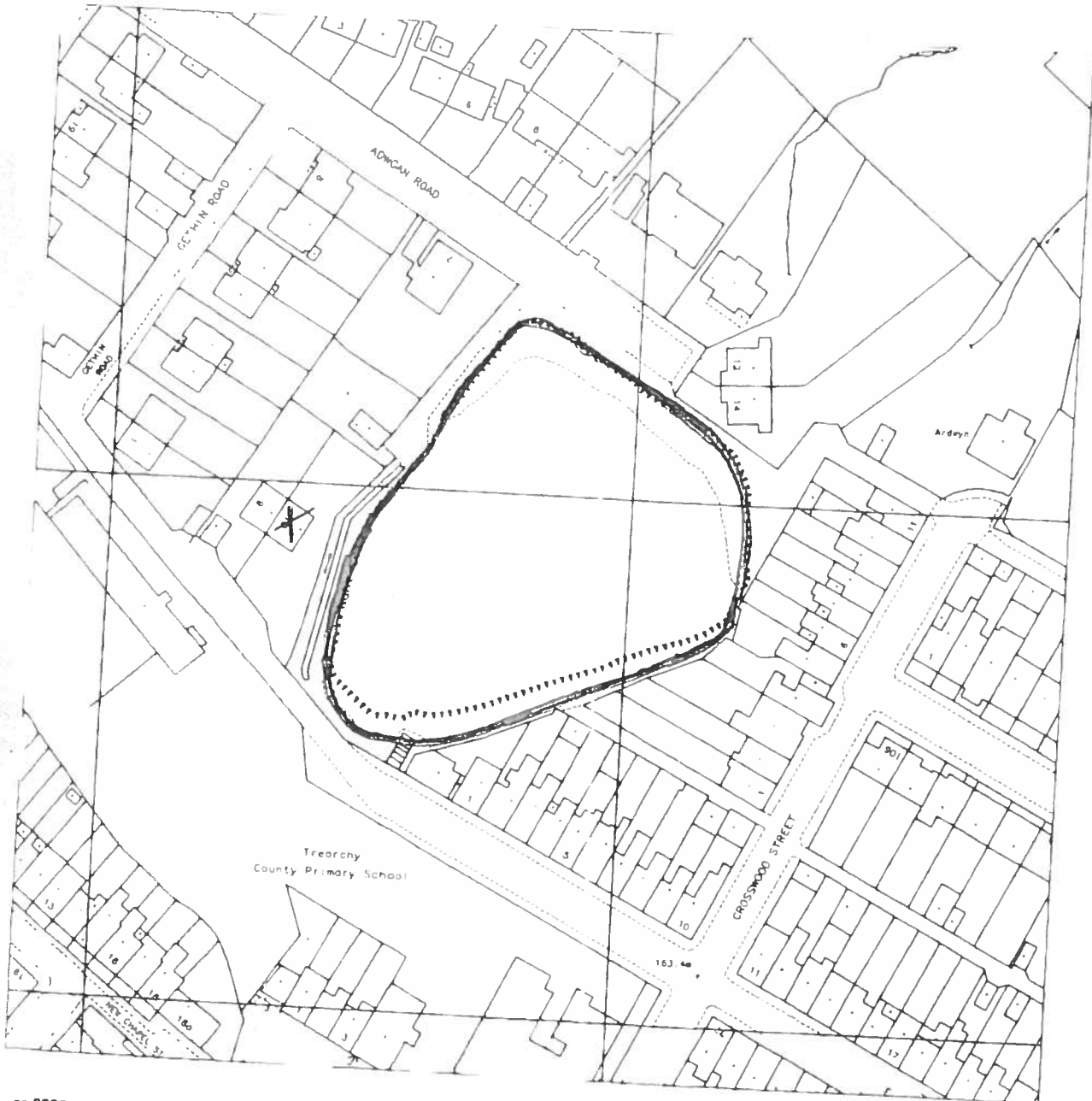
OFFICER CONSULTEE SIGNATURE

DATE

Directorate:	
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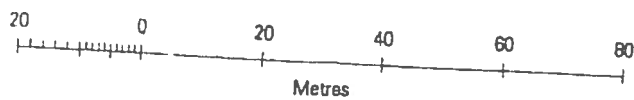
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**RHONDDA CYNON TAFF COUNTY BOROUGH COUNCIL**  
**MUNICIPAL YEAR 2013-2014**  
**REPORT TO ACCOMPANY RECORD OF OFFICER DELEGATED**  
**DECISION**

