

Email : 08.11.16

Dear Mr Dunsdon

Stoke Lodge Parkland – TVG Application

The recommendation contained in the Inspector's report dated 14th October 2016 at paragraph 462, is that the Application should be refused based on his finding that use was not "as of right".

In paragraph 384 the inspector confirms that his revised recommendation, overturning his previous recommendation to grant the Application in his report dated 22nd May 2013, is predicated on the very recent case of *Winterburn v Bennett*, decided in the Court of Appeal dated 25th May 2016.

In paragraph 391 the Inspector re-confirms the implication of *Winterburn v Bennett*. It should be noted that this finding by the Appeal Court overturns extensive and established precedent relied upon by the Courts over decades.

In paragraph 392 the Inspector states that: -

*"I need to recognise that if the registration authority accept my advice as set out in paragraph 391 above, their decision might be challenged on the basis that Winterburn is wrong and that the use in this case was as of right. Accordingly it is appropriate for me to go on to consider whether it is possible that use of the land in the relevant twenty year period has been contentious not because of the signs but **also** because of other actions of the landowner or those acting on his behalf."* (Underlining emphasis added)

The Inspector makes it clear in paragraph 462 that there is no other impediment to the Application other than *Winterburn v Bennett*, and he states there that: -

"Otherwise my recommendation would have been that the land should be registered. I do not think that any of the other reasons argued for by the objectors should lead to the rejection of the application."

The matter of a potential challenge was therefore clearly recognised and at paragraph 386 serious questions were raised with regard to the relevance and consideration (or not) of previous precedents, including footnote 65.

I can confirm that I am preparing to make a legal challenge with regard to *Winterburn* and consequently request a deferment on this Application being included in the PROW&GC scheduled for December 2016 for an initial period of three months, to be reviewed at the end of that period, on the basis that any decision reached relying solely on *Winterburn* may be unsafe.

The precedent in this case for deferring has clearly been set by the objectors requesting, and being granted, a 12 month deferment to await the outcome of the *Newhaven* case in the Supreme Court where a previous case in the Appeal Court was overturned. Albeit that the decision of the Supreme Court in that case proved to be of no avail for the objectors in this case.

Please forward this request to the Inspector and seek his recommendation and confirm your response to us prior to the end of the confidentiality restriction imposed by yourselves i.e. 2nd December 2016.

For the record I confirm that your confidentiality restriction is seriously prejudicing and hindering our ability to progress our preparation of the legal challenge due to the inability to advise the Community and request funds to assist with additional professional legal advice.

Please confirm receipt of this e-mail

Yours Truly

David Mayer - Applicant