COMMONS ACT 2006, Section 15

CITY AND COUNTY OF SWANSEA
(Registration Authority)

RE: LAND KNOWN AS CASTLE ACRE GREEN,
NORTON,
SWANSEA

REPORT OF THE INSPECTOR
MR ALUN ALESBURY, M.A., Barrister at Law

into

AN APPLICATION TO REGISTER THE
ABOVE-NAMED AREA OF LAND

as

TOWN OR VILLAGE GREEN

CONTENTS:

1. INTRODUCTION

1.1. I have been appointed by the Council of the City and County of Swansea ("the Council"), in its capacity as Registration Authority, to consider and report on an application, received by the Council on 20th September 2012, for the registration of an area of land known locally as Castle Acre Green, at Norton, in the Mumbles area of Swansea, as a Town or Village Green under ***Section 15*** of the ***Commons Act 2006***. The site is within the administrative area for which the Council is responsible, and is also entirely within the freehold ownership of the Council.

1.2. The Council, in its capacity as owner of the site concerned, was the principal, and by the time of the Inquiry the only, objector to the application. It is important to record that my instructions in relation to this matter have come from the Council solely and exclusively in its capacity as Registration Authority under the Commons Act. I have had no involvement with the Council in its capacity as landowner or objector, other than in the context of receiving evidence and submissions from the Council in those capacities, as one of the parties to the disputed issues relating to the application.

1.3. I was in particular appointed to hold a non-statutory Public Local Inquiry into the application, and to hear and consider evidence and submissions in support of it, and on behalf of the Objector(s). Hence I was provided with copies of the original application and the material which had been produced in support of it, the objections duly made to it, and such further correspondence and exchanges as had taken place in writing from the parties. Save to the extent that any aspects of that early material may have been modified by the relevant parties in the context of the Public Inquiry, I have had regard to all of it in compiling my Report and recommendations.

2. THE APPLICANT AND APPLICATION

2.1. The Application was itself dated 19th September 2012, and noted as received by the Council on the following day, 20th September 2012; it was made by Dr Robert Leek, of 47 Castle Acre, Norton, Mumbles, Swansea, SA3 5TH, who in the Application indicated that he was making it on behalf of "The Friends of Castle Acre Green". Dr Leek, in that capacity, is therefore "the Applicant" for the purposes of this Report. The application form indicated that the application was based on ***subsection (3)*** of ***Section 15*** of the ***Commons Act 2006***, and mentioned by way of explanation that Notices had been erected [on the land] by the City & County of Swansea for the first time on 12th April 2012 which gave permission to use the land for recreation.

2.2. On the question of the relevant 'neighbourhood' and 'locality', the form as submitted referred to two maps accompanying the application, and stated: "The neighbourhood of Norton is situated in the West Cross Electoral Ward". One of the two maps or plans showed a very clear delineation of a suggested Neighbourhood of Norton, and the other one showed (among other things) what I

understood to be the boundaries, at the time it was produced, of the Council electoral ward of West Cross. In the run-up to the Inquiry the Applicant produced a slightly amended plan of the Neighbourhood of Norton, showing it somewhat enlarged at its western end. The Objector did not object or take any issue with this amendment, and in the event the identification and boundaries of a 'Neighbourhood' of Norton was not a 'live' or disputed issue between the parties by the time of the Inquiry. I shall refer to the questions of 'neighbourhood' and 'locality' again in the concluding section of this Report, but I do not need to say anything else on these matters at this stage.

2.3. As far as the application site itself was concerned, its boundaries were very clearly shown on a plan which accompanied the application. A curious 'quirk' of the papers lodged with the application is that a set of completed evidence questionnaires included in those papers all contained a plan which showed a slightly different area, which excluded a small hook-shaped piece of land on the western side of the northern extremity of the land, at the entrance to the site from Norton Road. However, as I have indicated, the application plan itself was completely clear in its identification of the boundaries of the intended application site at this location, and was at a good scale. I shall consider the implications of the 'quirk' or anomaly which I have just referred to, at an appropriate point later in this Report.