<p style="text-align:center"><b>SECTION 13 COMMONS</b> <b>REGISTRATION ACT 1965</b></p> <p style="text-align:center"><b>APPLICATION TO REGISTER</b> <b>LAND KNOWN AS PROSPECT</b> <b>PLACE TREORCHY AS A TOWN</b> <b>OR VILLAGE GREEN</b></p>
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**1. PURPOSE OF THE REPORT**

To consider the Advice and Further Advice of Mr. Anthony Porten QC prepared following the submission of the documentary evidence in respect of the application to register the land known as Prospect Place, Treorchy as a Town or Village Green as shown edged red on the plan attached at Appendix 1.

**2. RECOMMENDATION**

It is recommended that the application to register the land as a Town or Village Green be refused in accordance with the recommendation of Mr Anthony Porten QC for the reasons detailed in the Advice and Further Advice attached at Appendix 2 and Appendix 3

**3. BACKGROUND**

- 3.1 An application was submitted in February 2006 by Mrs Jose Williams and Mr Raymond Thomas Williams to register Prospect Place,

Treorchy as a Town or Village Green under s.13 Commons Registration Act 1965.

- 3.2 Two evidence forms submitted by the applicants supported the application. In addition ten letters of support were received and 15 photographs showing the land and its use. One objection was received but the contents of the letter of objection but it raised no issues relevant to the determination of whether the land qualifies as a Town or Village Green.
- 3.3 The application was reported to the Commons Registration Committee on 30th September 2008 whereupon it was resolved that Counsel be instructed to advise whether a non-statutory inquiry should be held and if not Counsel was asked to advise on whether the application should succeed or fail.
- 3.4 In accordance with the resolution Mr. Anthony Porten Q.C. was instructed to advise on the matter and in his Advice stated that further information should be sought before an opinion could be provided on the determination of the application.
- 3.5 The further information sought related to two issues namely (1) the identification of a qualifying locality or neighbourhood, and (2) whether the use of the land for lawful sports and pastimes had been as of right.
- 3.6 Upon receipt of the further information Mr Anthony Porten QC was asked once again to advise on whether a non-statutory inquiry should be held and if not whether the application should succeed or fail.
- 3.7 Mr Anthony Porten QC in his Further Advice recommended that the application be rejected as the applicants have failed to satisfy one of the essential criteria namely that a significant number of persons as inhabitants of a qualifying locality or neighbourhood within a locality have indulged in lawful sports and pastimes on the land.

3.8 Whilst the application has not satisfied the requirements to register the land as a new town or village green the application demonstrated to the Council that the land had been used for recreation by the public and the local school. The land was acquired by the Council's statutory predecessor Glamorgan County Council under two separate conveyances neither of which record the power nor provide for the purpose for which the land was acquired. An investigation into the Council's ownership has revealed that there is no written evidence as to why the land was acquired, there is no written record of any appropriation post acquisition, the land is and has been used for a long time by the nearby school and by people living in nearby streets for recreational purposes. In view of the above it is recommended that the land be appropriated under Section 122 Local Government Act 1972 as an open space under the Open Spaces Act 1906 which will formalise the use of the land for recreational purposes.

#### 4. **SUMMARY**

- 4.1 To reject the application in accordance with Advice and Further Advice of Mr Anthony Porten QC that the application has failed to demonstrate that a significant number of persons as inhabitants of a qualifying locality or neighbourhood within a locality have indulged in lawful sports and pastimes on the land.
- 4.2 To appropriate the site under Section 122 Local Government Act 1972 as an open space under the Open Spaces Act 1906.

