

**APPENDIX B - Legal Opinion from Lord Banner KC dated 20 November 2024, submitted by Mr D Richardson (Ashfords LLP) on behalf of Waddeton Park Ltd, with covering e-mail dated 22 November 2024**

**From:** [David Richardson](#)  
**To:** [Green, Janice](#)  
**Cc:** [Slack, Trevor](#); [Newbury, Christopher](#); [Ghey, Ellen](#);  
**Subject:** Application to Register Land as Town/Village Green, Southwick Court Fields - 2020/02TVG [ASHFORDSLLP-ACTIVE.FID8557870]  
**Attachments:** [TROWBRIDGE SOUTHWICK 20Nov24\(42405586.1\).pdf](#)  
**Sent:** 22/11/2024 11:30:52

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Dear Ms Green,

**Application to Register Land as Town or Village Green – Southwick Court Fields, Southwick and North Bradley**

**Application no.2020/02TVG**

I am instructed by Waddeton Park Limited, and I am writing to you in your capacity as case officer for the above application to register land as a Town and Village Green ('TVG').

Our client is very concerned by the continuing, and unnecessary, delays in the Council making a final decision on this matter notwithstanding receiving an Inspector's recommendation and an opinion from the pre eminent KC in TVG matters, Mr Douglas Edwards. Our client has itself sought a legal opinion, from Lord Banner KC, as to the questions raised by Councillors in relation to Mr Edwards' advice, and I now attach that opinion for your attention. You will read that it is clear in its conclusions (as was Mr Edwards) and wholly supports the findings of Mr Edwards.

I have copied this to Mr Slack in your legal team and to Mr Newbury as Chair of the Western Area Planning Committee, and request that the attached opinion is made available to members of the committee in advance of the meeting now scheduled for 4 December 2024.

Kind regards

**David Richardson**  
**Partner and Head of Planning**

[d.richardson@ashfords.co.uk](mailto:d.richardson@ashfords.co.uk)

Direct +44 1392 333745

Mobile +44 7714 333443

Fax +44 1392 336745

**ashfords**

**Ashfords LLP**

Ashford House Grenadier Road Exeter EX1  
3LH

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**IN THE MATTER OF:**

**LAND AT SOUTHWICK, TROWBRIDGE, BA14 0AG**

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**OPINION**

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**I. INTRODUCTION**

1. I am instructed by Ashfords LLP on behalf of Waddeton Park Ltd (“**WPL**”) in relation to Land at Southwick, Trowbridge, BA14 0AG (“**the Site**”). The Site is allocated for residential development in the Wiltshire Sites Allocation Plan (“**WHASAP**”). It is the subject of an outline planning permission for up to 180 dwellings granted by Inspector John Longmuir on appeal on 20<sup>th</sup> March 2024.
2. Separately to the planning appeal, in 2020 part of the Site was the subject of multiple applications, by local residents, for registration as a town/village green under s.15(2) of the Commons Act 2006 (“**the 2006 Act**”). These applications were made to Wiltshire Council (“**the Council**”) in its capacity as Commons Registration Authority under the 2006 Act.
3. The first two applications, dated 13<sup>th</sup> January 2020 and 11<sup>th</sup> June 2020, were held by the Council to be invalid.
4. An Inspector, Mr William Webster, was appointed by the Council to hold a non-statutory public inquiry into the third application, dated 30<sup>th</sup> November 2020. That inquiry took place in November 2023. Mr Webster reported on 9<sup>th</sup> February 2024. The Council sought legal advice from Douglas Edwards KC, the pre-eminent silk on town/village green matters, who issued his written Opinion on 16<sup>th</sup> October 2024. I have read that Opinion. I assume the reader of my Opinion will be familiar with its contents, which I do not repeat here.
5. Mr Edwards concluded that the Council’s rejection of the 13<sup>th</sup> January

2020 and 11<sup>th</sup> June 2020 applications was wrong, but that: (i) they were out of time for challenge and could not now be called into question; (ii) although the Inspector was wrong to treat the third application as having been made on 13<sup>th</sup> January rather than 30<sup>th</sup> November 2020, this did not affect his conclusions that this application should fail because the factual findings leading him to find that village green status had not been acquired over the 20 year period up to 13<sup>th</sup> January 2020 would equally have precluded village green status having been acquired over the 20 year period to 30<sup>th</sup> November 2020.