2.4. The site is currently (as I was able to see it) a reasonably well maintained area consisting mostly of mown grass, but the grass merges into woodland along virtually the whole of the site's long southern boundary. Mainly within the woodland part there are some obvious paths, parts of which have clearly had their surfacing improved to make them more commodious to use. The site slopes generally down from west to east.

2.5. The site's (short) northern boundary, and its longer eastern boundary to Mumbles Road, are generally marked by a continuous wall, which can be seen over by an adult, but which does not include any entry points along its length. It is possible to gain entry to the site by a well-marked footpath entrance at the southern end of the eastern boundary, about which I heard a certain amount of evidence, which will be referred to later. There is a very obvious and wide entrance to the site, from Norton Road, at the western end of its northern boundary.

2.6. There is then a long stretch of what I shall call the site's north-western boundary, where the site abuts the back garden fences of the street called Castle Acre; along this stretch there are a number (which I believe to be three) of narrow passageways between pairs of houses, along which it is possible for a pedestrian to gain access through from that street onto the site.

2.7. The site's short western boundary is not obvious on the ground. It is sufficiently clear, because of the scale and clarity of the application plan, where it is intended to be, but on the ground the narrow area of open, grassy land continues to extend westwards (and uphill) for some distance, without it being apparent why the application site's western boundary has been drawn as it has been. A footpath

route into that extended western area links with other parts of Norton, and thus can be used to gain access to the application site.

2.8. The long southern boundary of the site is, as I have already noted, largely in woodland. Woodland generally continues southwards (and uphill) beyond the southern boundary of the application site, and there is generally no fence or otherwise effective modern boundary to separate off the site from that further area to the south. However it is also generally the case, as I saw on my site visit, that there are features on the ground, such as the (low) remains of old walls or banks, or established lines of trees, which in a visual sense 'explain' where the southern boundary of the site is intended to be. As well as the general point that most of this southern boundary can be crossed fairly easily by anyone who is in the woodland, there are some specific footpaths which head off southwards (and uphill) from the site, through the woodland, in the general direction of Oystermouth Castle.

3. THE OBJECTOR(S)

3.1. As I have already noted, by the time of the Inquiry, it had become clear that the only substantive objector to the application is the Council of the City and County of Swansea itself, as the owner of the area of land covered by the application. The Council in that capacity is therefore *"the Objector"* for the purposes of the remainder of this Report.

3.2. When the application was originally made public by the Registration Authority, a letter commenting on it was received from Councillor Mark Child, which was somewhat ambivalent as to Councillor Child's views as to the strength of the application as a claim under the Commons Act, but did not express opposition or objection to the application. In the event Councillor Child played no further part in the proceedings, and in particular did not take up the opportunity to participate in the Inquiry.

4. DIRECTIONS

4.1. Once the Council as Registration Authority had decided that a local Inquiry should be held into the application [and the objection(s) to it], it issued Directions to the parties, drafted by me, as to procedural matters in September 2014. Matters raised included the exchange before the Inquiry of additional written and documentary material, such as any further statements of evidence, case summaries, legal authorities, etc. The spirit of these Directions was broadly speaking observed by the parties, and no material issues arose from them, so it is unnecessary to comment on them any further.

5. SITE VISITS

5.1. As I informed parties at the Inquiry, I had the opportunity on the day before the Inquiry commenced to see the application site, unaccompanied. I also observed the surrounding area generally.

5.2. After all the evidence to the Inquiry had been heard, on the morning of 4th December 2014, I made a formal site visit to the site, accompanied by representatives of both the Applicant and the Objector. In the course of doing so, I was again able to observe parts of the surrounding area more generally.

6. THE INQUIRY

6.1. The Inquiry was held at the Ostreme Centre, Newton Road, Mumbles, over three days, on 2nd, 3rd and 4th December 2014.