RHONDDA CYNON TAFF COUNTY BOROUGH COUNCIL

THE COMMONS REGISTRATION ACT 1965

APPLICATION TO REGISTER LAND KNOWN AS

PROSPECT GREEN, TREORCHY

AS A TOWN OR VILLAGE GREEN

OPINION

P. J. Lucas LL.B  
Director of Legal and Democratic Services  
Rhondda Cynon Taff County Borough Council  
Municipal Buildings  
Llewellyn Street  
Pentre  
Rhondda CF41 7XW

(Mr Marcus Richards)

RHONDDA CYNON TAFF COUNTY BOROUGH COUNCIL

THE COMMONS REGISTRATION ACT 1965

APPLICATION TO REGISTER LAND KNOWN AS PROSPECT GREEN, TREORCHY,  
AS A TOWN OR VILLAGE GREEN.

ADVICE

1. This application was submitted in February 2006 by Mr and Mrs Williams seeking the registration of the 'Prospect Green Site', at Prospect Place, adjacent to Cadwgan Street and Crosswood Street, Treorchy, ('the claimed land') as a town or village green ('TVG'). Rhondda Cynon Taff County Borough Council ('RCT') is the Registration Authority ('RA'). Mr and Mrs Williams live at 10 Gethin Road, which is close by to the claimed land.
2. The application was made on Form 30, as prescribed by the Commons Registration (New Land) Regulations 1969, and supported by statutory declarations made by both applicants.
3. Mr and Mrs Williams each provided a completed Evidence Questionnaire, and on the reverse of them gave a list of names, being seven residents of adjoining streets, adding also that they had many



other names available on request. In a subsequent letter (1 October 2008) the applicants wrote that *'the application form only requested that any other persons who would provide evidence to support the Application should be named and entered on the reverse of the Application form ..'* I am not aware of any such note, but in any event a number of letters of support have since been received by the RA and, in many cases, those letters have incorporated answers to the questions that appear on the 'pro forma' questionnaires that are commonly used.

4. The evidence in support, including that of the applicants themselves, has thus now been provided by some 14 persons from 10 properties as follows:

B Davies	4 Gethin Road
G R Dunn	7 Gethin Road
Mr and Mrs Griffiths	9 Gethin Road
Mr and Mrs Williams	10 Gethin Road
D Lewis	3 Cadwgan Road
Mr and Mrs Thomas	7 Cadwgan Road
W D Wilkins	14 Cadwgan Road
J E Williams	70 Prospect Place
(Illegible)	9 Crosswood Street
Mr and Mrs (illegible)	3 James Street

In summary, the evidence is to the effect that over a long period (about 30 years) the claimed land has been in regular use by local children and adults for recreation. Photographs have been provided

that show the land being used for well-attended activities including football, cricket, tobogganing etc.

### The Law

5. The terms of section 13 of the Commons Registration Act 1965 provided that –

*“Regulations under this Act shall provide for the amendment of the registers maintained under this Act where –  
(b) any land becomes .. a town or village green.”*

6. The 1965 Act defined 'town or village green' at section 22 as:

*“land*

*[a] which has been allotted by or under any Act for the exercise or recreation of the inhabitants of any locality or*

*[b] on which the inhabitants of any locality have a customary right to indulge in lawful sports and pastimes or*

*[c] on which the inhabitants of any locality have indulged in such sports and pastimes as of right for not less than twenty years.”<sup>1</sup>*

7. Section 22 of the 1965 Act was amended by s.98 of the Countryside and Rights of Way Act 2000 ('the CROW Act'). As from 30<sup>th</sup> January

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<sup>1</sup> The division into three classes a, b, and c did not appear in the statute but has conventionally been accepted.