6. The Council's Western Area Planning Committee met on 6<sup>th</sup> November 2024 to determine the third application. An officer's report recommended that the application be rejected in the light of Mr Webster's report and Mr Edwards' opinion.
7. Contrary to that advice, the Committee instead decided to defer the matter, and it was requested by Councillor Vigar at the meeting that such deferral should be for two months (I understand that in fact this matter is now to be considered again at the meeting scheduled for 4 December 2024). I have watched the video recording of that meeting on YouTube. The principal concern of members appears to be whether the principle relied upon by Mr Edwards, for his conclusion that the Council's rejection of the 13<sup>th</sup> January 2020 and 11<sup>th</sup> June 2020 applications cannot now be called into question, is applicable in this context.
8. I am asked to advise WPL on the legal soundness of the Committee's approach.

## **II. ANALYSIS**

9. I am of the firm view that the Committee's decision to defer the determination of the third application was wrong in law.

10. The principle of formal validity of administrative acts, namely that a decision made pursuant to public law functions must be given all the effects in law of a valid decision unless and until it is quashed pursuant to a challenge made under the applicable procedure (usually judicial review) and within the applicable time limit (usually three months), is a general principle of public law. It has been applied in a range of contexts, including planning and associated local-government decision making. See e.g. *R (Noble Organisation Ltd.) v. Thanet District Council* [2006] Env. L.R. 8 , per Auld LJ at para. 42:

“[T]he domestic law principle is clear, and was correctly applied by the Judge, namely that administrative acts are valid unless and until quashed by a court: see *Hoffman-La Roche & Co v Secretary of State for Trade and Industry* [1975] AC 295, HL, per Lord Diplock at 366A-E; and *R v Restormel BC, ex p Corbett* [2001] EWCA Civ 330, [2001] 1 PLR 108, per Schiemann LJ at paras 15 and 16. If the time has passed for them to be challenged by way of judicial review, they stand notwithstanding that the reasoning on which they are based may have been flawed: see *O'Reilly v Mackman* [1983] 2 AC 237, HL, per Lord Diplock at 283F. For an example of the application of that principle in a closely related context to planning, see *Lovelock v Minister of Transport* (1980) P& CR 336, CA, per Lord Denning MR at 345, in which the Court declined to quash a compulsory purchase order, notwithstanding its unlawfulness, because the challenge was too late.”

11. The first instance judgment of Richards J. (as he then was), which was expressly upheld in the above passage, had similarly held:

"35. The starting point must be the validity of the outline planning permissions granted in June 1997 and January 2002 respectively, for the business park and the leisure development respectively. They were not challenged at the time, there has been no application to challenge them out of time, and there would be no realistic prospect of time being extended so as to permit a challenge now. On the basis of well established principles supported by the authorities ... including the dicta of Lord Diplock in *Hoffmann-La Roche* and *O'Reilly v Mackman*, those earlier consents must be given all the effects in law of valid decisions. The same applies to the June 2000

screening decision that the application for the leisure outline planning permission did not need to be accompanied by an EIA.

36. In those circumstances the council was plainly entitled, when considering the application for reserved matters approval, to have regard to the earlier decisions. In particular, the two outline planning permissions were extant, lawful consents in respect of the same site (or, in the case of the business park permission, in respect of a larger area of land of which the site formed part) and were properly taken into account as material considerations. Indeed, the application for reserved matters approval was necessarily premised on the validity of the leisure outline planning permission pursuant to which the application was made.

37. Equally, the claimant is plainly not entitled to use the present claim as a means of mounting an indirect or collateral challenge to the validity of the earlier decisions."

12. It follows from this that Mr Edwards KC, with whose Opinion I am in entire agreement, was right to conclude that the the Council's rejection of the 13<sup>th</sup> January 2020 and 11<sup>th</sup> June 2020 applications, which could have been but was not challenged at the time by way of judicial review, cannot now be called into question. They must, as a matter of law, be treated as valid and given all the effects in law of valid decisions. There are very rare instances of the Court allowing judicial review claims to be brought 'out of time'. But the Court has been clear in stating that these do not set a precedent, and there must be exceptional circumstances for such claims to proceed. No such exceptional circumstances exist in this case. There is no realistic prospect of a judicial review claim being allowed to proceed out of time in this case.
13. It also follows that the Committee in deferring its decision - contrary to the advice of its officers and of Mr Edwards KC - acted on a misapprehension of the law and thus unlawfully.
14. I understand that the delay, should it continue, is liable to cause WPL significant commercial prejudice. If the Committee is unable to make its decision at its next meeting in December, it would be worth exploring

potential financial remedies that can be sought against the Council either for negligence or breach of WPL's right under Article 6 ECHR to a determination within a reasonable timescale.

**V. CONCLUSION**

15. I have nothing to add as currently instructed but would be happy to answer any further questions arising out of the advice above, if and when required.

A handwritten signature in black ink, appearing to read 'Banner', written in a cursive style.

**LORD BANNER K.C.**

**Keating Chambers  
15 Essex Street  
London WC2R 3AA**

**20<sup>th</sup> November 2024**