6.2. At the Inquiry submissions were made on behalf of both the Applicant and the Objector, and oral evidence was heard from witnesses on behalf of both sides, and subjected to cross-examination, and questions from me as appropriate. With the agreement of the parties participating in the Inquiry, all of the oral evidence was heard on oath, or solemn affirmation.

6.3. As well as the oral evidence, and matters specifically raised at the Inquiry, I have had regard in producing my Report to all of the written and documentary material submitted by the parties, including the material submitted in the earlier stages of the process, which I have referred to above. I report on the evidence given to the inquiry, and the submissions of the parties, in the following sections of this Report, before setting out my conclusions and recommendation.

7. THE CASE FOR THE APPLICANT – EVIDENCE

Approach to the Evidence

7.1. As I have already noted above, the original Application in this case was supported and supplemented by a number of documents; these included plans, witness statements, completed evidence questionnaires, photographs, and other supporting material.

7.2. Other written or documentary material was submitted on behalf of the Applicant [and also the Objector] in the run-up to the Inquiry, in accordance with the Directions which had been issued. Some of this consisted of written statements from witnesses who would in due course give evidence at the Inquiry itself.

7.3. I have read all of this written material, and also looked at and considered the photographs and other documentary items with which I was provided, and have taken it all into account in forming the views which I have come to on the totality of the evidence.

7.4. However, as is to be expected, and as indeed was mentioned in the pre-Inquiry Directions, and at the Inquiry itself, more weight will inevitably be accorded (where matters are in dispute) to evidence which is given in person by a witness,

who is then subject to cross-examination and questions from me, than will be the case for mere written statements, etc., where there is no opportunity for challenge or questioning of the author.

7.5. With these considerations in mind, I do not think it is generally necessary for me specifically to summarise in this Report such evidence as was contained in the statements, completed questionnaires, letters, etc. by individuals who gave no oral evidence. In general terms it was broadly consistent with the tenor of the evidence given by the oral witnesses, and nothing stands out as particularly needing to have special, individual attention drawn to it by me.

7.6. In any event all of the written and documentary material I have referred to is available to the Registration Authority as supplementary background material to this Report, and may be referred to as necessary.

The Oral Evidence for the Applicant

7.7. ***Ms Julie Vallack*** lives at Myrtle Cottage, 23 Norton Road. She lives there with her mother Jean Vallack, and her son Adam had lived there until recently. Ms Vallack had completed one of the evidence questionnaires which accompanied the original application.

7.8. She said that her parents had purchased Myrtle Cottage in 1980, and although she did not live there at that time she was a daily visitor. She herself has purchased different properties in the Newton and West Cross areas which are close to Norton. She would often stay in Norton at weekends, and reside there in between moves. If her parents went abroad she would stay at the cottage for extended periods. She has always considered the cottage as her home.

7.9. They are a close family, where her parents supported her and she has in later years supported them. When her son was born in 1984 her parents became the daily carers to her son on her return to work. Both her parents would take her son down to "the Field" (the application site) for games and exercise. In 2003 her son and she moved into Myrtle Cottage on a permanent basis, and in 2006 she herself purchased it. Her parents both remained there with her up until her father's death in 2013. Her mother is now 84 years old and still lives there with her.

7.10. From 1980 onwards they as a family would use the application site on Castle Acre Green, which they always referred to as *"the field"*, mainly for walking. Her late father had problems with both his knees and needed gentle walking exercise on a daily basis, for which he would walk around the field, as it is the closest open space to Myrtle Cottage. Her father finally had both knee joints replaced in 1997. She would often accompany him after work for fresh air, or her mother would.

7.11. In 1993 she had a Jack Russell puppy, who lived for 17½ years until October 2011. That dog would be taken around the field at least twice if not three times a day. The dog would be let off the lead on the field. In all that time they were never denied access or told that the dog should be on a lead.