2001, the original definition of a class [c] green was replaced by a reference to land falling within a new subsection (1A), as follows:

*"(1A) Land falls within this subsection if it is land on which for not less than twenty years a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged in lawful sports and pastimes as of right, and either—*

*(a) continue to do so, or*

*(b) have ceased to do so for not more than such period as may be prescribed or determined in accordance with prescribed provisions."*

8. The 1965 Act has now been repealed by the Commons Act 2006, without any 'prescribed provisions' ever having been made under subparagraph (b) above. The Commons Act 2006 (Commencement No.1, Transitional Provisions and Savings) (Wales) Order 2007<sup>2</sup> brought into force with effect from 6 September 2007 section 15 of the 2006 Act, dealing with the registration of greens. However, the transitional provisions deal with applications made before that date and, in particular, at Regulation 4 that -

*"(3) Where -*

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<sup>2</sup> 2007 No. 2386 (W.197) (C.88)

*(a) an application is made to a registration authority before 6 September 2007 pursuant to section 13(b) of the 1965 Act for the amendment of the register of town or village greens as a result of any land having become a town or village green, and*

*(b) the registration authority does not determine the application before that date,*

*the registration authority must continue to deal with the application on and after 6 September 2007 as if section 13(b) of the 1965 Act had not been repealed."*

9. This application was made in February 2006 and so the definition that applies to it is that in class [c] of s.22 of the 1965 Act as amended by s.98 of the CROW Act 2000.

### Objections

10. One objection only has been received, from Mr David Roberts of 33 High Street Treorchy. He wrote initially in February 2007 and several times since. I have read his correspondence, but it seems to raise no points that go to the issues that the RA have to decide in determining whether the claimed land qualifies as TVG.
11. The claimed land is owned by RCT, who have not objected to the application.

Discussion

12. For the applicants to succeed on this application they need to establish, on the balance of probabilities, all of the following:

That the claimed land has been used –

- a) continuously for not less than twenty years up to the date of the application;
- b) by a significant number of the inhabitants of a locality or of a neighbourhood within a locality;
- c) for lawful sports and pastimes;
- d) as of right.

13. In the absence of any relevant objections, there is no challenge to any of the evidence put forward by the applicants. However, even on that evidence, as it stands to date, there are issues that I consider need to be resolved, particularly in respect of (b) and (d) above, which I will explain.

Locality / Neighbourhood

14. The authorities from prior to the CROW Act amendment show that 'a locality' should be an administrative area recognised by law<sup>3</sup>.

15. The purpose of the CROW Act amendment was to overcome some of the difficulty encountered by applicants in satisfying that definition of locality, and to allow applications to succeed where they could show

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<sup>3</sup> See Ministry of Defence v Wiltshire CC (1995) 4 All ER 931, and judgment of Carnwath J in R v Suffolk CC ex p Steed (1995) 70 P&CR 487

use of the application land by the inhabitants of some defined area smaller than a locality.

See Lord Hoffmann *Oxford County Council v. Oxford City Council and another* [2006] 2 AC 674:-

*" 'Any neighbourhood within a locality' is obviously drafted with a deliberate imprecision which contrasts with the insistence of the old law upon a locality defined by legally significant boundaries."*

The authorities that pre-date the amendment are therefore now of limited assistance only.

16. The approach to the concept of a neighbourhood within a locality was addressed by Sullivan J. in *R (Cheltenham Builders Ltd) v South Gloucestershire DC* [2004] JPL 975:

*"85. It is common ground that a neighbourhood need not be a recognised administrative unit. A housing estate might well be described in ordinary language as a neighbourhood. For the reasons set out above under "locality", I do not accept the defendant's submission that a neighbourhood is any area of land that an applicant for registration chooses to delineate upon a plan. The registration authority has to be satisfied that the area alleged to be a neighbourhood has a sufficient degree of cohesiveness, otherwise the word "neighbourhood" would be stripped of any real meaning. If Parliament had wished to enable the inhabitants of any area (as*

*defined on a plan accompanying the application) to apply to register land as a village green, it would have said so.*

*86. The parties are agreed that Parliament, in enacting the 2000 Act, was attempting (unnecessarily the defendant would say) to make it less not more difficult to establish class (c) village green rights. Parliament might have provided that land would fall within subsection (1A) if it had been used for not less than 20 years by a significant number of the inhabitants "of any locality or of any neighbourhood", but for whatever reason, it did not do so. If a "neighbourhood" is to be relied upon, it must be a neighbourhood within a "locality". Thus, the need to identify a locality has not been removed. In most cases this should not create a difficulty ..."*

