



## Press Release

24/10/2022

### **High Court declares Neath Port Talbot Council’s decision to open a new English-medium super-school “unlawful” for failing to assess impact on Welsh language education**

The High Court, sitting in Cardiff, has ruled today that Neath Port Talbot Council acted unlawfully when it decided to establish an English-medium “super-school” to replace three smaller primary schools in the Pontardawe area.

The court has decided that the new school proposed at Parc Ynysderw cannot currently go ahead as the Council failed to assess properly the impact it would have on the Welsh-medium schools in the area.

The judgment follows a claim for judicial review brought by Rhieni Dros Addysg Gymraeg (“RhAG”). RhAG is an organisation that supports parents who wish to choose Welsh language education for their children, and promotes Welsh-medium education in general. The judicial review hearing was held on the 18<sup>th</sup> and 19<sup>th</sup> of July in Cardiff before Mr Justice Kerr. Judicial review is a legal process for challenging decisions of public bodies.

Represented by commercial law firm [Darwin Gray LLP](#) , and [Gwion Lewis KC](#) of Landmark Chambers, RhAG successfully challenged the Council’s decision to open the new school as the initial statutory consultation and subsequent decision did not comply with the Welsh Government’s School Organisation Code\*. Mr Justice Kerr determined, after careful deliberation, that the Council had misinterpreted the Code by not regarding the local Welsh-medium primary schools as schools that would be “affected” by the new English-medium super-school.

The High Court’s decision not only provides clarity on the Code, but also has significant implications for local authorities across Wales whenever they bring forward proposals for new



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schools in their areas. Local authorities should no longer assume that a Welsh language impact assessment is not needed because only English-medium schools are being established or closed.

Mr Justice Kerr rejected the Council's attempt to argue that even if an impact assessment had been made during consultation, it would still have decided to go ahead with the new school, regardless of the contents or results of the assessment.

**Siôn Fôn, solicitor and Associate with Darwin Gray LLP, who represents RhAG, said:**

*"We welcome the High Court's decision, and believe that the court's careful interpretation of the School Organisation Code will benefit local authorities throughout Wales. The judgment provides clear guidance on when a Welsh language impact assessment should be included during a statutory consultation process. Local authorities have a duty to ensure that the strict rules around public consultations are respected and that all relevant matters are capable of full consideration by the public as part of a fair consultation.*

*Welsh language impact assessments help authorities to anticipate and then mitigate potential adverse impacts on the language and are therefore extremely important, especially in areas of significant linguistic importance such as Pontardawe."*

**Elin Maher, National Director of RhAG, said:**

*"We are overjoyed with the outcome in this matter. The proposal has caused considerable concern for us as an organisation, and more widely in the community in Pontardawe, especially as the Council themselves recognise that the area is one of significant linguistic importance in regard to the Welsh language. We had always maintained that the Council had failed to consider the potential impact of their decision on Welsh language schools in the area. We faced an aggressive and threatening response from the Council when matters were raised*



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*with them, and I therefore wish to extend thanks, on behalf of RhAG to all those in the wider community of Pontardawe who supported this campaign. RhAG could also not have won this successful outcome without the excellent legal advice and flexible approach to legal fees rendered to us by both Gwion Lewis KC and Darwin Gray LLP.*

*A full and proper impact assessment on the Welsh language and Welsh language education was not provided by the Council at the outset and the lack of such an assessment, and the lack of recognition of the significant threat to Welsh language education in the Pontardawe area as a result of the Council's failings forced us to, reluctantly, intervene. We are extremely pleased that the Court has now vindicated our position.*

*We hope that local authorities review this judgment carefully and appreciate the importance of undertaking thorough linguistic impact assessments on any proposed community developments, particularly with regard to education and leisure.*

**Gwion Lewis KC, who acted for RhAG throughout the case, said:**

*"This is a judgment of national importance for Wales. It makes clear that councils must undertake a Welsh language impact assessment whenever there is a real possibility that a proposal to open a new school could impact on existing Welsh-medium schools, or the vitality of the Welsh language in the community. The judgment is a must-read for everyone involved with education in Wales."*

**-end-**



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### Notes for editors

Judgment of Mr Justice Kerr 24 October 2022

Welsh Government Report 2021 - The Welsh Government had commissioned a report on the proposal which criticised the approach taken by the Council, concluding *“if a new large high status English-medium primary school is established in an area where the Welsh language is in a fragile state ... the numbers attending YGG Trebanos and YGG Pontardawe might decline...”*. The report added that the Council’s consultation document *“...does not provide a full assessment of the likely impact of a major development in a linguistically sensitive area”*. The Council sought to distance itself from the Welsh Government report, which was prepared by a leading industry expert, calling it a *‘poor quality document’*.

\*“the Code” - Changes in provision of public education in Wales are governed by Part 3 of the School Standards and Organisation (Wales) Act 2013. The mandatory school organisation code issued by the Welsh Ministers must be followed by local authorities, school governing bodies and others in connection with proposals for a new scheme. The current version of the Code dates from November 2018. This is a devolved issue.

### Contacts

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