7.12. Mostly she or a member of her family would walk in a large loop around the bottom of the field, and the dog would make forays into the wooded area. At other times Ms Vallack would vary the walk and enter from the top of the field, from the Druids Close entrance. Her father rarely did that walk as it was too strenuous for his knees. It was normal to meet other residents on the field, also walking their dogs. There were many happy dog walkers there.

7.13. As the field has a high wall to its seaward side it is quite a contained and safe area for young families. Whatever was the trend of fad of the year, the younger families would engage in it on the field. One particular phase was a bouncy castle used for children's parties. She had seen small vans with generators blowing these items up on the field. Over the years there had been kite flying, conker picking and primary school parties for nature rambling.

7.14. As there is a large copse or wood adjoining the field, children would make wigwams from fallen branches, which also doubled up for goal posts or even cricket stumps.

7.15. It was not only children who would play such sports there. This is also an area used by picnickers, as opposed to the hustle and bustle of the sea front. Mushrooms also occurred there, and the blackberries were picked. In later years she had even seen wedding parties taking a photo-shoot on the field, as well as on the sea front.

7.16. In all that time she has never been prevented from entering the field, nor has she been told that any of the activities she had spoken about were prohibited.

7.17. *In cross-examination* Ms Vallack explained that the area where blackberries were picked was around the edge of the field. In fact all of the activities she had mentioned were carried on both on the open field and into the woodland part of the site, she said. She agreed that about 30% or so of the application site is woodland.

7.18. She also agreed that the woodland part of the application site seemed to correspond approximately to the part of the site which was shown on a plan as currently being managed by the Mumbles Development Trust.

7.19. In that southern area there are some fairly new paths which have been constructed, but they follow the ways that dog walkers already walked. Garlic used to grow there near those paths, and blackberries. She thought on reflection that the extent

of the wooded area on the site has grown. But the aerial photograph which was part of the Applicant's bundle gave the impression that the site was more wooded than it is in reality.

7.20. Her dog had died in 2011, which was before permissive signs appeared on the land in April 2012. She did not think that she herself had walked up to the top of the application site in April 2012, near to the position where one of the photographs produced by the Objector showed one of the signs. Nevertheless she has subsequently seen that sign there and wondered why it was there.

7.21. She would say that she has always used the field, i.e. the application site. Indeed she would not go anywhere else and let her dog off the lead. She had always used that land without permission, and indeed she thought it was a bit of a cheek when the sign did eventually appear. She herself did not know if it was the appearance of this sign that had spurred the making of the application.

7.22. She recognised one of the photographs showing a path coming out of the woodland into the open area. There were two pathways in there in the woodland which she would walk with her dog. Those paths were more formally made up at some point but she could not recall the year in which that happened.

7.23. She had in fact been aware of something going on in relation to the land with the Mumbles Development Trust, something about a path being made right the way through to Newton, some kind of walk being produced. She was aware that there was an access into the footpath and the woodland from the Mumbles Road and that there were signs there, although she could not remember in which year those were put up. For many years one could walk straight out onto Mumbles Road, before the present wooden gate structure at that location was put in place. She thought that the year could have been 2006, because she did see them before her dog died. She did not recall seeing any other signs in relation to the path other than the one at the Mumbles Road exit.

7.24. In relation to a sign about dog fouling which had been attached to a lamppost near the Norton Road entrance to the field, that was a sign which was on the pavement, not on the field. She had never to this day seen a sign of that kind on the field. She thought that that sign referred only to the fouling of pavements.

7.25. She agreed that the sign was immediately at the point where the grass area of the site starts, but to her the sign was obviously linked to the pavement. There had indeed been a problem with respect to dog fouling on the pavements in the area. And such signs went up all along the Mumbles sea front. There had been letters and complaints in the local newspaper. It was a sign put up on a lamppost, as had been the case elsewhere in Mumbles.

7.26. She had never heard of complaints about dog fouling on the grass field. Certainly on the area of the field that she knew, if any of the local people's dogs made a mess they would pick it up. No-one had ever brought to her attention dog mess on the field that had not been cleaned up. She had of course seen dogs defecate onto the field. However she did not believe that the sign that had been erected was to do with that.