17. In answer to Part 3 of the application Form 30, the applicants gave the 'Locality' as Prospect Place Treorchy adjacent to Cadwgan Street and Crosswood Road; the only plan they have supplied is one that identifies the claimed land. It is unfortunate that the Form 30 as the used was not more helpful in making clear exactly what information was required, but the result is that whilst these applicants have fully identified (in writing and on plan) the location of the claimed land, but have not identified a locality or neighbourhood within a locality as is required by the statutory provisions.

18. Before determining the application the RA will need to consider whether the claimed land has been used for lawful sports and pastimes by a significant number of the inhabitants of a locality or a neighbourhood within a locality: it has been held that the

locality/neighbourhood does not necessarily have to be confirmed by the application form, but it does involve a question of fact that must be addressed and resolved by the RA: see the judgment of Sullivan J in R (*Laing Homes Ltd*) v. *Buckinghamshire CC* [2004] 1 P&CR 36 at paragraphs 129 - 155; the whole of that passage has relevance but, without quoting at length from that passage, I note these short extracts in particular:

*"135. Laings argued that against this background the reference to "Locality" in Part 3 of Form 30 required an applicant to identify the locality whence the inhabitants claiming to have indulged in lawful sports and pastimes on the application land came.*

*136. The Inspector described this argument as:*

*"wholly without merit and wrong. It is obvious that the particulars sought in Part 3 are only in relation to identifying the correct location and extent of the claimed land and have nothing to do with the section 22 issue at all"(3.8).*

*137. I agree, Part 3 is headed "Particulars of the land to be registered, i.e. the land claimed to have become a town or village green." Given the importance of the locality in the statutory scheme it might have been desirable to require an applicant to provide information about the locality served by the village green in the prescribed form, but Form 30 does not require the provision of such information.*

*143...The purpose of giving notification of an application to the owner and occupier and to the public (see Regulation 5 of the Regulations, above) is to elicit further evidence and information, in addition to that contained in the application. Form 30 is not to be treated as though it is a pleading in private litigation. A right under section 22(1) is being claimed on behalf of a section of the public. The Registration Authority should, subject to considerations of fairness towards the applicant and any objector to, or supporter of, the application,*



*be able to determine the extent of the locality whose inhabitants are entitled to exercise the right in the light of all the available evidence.”*

#### As of Right

19. There are indications in the evidence presented that the use may not be as of right, and I am not satisfied that the applicants have discharged the onus of proof that lies on them in this respect. The uncertainty arises from elements of the evidence.

20. First, the application form has a rider attached entitled 'History of the Prospect Green Land' in which the applicants state that -

*“In the 1970s the land was donated by the Landowners under deed of covenant to Mid Glamorgan County Council for school, recreational or residential use. In turn the Mid Glamorgan County Council Education Department offered the land for recreational use by the adjacent Treorchy Primary and Infants School. Work was undertaken in 1974 to remove the spoilage and the site was levelled and landscaped and the School used the site for physical recreation and nature study.”*

21. Secondly in the applicants' evidence questionnaires, in response to question 23 they have responded that the Treorchy Primary School undertakes certain physical activities (on the land) and that the local Brownies Group attend the site for their organised games. Two of the photographs appear to show schoolchildren (in uniform) lined up on the site.

22. The result is that the applicants' own evidence gives rise to two possible inferences, either of which would be inconsistent with the claim of TVG rights:

- a) that the use has been not 'as of right' but 'of right'; and
- b) that the use has been with the (revocable) permission of the landowner.

