



Gwasanaeth Llysoedd  
a Thribiwnlysoedd EM  
HM Courts &  
Tribunals Service

Swyddfa Llys Gweinyddol Cymru  
Canolfan Llysoedd Sifil Caerdydd  
2 Stryd y Parc  
Caerdydd  
CF10 1ET

Administrative Court Office for Wales  
Cardiff Civil Justice Centre  
2 Park Street  
Cardiff  
CF10 1ET

DX 99500 Cardiff

Ffôn/T 029 2037 6460

Ffacs/F 029 2037 6461

Ebost/E [administrativecourtoffice.cardiff@hmcts.x.gsi.gov.uk](mailto:administrativecourtoffice.cardiff@hmcts.x.gsi.gov.uk)

[www.justice.gov.uk/about/hmcts/index.htm](http://www.justice.gov.uk/about/hmcts/index.htm)

TREASURY SOLICITOR  
DX: 123242 KINGSWAY

21 March 2012

Ein cyf/Our ref: CO/965/2012

Eich cyf/Your ref:  
z1201934/jus/b5

Dear Sir / Madam,

**Re The Queen on the application of JEAN UNDERDOWN and Others v WELSH  
MINISTERS**

Please find enclosed sealed copy of The Honourable Mr Justice Beatson Order of 21<sup>st</sup>  
March 2012 for your records.

Yours faithfully

Mrs Sandra Abraham  
Administrative Court Office  
029 20376460

For Court Manager

**Treasury Solicitor's**

**23 MAR 2012**

**Received**



INVESTOR IN PEOPLE

The Administrative Court Office will not accept service via email. When using the above email address it should be noted that mail sent after 4.30 p.m. may not be opened until 9.00 a.m. on the following working day. Court users should not send confidential or restricted information over the public Internet.

In the High Court of Justice  
Queen's Bench Division  
Administrative Court



In the matter of an application for Judicial Review

The Queen on the application of **JEAN UNDERDOWN** and  
**KAREN GALLIMORE**

versus **(D) WELSH MINISTERS** and **(IP) VALE OF GLAMORGAN COUNCIL**

**Application for permission to apply for Judicial Review**  
**NOTIFICATION of the Judge's decision (CPR Part 54.11, 54.12)**

Following consideration of the documents lodged by the Claimant and the Acknowledgement of Service filed by the Defendant

Order by the Honourable Mr Justice Beatson

1. **Permission is hereby refused.**

2. **The defendant in these proceedings shall be named as the Welsh Ministers.**

3. **The Vale of Glamorgan Council shall be an Interested Party to these proceedings and shall be served with them.**

4. **Unless the claimant or the defendant makes a written application to the Administrative Court Office within 7 days of service of this Order, the claimant shall pay the defendant's costs assessed at £500.00 within that 7 day period. If the claimant or the defendant makes such an application, the application for costs shall be considered on paper by a judge of the Administrative Court.**

Reasons:

1. It is not arguable that there has been a breach of the claimants' rights under the European Convention. Article 1 of Protocol 1 to the ECHR gives a State the right "to control the use of property in accordance with a general interest" and thus permits private property rights to be subject to rights of way. The approach of the Strasbourg Court is to give a wide margin of appreciation to the State in its decisions concerning the control of the use of property. Parliament has legislated that property rights should be subject to public rights of way where those rights have been shown to be acquired by long user. The public rights were created at the time of the 2003 order making the footpath, which was not challenged by the claimants. The application to delete the footpath, or the relevant part of it, was considered at a public inquiry by an independent Inspector.
2. The grounds, notwithstanding their length, do not demonstrate an arguable error of law on the part of the Inspector. Insofar as the complaints relate (as many of them do) to the decision in 2003 by another Inspector to confirm the order recognising footpath 73, these proceedings are out of time (see paragraph 12(1) of Schedule 15 to the Wildlife and Countryside Act 1981).
3. Since no finding was recorded in error, it is not arguable that the Inspector was required to consider the question of intervening user. Similarly, for the reasons given in paragraphs 42 – 49 of the summary grounds, the submission that the Inspector failed to consider an investigation report prepared by the Council in relation to footpath 26 does not give rise to an arguable ground of challenge. Additionally, since the function of a site visit is not to "impart evidence" or new submissions, and since it was not, in the circumstances of this case, arguably irrational of the Inspector to make a decision without visiting the site on the basis of the evidence submitted to him, his failure to conduct a site visit (which is not required in the relevant legislation) was not arguably unlawful in public law terms.
4. Whether or not the Vale of Glamorgan Council's approach can be criticised, that criticism did not arguably infect the Inspector's approach and decision.
5. The claimants have not exercised the procedure under Freedom of Information legislation to apply for the legal advice, but in any event, there is nothing in the material before me to suggest that the legal advice is not, as nearly all legal advice is, protected by legal professional privilege.

Observations on the service and other points addressed in the two additional bundles filed by the claimants:

The defendant should, under the Government of Wales Act 2006, be named as the Welsh Ministers: see section 162 and Schedule 11. Mr Godfrey's letter dated 6 March 2012 and other correspondence from the defendant and the defendant's solicitors make it clear that no point is being taken on service, although it is clear from CPR 6.5(2) that personal service on the Crown, which includes the Welsh Ministers in this context, is prohibited. The letter dated 6 March 2002 from Mr Godfrey sets out the position accurately. It is also for the defendant to choose its legal representatives and there is no statutory prohibition on the Treasury Solicitor's Department representing the Welsh Ministers.

*J Beatson 21.3.2012*

Signed

Sent / Handed to the claimant, defendant and any interested party / the claimant's, defendant's, and any interested party's solicitors on (date):

Solicitors:

Form JRJ 1 – Judicial Review Permission Refused

Ref No.

**Notes for the Claimant**

If you request the decision to be reconsidered at a hearing in open court, you must complete and serve the enclosed FORM within 7 days of the service of this order – CPR 54.12