7.27. As for the permissive signs which had been erected, she accepted that there was now one near Norton Road too. She had seen it. She had understood that there were rumours that the Council was making noises about local people needing a permissive right to go onto the land. That sign does say that permission could be withdrawn. In her recollection the ball had already started rolling locally even before the signs appeared; village green status had previously been sought for some land at West Cross, and this is a small locality and people had heard about it. Certainly in the local community there was some surprise that the Council put up these signs on the field when they did so. But the signs appeared, in her recollection, after communications had started to flow about a possible 'village green' claim.

7.28. She herself had completed one of the questionnaires produced by the Applicant about battle re-enactments at Oystermouth Castle in the period 1999 to 2002. In that she had stated that she could remember a camp on Castle Acre Green in connection with such a re-enactment, on one occasion. Among other answers she had given were that she was during that period free to walk through the camp site, if she chose to, as normal.

7.29. Ms Vallack identified pictures of some of the dog fouling notices which had been photographed along the sea front, as well as the dog fouling notice on the pavement near the application site. She also acknowledged that a sign advertising the Norton House Hotel had stood in the corner of the application site, by the junction of Norton Road with Mumbles Road. There had previously been a sign there for the Beaufort Hotel as well, although that had gone because that hotel is now temporarily closed and up for sale. Her understanding was that the Beaufort is owned by a brewery, whereas the Norton House Hotel is privately owned.

7.30. One of the photographs produced to the Inquiry showed a relatively new picnic table and benches erected in the wooded area of the site. However the picnicking on the site which she had referred to in her evidence had been on the field itself.

7.31. Reverting to the medieval pageants or battle re-enactments, she reiterated that she could only recall one medieval battle occasion. She thought it was the first time that such a thing had occurred; she recalled it because she went down to the field with her dog and was surprised to see that there were ordinary tents and vans on the field, all along the southern side of the grassy area. She had been shocked because she thought the site had been invaded by itinerants. There were no public facilities for the campers, and no warning had been given, so it had stuck in her

mind because she thought that they in the local area had a problem. She did not want to take her dog down there again in such circumstances. Her impression had been the campers had just come onto the site off the road. She had not in fact gone up to the Castle or seen what was going on up there, so she did not know why the people were camping on the site. She was not that concerned, as she herself does not live facing the field; she was subsequently told that it was to do with the medieval re-enactment. She had not been aware in subsequent years of that type of event taking place.

7.32. *In re-examination* Ms Vallack said that in about 2011 she had been aware of the publication of a list of local development plan candidate sites for potential housing development, and that there had been a petition against it in the case of this site, with some 200 objections.

7.33. She had never seen signs to do with dog fouling, or dog bins, on the land of the application site.

7.34. In relation to the entrance to the land and the footpath from Mumbles Road, she pointed out that some of the old entrance posts which survived at that location were visible in photographs which had been produced to the Inquiry. In the woodland there were in fact quite a lot of paths; some of them were shown on photographs produced in the Applicant's evidence.

7.35. As far as the re-enactments were concerned, she confirmed that she had only found out about them after she had seen the tents on the field for the first time. She had been a little afraid to walk through the tents as she had a Jack Russell with her, and to her eye the people had seemed to be itinerants. However that circumstance had not stopped her from using the rest of the field. She was still able to go on her walk.

7.36. ***Mrs Mandy Thomas*** lives at 100 Castle Acre, Norton. She has lived at that address with her family since April 1991, and had brought up her family there. Her son and daughter are now 20 and 23 years old. She had completed one of the evidence questionnaires in support of the application.