23. On point (a) the position in law is quite complicated but in brief is this: if the land is held by a local authority for the use of the public generally, then the general public (including the local inhabitants) have the right to use the land and do not, through that use, establish TVG rights. Various authorities explain the rationale for this (though not always consistently); thus -

In *R v. Suffolk County Council ex p. Steed* (1995) 70 P&CR 487, Carnwath J said:

*"To state the obvious, a town or village green is an adjunct of a town or village or something similar. As such it may be contrasted with open spaces of various kinds, for example recreation grounds maintained by local authorities for the public generally (e.g. under the Open Spaces Act 1906) .."*

Opinions were given by members of the House of Lords in *R (Beresford) v. City of Sunderland* [2003] 3 WLR 1306 as follow:

*“Where land is vested in a local authority on a statutory trust under s.10 of the Open Spaces Act 1906, inhabitants of the locality are beneficiaries of a statutory trust of a public nature, and it would very difficult to regard those who use the park or other open space as trespassers (even if that expression is toned down to tolerated trespassers). The position would be the same if there were no statutory trust in the strict sense, but land had been appropriated for the purpose of public recreation.”* [Lord Walker at paragraph 87]

*“Where ‘open space’ land comes into the ownership of a ‘principal council’, I think there are strong arguments for contending that the statutory scheme under the Local Government Act 1972, whether or not the Open Spaces Act 1906 ..(is) applicable, excludes the operation of s.22(1) of the Commons Registration Act 1965.”*

[Lord Scott at paragraph 52]

24. On this point (a), therefore, more information is required (i) on the terms on which the land was conveyed and transferred to the local authorities, and under which statutory provisions, and (ii) whether the land has been held or appropriated e.g. for public recreation.

25. On point (b) the question is whether the land in reality is used by the landowner (RCT) as part of the school, permitting use by local residents, but with the school uses having primacy. If use by the school takes priority over the informal use of the site by the local inhabitants, and the locals defer to the school’s use of the site, then

those circumstances would show that RCT as landowners have retained control of the land and that its use by local inhabitants was with the Council's licence: applying the test indicated by the Courts, there would be nothing to suggest to the landowner that a claim of right was being made. Two references to the authorities are sufficient here to make the point:

Lord Bingham in *Beresford* (above):

*"I can see no objection in principle to the implication of a licence where the facts warrant such an implication. To deny this possibility would, I think, be unduly old-fashioned, formalistic and restrictive. A landowner may so conduct himself as to make clear, even in the absence of any express statement, notice or record, that the inhabitants' use of the land is pursuant to his permission. This may be done, for example, by excluding the inhabitants when the landowner wishes to use the land for his own purposes, or by excluding the inhabitants on occasional days: the landowner in this way asserts his right to exclude, and so makes plain that the inhabitants' use on other occasions occurs because he does not choose on those occasions to exercise his right to exclude and so permits such use."*

In *R (Laing Homes Ltd) v. Buckinghamshire CC* [2003] 3 PLR 60, the issue was whether the farming activities of the landowner prevented the use by local inhabitants qualifying for TVG status; Sullivan J explained the proper approach this way (judgment paragraph 82):

*"Thus, the proper approach is not to examine the extent to which those using the land for recreational purposes were interrupted by the landowner's agricultural activities, but to ask whether those using the fields for recreational purposes were interrupting Mr Pennington's agricultural use of the land in such a manner, or to such an extent, that Laings should have been aware that the recreational users believed that they were exercising a public right. If the starting point is, "how would the matter have appeared to Laings?" it would not be reasonable to expect Laings to resist the recreational use of their fields so long as such use did not interfere with their licensee, Mr Pennington's use of them, for taking an annual hay crop."*

The decision in *Laing Homes* was considered in the *Oxford* case: the House of Lords did not, it seems, overrule it but Lord Hoffmann when referring to the judgment of Sullivan J said this:

*"But, with respect to the judge, I do not agree that the low-level agricultural activities must be regarded as having been inconsistent with use for sports and pastimes for the purposes of section 22 if in practice they were not."*

This comment by Lord Hoffmann means that it must be a question of fact in each case whether 'in practice' the landowner's activities were inconsistent with use for sports and pastimes for the purposes of section 22<sup>4</sup>. In the present case if, for example, the local people

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<sup>4</sup> This would seem to have been confirmed by the very recent decision of the Court of Appeal in *Lewis v. Redcar and Persimmon Homes* [2009] EWCA Civ.3. Judgment was given on 15 January 2009.

recognised that they should keep off the land when the school was using it for organised games, and if this occurred with any frequency, then that would be inconsistent with the TVG claim.

