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7 July 2016
Trevor Coxon

Via E-mail: matthew.coward@wales.qsi.gov.uk and First Class Post

Dear Sir

Former Grove Park School, Wrexham

In summary, your response to the Council's request for an extension of the deadline to respond to your consultation of the proposal to list Grove Park School is extremely disappointing. CADW proceeding to advise the Cabinet Secretary at this time is premature and any decision in relation to listing that is made now is likely to be unlawful.

The background to this is that CADW proceeded to consult on a proposal to list Grove Park School by letter to the Council dated 6 June 2016 and requested that comments be received from the Council, who owns the building, by 4 July 2016. That deadline is non statutory and arbitrary.

The Council responded to the consultation initially on 10 June 2016 confirming it was the owner of Grove Park School, and confirming that it intended to make representations by the deadline. However it indicated that it required clarification of the rationale for listing, and it sought further information in relation to the way in which both the current and previous attempts to list had been dealt with, in order to be able to meaningfully consider the listing proposal. The Council set out that an extension to the deadline for a final response may be required accordingly. The Council's response also emphasised that it would act responsibly and confirmed that there was no suggestion it would proceed to demolish until that process had concluded. This is important as there is clearly no urgency to progress a listing following the expiry of the above deadline.

CADW responded to the request for an explanation of the rationale and information on 15 June. In relation to the rationale for listing it was explained that the reasons for listing were set out in the draft list description provided with CADW's letter dated 6 June 2016. In relation to the information request, it pointed to a response to a previous request for information by a third party, although it acknowledged that the information available was only limited to documentation available up to 19 April 2016 as that was the date on which the previous information request was dealt with. CADW further indicated that a substantive response containing further information would be made on 8 July 2016.

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The information provided with this response included a report on the listing proposal given by Mrs Judith Alfrey, along with correspondence indicating that this had been subject to internal review before the Cabinet Secretary was advised of its content. Further correspondence indicated that, notwithstanding this, the Cabinet Secretary formed the view that he was minded to list, contrary to the recommendations of Mrs Alfrey. The Cabinet Secretary's decision is notable in that it does not seek to apply any of the criteria in the Welsh Government's guidance and there are clear legal ramifications of that. There is then subsequent to the Cabinet Secretary's "minded to" decision an indication that a review of CADW's decision making should be undertaken before a final decision is made. CADW then made several statements in correspondence that the Cabinet Secretary was minded to list, subject to a review being undertaken. It is of course, highly unusual for the Cabinet Secretary to have formed and for CADW to have expressed a view on the matter, even if it is only expressed as a "minded to" view, prior to the outcome of the review process being known. The correspondence trail ends with steps being taken to appoint a reviewer, but the outcome is not known as it seems the completion of the review post-dated the response to the information request.

The Council awaits the further response to the information request, which has been promised by 8 July, as this will no doubt contain the reviewers comments. These are key to CADW's advice on the proposal to list and highly material to the Cabinet Secretary's decision, and which will have culminated in the consultation process that CADW has now embarked upon. The reviewers comments will address the steps already taken to assess whether the listing should proceed, as had already been addressed by Mrs Alfrey. The Council's consideration of and response to the consultation can only be made in light of it considering the review, given that the Cabinet Secretary disagreed with Mrs Alfrey's recommendation and the only other information we have to date in relation to that decision does not seek to provide any alternative analysis of the listing criteria set out in the relevant guidance.

The Council's ability to comment can therefore only be sensibly informed by the outcome of the review, which is awaited with interest, along with any other relevant correspondence and information. To that end the Council has appointed an experienced heritage consultant to review the listing criteria. He has conducted a site visit and he will (and can only properly) conclude his report once the outcome of the review and any further correspondence is provided.

The Council accordingly requested an extension to the deadline of 4 July 2016, by letter dated 22 June (but sent on the 27 June) on the basis that the information that it required to properly analyse the listing proposal was not yet available, and you have now indicated that request for an extension will not be granted.

The Council is very disappointed with the decision and is of the view that, in the absence of the deadline being extended, the consultation process undertaken is flawed and may be unlawful. It is the Council's understanding that in order for a consultation process to be lawful four key criteria must be met and we address these as follows:

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*Rydym yn croesawu gohebiaeth yn Gymraeg.
Byddwn yn ymateb i unrhyw ohebiaeth yn Gymraeg ac ni fydd hyn yn arwain at unrhyw oedi.*

*We welcome correspondence in Welsh.
We will respond to any correspondence in Welsh and this will not lead to any delay.*



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1. Consultation must be undertaken at a formative stage, before a final decision has been made. We are very concerned that the Cabinet Secretary has clearly formulated opinions that are contrary to CADW's own advice, without reference to guidance, early on in the decision making process, before consultation was undertaken and before the outcome of the review process to which we refer above was known. He then proceeded to express those views prior to the review process. We have to reserve our position in regard to whether this requirement has in fact been met accordingly, but it does appear to us evident that the Cabinet Secretary may have formulated his views on this matter well before the consultation process was embarked upon.
2. The consultation must contain sufficient reasons for the proposals to allow those involved to give intelligent consideration and allow an intelligent response. It is clear that the information given in the listing description, to which your letter of 15 June refers us, does not give sufficient reasons to give intelligent consideration or allow an intelligent response. Clearly, in order for us to do that we need to see and be able to comment upon the outcome of the review process that was undertaken, which will no doubt detail the reasons for the Cabinet Minister to maintain his clearly expressed "minded to" list view, which have led to CADW proceeding to consult on the proposal to list. At present, we have seen no detailed analysis of the guidance upon which we can offer any meaningful comments relating to listing, other than that of Mrs Alfrey who recommended against listing. No doubt the review outcome will address that, and give us something to comment on.
3. Adequate time must be given for this purpose. Clearly that time starts to run when the relevant information that we have requested, which will give greater detail of the reasons for CADW's decision to proceed to consult on the listing proposal, is available. Any decision to impose a time limit on the consultation, by imposing a non-statutory and arbitrary deadline for a response that expires before information validly requested and clearly material to the matter in hand is provided is in breach of this requirement. Furthermore, the decision not to extend the deadline means that inadequate time is given for any intelligent consideration or response. This is all the more clear in circumstances where there is no threat to the building, the Council having made it clear it will behave responsibly and there is no threat of demolition before a final decision on listing is made.
4. The product of consultation must be conscientiously taken into account. At this stage, given the decision making by the Cabinet Secretary to date and that CADW are aware that the Council does wish to make substantive comments on the listing proposal, it would not be behaving conscientiously if it proceeded to make a decision before those comments could realistically be made available.

It is the Council's view that if CADW proceed to advise the Cabinet Secretary to make any decisions in relation to listing in advance of the provision of the information we have requested, and without giving us sufficient time to comment on the same, once provided, that would be premature and any decision resulting will be unlawful. The Council will need to consider what the next steps would be in that event, and our

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position is reserved accordingly. However, the Council makes the point now that it will scrutinise the decisions made by both CADW and the Cabinet Secretary in relation to this matter carefully.

The Council would wish to give CADW the opportunity to revisit its decision not to extend the deadline for a response to this consultation accordingly and looks forward to hearing further from you in that regard promptly

Yours faithfully



Head of Corporate and Customer Services