7.37. On first arriving in Castle Acre they were fortunate that there were four families with children of roughly the same age as theirs. The green space of Castle Acre was a happy and safe playground for all those children. They learned to ride their bikes there, kites were flown, dens were made and dogs played with. As they grew older ball games such as football, cricket, rounders and rugby were played there. The space was in daily use, a green oasis much appreciated by the families of the area. Several people who lived nearby would come down, bringing their children with them and great fun was had. The green open space provided a flat, safe open area for all.

7.38. They used the woods a lot, and their children thoroughly enjoyed those experiences. They learned a lot about the natural environment, the prolific wild life, etc. They watched owls, bats and foxes every week. They are now able to identify a range of wild birds such as woodpeckers, jays and finches. That would not have been the case had they not been able to access this green space.

7.39. There are now other young families living in the area, and they are using the space in the same way as Mrs Thomas's children did. Dog walkers use the space to walk their dogs every day. Their dogs are usually either on leads or running about retrieving balls etc. Recently she herself had been walking dogs for friends who are still working, and she too still uses the space for that purpose. All owners clear up after their dogs, and the fact that she has never been concerned by this or by litter in general suggests the space is valued and respected by all.

7.40. This land is one of the few open green areas available to the public in Mumbles. It is perfect as it is fringed by an area of woodland, which is regularly used in many different ways. This community and school use has been developed over a number of years. It has been very pleasing to see groups of school children walking and exploring this small safe area. The wildlife in the area is extensive. They hear the owls calling each evening, and screeching in the mating season. Bats frequent the area, and the bird song is wonderful. Although foxes can be an urban problem they do not have much trouble with them. Every night a fox trots past her window, and they look forward to seeing him.

7.41. As a family they had benefited greatly from being able to access this area, just as many other families are now continuing to do. The area contributes greatly to the wellbeing of families growing up in Norton and Mumbles.

7.42. One of the things that children love about this space is that the woods are so close. The application site had been almost in daily use by her children she would say.

7.43. As a mother of small children she would have been worried if the site had been covered in dog mess. It was not, but the pavements were covered in dog mess all over Swansea, and there had in fact been a campaign about it. They as a family had not had dogs, but their neighbours had had dogs which her children had been very fond of.

7.44. On the site there had been a huge range of bird life and it was very special to have it on one's own doorstep.

7.45. She had felt affronted by the permissive signs when they first went up on the site, and it made her suspicious of what their underlying purpose was. In her view the Council does not really own this land. They the local people own it, and the Council look after it. They had had no letter explaining why the signs went up; she did ring the Council's offices but only got a vague answer.

7.46. She had been delighted when the Mumbles Development Trust became more active in the area, and improved the footpath. Previously the paths could be difficult for the elderly. That had been done relatively recently, about 2008 she thought, possibly in the period 2006 – 2008.

7.47. There are new young families in the area now, which is very nice; some of them use the land in the same way as her family had done. She herself walks dogs for her neighbours. She reiterated that there was never a lot of mess in the field; she would have been very concerned if there had been. Most people walking their dogs on the field certainly did pick up after them.

7.48. This space is very much valued and respected by local people, and indeed is one of the few areas available to the local public. There are other parks and open areas in other parts of Mumbles, but not many other flat open space areas.

7.49. She herself is a retired teacher, and sometimes goes on the land just for a walk; it is very nice to hear the owls in the woods for example, and to see or hear the rest of the wildlife.

7.50. *In cross-examination* Mrs Thomas said that most people who own dogs do have connections with small children, so in general they are not worried by dog mess in the field. She was not aware of any complaints about dog mess being specifically focused on this field. However she had been aware of a campaign about dog mess all over the whole of Swansea. There had then been a tightening up around Swansea in general, and some control over this; signs and dog poo bins had been put up all over Swansea. In this local area she remembered seeing signs going up, including on the lamppost near the bottom of the site. However she had never seen there being a dog poo problem on the application field. Things did improve somewhat on the streets after the signs and bins went up, and nowadays she thought the majority of dog owners probably did pick up after their dogs.