26. Further, if the landowner (RCT, through the school) have retained the right to decide who could use the land, and users obtained its permission to do so (e.g. to the Brownie Group, or for a helicopter to land), then that too would be inconsistent with TVG rights having accrued. It is not possible on the evidence so far submitted to make any findings of fact on the inter-relationship of the uses by the local people, the school, and others.

27. On this point (b), therefore, more evidence is needed on the way in which the land has been used and the extent to which use by the local inhabitants was carried on in such a way as not to interfere with use by the school (or those to whom the school had given permission), and generally as to whether RCT/the school exercised control of the land's use and granted permissions etc.

28. There is a deficiency in the evidence on the locality/neighbourhood point, and there is an uncertainty raised by the evidence as to whether the use has been as of right. Further information on is required on these two issues before I can advise the RA whether the facts establish that, as a matter of law, the qualifying criteria for registration as a TVG are made out.

Procedure

29. At present there are no substantial issues of fact: the only objector has not raised any that are relevant. However, it does not follow from that that the claimed land qualifies for registration as a TVG. The RA must be satisfied that the statutory criteria have all been established.
30. In these circumstances, whilst it is not (at the moment) necessary to hold a local Inquiry, the RA will need to be provided with further factual information before I can give an opinion on how the RA should proceed ultimately to determine this application.
31. In the case of the locality/neighbourhood point the request for further evidence should be addressed to the applicants: the deficiency in their submitted evidence should be explained to them and they should be given the opportunity to deal with it. Their response will need to be provided to the objectors with the opportunity to comment.
32. On the second point, the information will be available to RCT as landowner. Evidence is required on two aspects, relating to:
- a) the history of the land, its acquisition and any appropriation, by reference to any relevant documents and Council Minutes; and
  - (b) the way in which the land has been used by the school, and consents (if any) that may have been given to others to use it.

33. There is an obvious sensitivity by reason of the fact that RCT is the landowner. RCT as RA must take care to remain meticulously objective, and must ensure that it acts in a way that is fair to the applicants and to the landowner. The initial correspondence may need to be copied to each, and certainly the applicants must be given the opportunity to comment on any response received from the landowner.

34. I suggest that a clear distinction needs to be made within the Council's legal department and that different personnel should conduct the matter for the Council in its respective roles. Any instructions for specialist advice required by RCT as landowner should be directed to another Counsel. I am advising RCT only in its capacity as RA; I do not wish or intend to influence the Council as landowner on how it might proceed.

35. I should be asked to advise again when the steps I have suggested have been completed. It is possible that the further information and evidence, when received, will lead to the position that there are factual matters in dispute that need to be the subject of independent assessment and that an Inquiry will be indicated, but that is not inevitable.



2-3 Gray's Inn Square  
London WC1R 5JH

Anthony Porten QC  
19 January 2009



## RHONDDA CYNON TAFF COUNTY BOROUGH COUNCIL

## THE COMMONS REGISTRATION ACT 1965

APPLICATION TO REGISTER LAND KNOWN AS PROSPECT GREEN, TREORCHY,  
AS A TOWN OR VILLAGE GREEN.FURTHER ADVICE

1. The background to this application is set out in my previous Opinion dated 19 January 2009, when I advised that further information was required on two issues in the claim, namely (1) the identification of a qualifying locality or neighbourhood, and (2) whether the use of the land for lawful sports and pastimes had been as of right.

