

Representations from Mr. Morland and responses from Commons Registration Authority

Mr. Morland's representations

I am very doubtful that the conclusions/advice in the Counsel's Advice 16 October 2024 (Douglas Edwards KC) at Appendix 5 to the Officer's Report on Agenda Item 7 (Southwick Court Fields Village Green Application 2020/02TVG) are entirely sound. However, I have not had sight of the Instructions to Counsel which might throw further light on the particular points in the Advice that are troubling me.

The crucial point where I believe he has gone wrong is in his assertion that Wiltshire Council could not/cannot review/change/reverse the decisions taken by its officers on 24 February 2020 * (in respect of the 13 January 2020 application) and on 7 October 2020 (in respect of the alleged 11 June 2020 application - but still dated 13 January 2020 - see [11]), even though he concludes that in both cases, those decisions were "wrong, substantively and procedurally" (see [37], [43], [46] and [50]).

His suggestion that those decisions could nevertheless only have been corrected by Mr Norman Swanney commencing Judicial Review proceedings to challenge them (see [44] and [46]) is frankly absurd. Even the Pre-Action Protocol for Judicial Review would become pointless if decisions by public bodies could only be changed by a court order. Equally, the entire complaints system operated by Wiltshire Council would also become worthless, and every case of alleged maladministration would have to be determined by the courts too.

The legal authority stated for this outcome (see [44]) is R (Datafin plc) v Panel on Takeovers and Mergers [1987] QB 815 (CA), the substance of which has no connection whatever with Village Greens. Although I have been unable to find a transcript of the judgment of that Court of Appeal case anywhere on-line (even though it does have [a Wikipedia article](#), I do not think the passage quoted per Lord Donaldson MR (at p.840) "however wrong public law decisions may be, they subsist and remain fully effective unless and until they are set aside by a court of competent jurisdiction" is as wide and general in its scope as is suggested in the Counsel's Advice. That is clear from the more recent case of [Cerelia Group Holdings v Competition and Markets Authority](#)

in which the same passage was cited (see [123]).

By Regulation 5(4) of The Commons (Registration of Town or Village Greens)(Interim Arrangements)(England) Regulations 2007/457 (see at [28]), "where it appears to the authority that any action by the applicant might put the application in order, the authority must not reject the application under this paragraph without first giving the applicant a reasonable opportunity of taking that action". The effect of this provision was considered by the Court of Appeal in the case of

[R \(Church Commissioners for England\) v Hampshire County Council](#)

Arden LJ, who gave the leading judgment, said (at [44]) "Regulation 5(4) provides a means for curing deficiencies in an application which does not provide all the statutory particulars, and, once an application is so cured, it is treated as duly made on the date on which the original defective application was lodged".

I do not agree with the Counsel's Advice (see [50]) that the Arden LJ's conclusion in the Church Commissioners case is in effect overridden by the comments of Sir John Donaldson MR made 27 years earlier in the *Datafin* case, because she was not considering the operation of s.15C CA 2006 (Registration of greens: exclusions) in respect of trigger events and terminating events (which came into effect on 25.4.2013 by virtue of the Growth and Infrastructure Act 2013).

It follows that I also do not agree with the Counsel's Advice that "To the extent that the Inspector was in effect treating the application before him as that made on 13 January 2020, he was wrong to do so" or the comment that "In my view, it was not open to the Inspector to do this as a matter of law".

However, I agree with the Counsel's Advice (at [43]) that there was a terminating event on 14 July 2019 in respect of the draft development plan document - the Wiltshire Housing Site Allocations Plan, and therefore that there were no trigger events in force on 13 January 2020. I also agree that "by 11 June 2020 two separate trigger events had arisen" (see [46]), so any change to the "wrong" decision taken by officers on 7 October 2020 (see [16]) would not affect the outcome of Mr Swanney's application.

Nevertheless, that is not the case in respect of a change to the "wrong" decision taken by officers on 24 February 2020 (see [8]), which would enable Mr Swanney's application to be considered for its whole application area on 13 January 2020, and on its merits might well reach a different conclusion from that recommended by the Inspector's Advisory Report of 9 February 2024 (see Agenda Report [4] and Appendix 4).

In my view, it remains open to Wiltshire Council, either by a resolution of its Western Area Planning Committee or otherwise, to review/change/reverse the decision taken by its officers on 24 February 2020, notwithstanding the *Datafin* case referred to in the Counsel's Advice. If it does not do so, it seems to me that a claim for maladministration against Wiltshire Council by or on behalf of Mr Swanney/Cllr David Vigar, and relying on the findings of the Counsel's Advice, is bound to be successful, and with a substantial financial damages and costs award attached.

Commons Registration Authority's response

Mr Morland questions the reliance on the case of *R(Datafin plc) v Panel on Takeovers and Mergers 1987* as authority for the decision that the Council, as the Commons Registration Authority, cannot unilaterally reverse a decision once made.

Douglas Edwards KC has advised that it is a well-established principle of law that decisions of public authorities are valid unless and until quashed. He has referred us to decided cases in which that principle has been followed.

When dealing with a Town or Village Green application, the Council, is acting in a quasi-judicial capacity, which should, of course, be borne in mind.

With regard to the *Church Commissioners for England v Hampshire County Council 2014*, Mr Edwards in his written Advice to the Council distinguishes the circumstances of that case from those the Committee is now asked to consider and concludes that the case is not authority for the proposition that the Council could reverse its decision to reject the application.

With regard to the penultimate paragraph, the outcome of an application concerning land which is not now before the Committee is not a relevant matter for consideration by the Committee.