7.51. She accepted that one of the wooden signs which had gone up in connection with the improved footpath in the woods contained on it the words *"Respect, Access, Enjoy"*. The appearance of those signs was a surprise, but Mrs Thomas did not see that they were signs giving permission to use the path. She supposed signs like that would have let strangers know that this area could be accessed. However she herself had certainly not seen that sign as some kind of permission being given to her to go there. She accepted that the application site had always been walled from Mumbles Road, and just round the corner into Norton Road; but other than that the site had had no fencing around it.

7.52. *In re-examination* Mrs Thomas said that the sign in the woodland area also carried a symbol for a path which she thought was the Mumbles Way. It is a way marker sign. She did not think that she had seen such signs elsewhere on the application

site, but was not sure. She thought that since the paths had been improved, both this part of the path and the part at the top, she had seen more people using the path. She had sometimes seen ramblers there; indeed some people had wandered up her own drive.

7.53. Locals had always understood that there were paths through the woods. The original paths were made by people walking dogs. There were countless little paths through the woods, and only a few of them were later surfaced.

7.54. There had never been any dog bins or notices on the green. As for the medieval re-enactments, her children had taken part in the first one which was great fun. Her understanding was that there was some overspill of tents onto the application field, from the area around Oystermouth Castle. There had only been about 5 tents down on the application field, and one could certainly walk through them if one wanted.

7.55. ***Mr Haydn Lewis*** lives at Callander, Glen Road, Norton. He has lived there for 43 years. He had completed one of the evidence questionnaires originally lodged with the application.

7.56. He said that he had been using the green for 43 years for relaxation, for his wife and himself and their three children, who are now 42, 40 and 38 years old. They used the green daily as it was the only safe environment in their area. They would go there to play games such as 'touch', using the two manhole covers there as safe spots, and also catch-ball, tennis, cricket, kick-a-football and throw-a-rugby-ball. So it made for a varied number of games; the other favourites were hide and seek in the woods, and climb the trees, as children do. The children felt they could play in safety and unrestricted in a relaxed atmosphere, at any time, day or night, as the green is never closed. Without this green space the local population would have nowhere in the Norton area to meet socially and relax with their families or the family pet. He had spent countless hours there from 1986 with his dog, firstly training him and then playing by throwing anything for him to bring back. He would walk the dog before work at 6am, through the green and the woods, where he would enjoy the various animal scents. Then he would walk again after work from 5pm onwards, this time a longer walk cutting through the Castle field and back to the green and his home.

7.57. He still uses the green up to the present time, and sees many people using both it and the woods. There are children playing with their parents, or just children playing on their own. There are doggy people training their dogs, and people just sitting relaxing. These days he has grandchildren, and they still use the green and the woods when the children come down, so they go to play and go walking just as they did with his own family in previous years. He also walks his neighbours' dogs for exercise, usually 3 to 4 times a week, and they walk the green and the woods as well.

7.58. When one enters the woodland part it is calm and quiet, with only the birds chattering and the breeze blowing in the branches. One is in another world and the whole area is of priceless value.

7.59. *In cross-examination* Mr Lewis said that he had played the game of touch on the application field with both his own children and other children. The field was often used for picnics as well. As for pathways, there were several pathways into the field, from the top, and from the Castle, and via the allotments. Formalised pathways subsequently developed in the woods.

7.60. Nowadays his grandchildren use the field as well. He himself had come to this area from the other side of town, where there were former greens which had now been built on. He did not wish that to happen in this part of Swansea.

7.61. He used to work in a steel works. It was a joy to come home to his home here from there. He would walk to the application site at various times after coming home from working a shift at the steel works, and it was a real joy. This lovely green area made him feel great. It was a priceless gift. He did recall a past rumour about putting chippings on this land and using it as a car park, but nothing came of that. As for the re-enactments on the site, the people involved were fine, they were no bother and did not interfere with anybody, and access was available at all times. As for dog mess, he had never walked in any on the green. On the streets he certainly had, but not there on the site.