Locality or Neighbourhood

2. A letter dated 18 February 2009 was written on behalf of the RA to the applicants inviting them to address the locality or neighbourhood issue, advising them of the statutory provisions, and drawing their attention to advice given in the relevant guidance published by the Welsh Assembly Government.
3. The applicants' response was by letter dated 26 February 2009, which included the following:

*"We would consider that our claim is based on a 'Locality Basis'.*

*The site has been used ... not only by residents within the immediate and adjoining proximity to the site but also by a significant number of local adults and children from the communities which we have marked on the enclosed map and which we consider to be the 'Locality Area'.*

*The local Primary School ... has in fact a catchment area for their pupils which lies from Ynyswen to the lower end of Treorchy bordering on the Pentre Electoral Ward. Moreover ... children and teenagers within our neighbourhood also attract their friends from neighbouring areas to participate with them in their outside sport pastimes and activities ..."*

4. The boundary of the 'locality' shown on the attached map enclosed a large area of Treorchy, stretching (as the letter suggested) from Ynyswen to Pentre. The boundary as drawn appears to be an arbitrary line that does not follow the boundaries of any district, ward or parish, nor does it coincide with any physical features on the ground. It extends a considerable distance from the claimed land, and includes other open spaces which must be used by those who live close to them (one example being The Tump, Bryn Rhodfa, which was itself subject of a TVG application).
5. The conclusions I draw from this further evidence provided by the applicants are:
  - a) They are not relying on a neighbourhood, but solely on a locality.
  - b) In any event, the extensive area delineated on the plan they have proffered could not qualify as a neighbourhood and, on their own

explanation, includes both several, distinct 'communities' and 'neighbouring areas'.

- c) The area delineated on the map does not represent or coincide with any administrative area recognised by law (see paragraph 14 of my Opinion).
- d) Accordingly, the applicants have not identified a qualifying locality or neighbourhood within a locality; further, on the basis of the evidence submitted, I do not consider that the RA could itself identify any locality or neighbourhood that would satisfy the statutory criteria.

#### As of Right

- 6. The documentary evidence on the history of the land that has been found is limited. There is apparently nothing recorded to show under what provisions the land was acquired, or is held, by the Council though I note that by the terms of the conveyance from the BP Pension Trust in 1974 the Council covenanted not use the land acquired under that transaction *'for any purpose other than for school buildings school playing fields sports pavilion recreational use and residential development'*.
- 7. There is no evidence of permissions being sought or given for the use of land and the evidence is (e-mail from Julie Hadley 5 August 2009) that *'Neither the school, nor the Education Department maintain the land at all, the school does not exercise any control over it, and does not give permission of any kind to any person or organisation to use the land for any purpose'*. Even if it might be inferred that the Council as landowner has permitted the use of the land, there is no evidence to show that the Council's permission was

expressed to be revocable. Equally, there is no evidence to suggest that there has been any use of the land by the Council that would have been inconsistent with its use by local inhabitants for their recreational uses as described in their supporting evidence.

8. On the only evidence available, and with nothing to contradict it, the RA would be entitled to find that the use of the land has not been 'precario'. As the use has clearly also not been 'by force' or 'secretly', I conclude that the applicants have made out that the use of the claimed land has been 'as of right'. However for the application to succeed all the statutory criteria must be satisfied and, for the reasons I have given, that is not the case here.

#### Conclusion and Recommendation.

9. I conclude that the applicants have failed to satisfy one of the essential statutory criteria and I therefore recommend that the RA should reject this application for the reasons given in this Further Advice, namely that the applicants have failed to establish that a significant number of persons as inhabitants of a qualifying locality or neighbourhood within a locality have indulged in lawful sports and pastimes on the claimed land.



2-3 Gray's Inn Square  
London WC1R 5JH

Anthony Porten QC  
21 September 2009

RHONDDA CYNON TAFF COUNTY BOROUGH COUNCIL

THE COMMONS REGISTRATION ACT 1965

APPLICATION TO REGISTER LAND KNOWN AS

PROSPECT GREEN, TREORCHY

AS A TOWN OR VILLAGE GREEN

FURTHER ADVICE

P. J. Lucas LL.B  
Director of Legal and Democratic Services  
Rhondda Cynon Taff County Borough Council  
Municipal Buildings  
Llewellyn Street  
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Rhondda CF41 7XW

(Mr Simon Humphreys)

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