7.62. ***Mr Brian Jenkins*** lives with his wife at Elm Cottage, 37 Norton Road. He and his wife had completed one of the evidence questionnaires lodged with the original application.

7.63. He said that he and his wife had lived in Norton Road since 1968, and had walked and played with their three successive terrier pet dogs, on all parts of Castle Acre Green. Two of the dogs would be off the lead and one on a long extendable lead. This was mostly twice a day, from 1968 until 2011, with two short breaks over that time. They were free to come and go, and used most entrances to the green according to the dogs' choice. In the early days it was common knowledge that the site was earmarked for a road linking from Mumbles Road to Langland Road.

7.64. Over the years they saw many other residents of Norton exercise and play with their pet dogs just like them. They also saw children and parents playing football or cricket, and sometimes teachers accompanying young school children on nature study outings. In later summer they frequently saw locals picking blackberries around the edge of the wooded area bordering the green.

7.65. 'The Field', as they called Castle Acre Green then, was overgrown in its early days until sometime, probably in the late 1970s, when the grass started to be cut, presumably by the City and County of Swansea. They assumed that that had been

because the field had become a bit of an eyesore, especially for visitors entering Mumbles along Mumbles Road. There did not seem to be any effort to exploit the area by putting seats there, for example by the wall near the sea, or by planting any shrubs or flowers. Thus it was and remains basically an open space with some trees that is used extensively by the neighbourhood and others, often to allow dogs to run freely, unlike on the prom where dogs have to be on a lead.

7.66. There were no signs showing who owned the land or restricting how it could be used, until the signpost appeared out of the blue in 2012.

7.67. ***Mr Nigel Phillips*** lives at 36 Glen Road, Norton. He had completed one of the evidence questionnaires lodged with the original application.

7.68. He said that he has been a resident of the Norton area since 1970. He was a child during the period 1970 to 1979, and along with many other children from the locality they accessed all parts of Castle Acre Green, although they referred to it then as Lower Castle Fields. They engaged in various activities such as football, cricket, picnics, blackberry picking and just as a general hanging out and meeting place, all year round. Access to the land has always been unrestricted from all entrances.

7.69. When he got married in the 1980s and had children, the tradition of using this area was passed on to his two children and many of their friends, between 1990 and 2013. As a dog owner continually, since 1990 through to the present time, he and his family used the green at least three times a day all year round, along with numerous other dog walkers. The breeds he has kept, such as Labradors, Retrievers and Spaniels, and currently a Collie cross, have all required plenty of exercise, and the green has always been a safe and stimulating place for all their dogs and their friends to spend quality time together.

7.70. Over the years he has witnessed various activities on the land, and only recently had he seen an outdoor class from Oystermouth school being conducted near the raised manhole cover at the bottom end of the green. That group had been in the woodland on a ramble.

7.71. Even though the Council had only put up a sign a couple of years ago, he had always assumed that Swansea Council owned the green, because he had witnessed them cutting the grass. But he never saw any other work, apart from the recent repairs to the perimeter wall at the junction of Norton Road and Mumbles Road. Around that time he believed the Council had put up the sign to the effect that they owned this land, but he could not recall any such signs prior to that. Castle Acre Green has functioned uninterrupted as a community facility in the way he has described for at least the last 40 years.

7.72. *In cross-examination* Mr Phillips said that he did not recall the Council cutting the grass back when he was a child in the 1970s; he thought it might have begun to be done in the 1980s.

7.73. *In re-examination* Mr Phillips said that he assumed that the grass cutting had been done for aesthetic reasons, and possibly to a degree to encourage people to use the land. A lot of people use this land, it is an iconic focal point. Cutting the grass certainly made it easier for people to use the land, particularly when it was wet.

7.74. ***Professor David Boucher*** lives at Bath Cottage, 4 Norton Road. He and his wife had completed one of the evidence questionnaires lodged in support of the original application.

7.75. Professor Boucher explained that he, with his wife and two daughters, took up residence at 4 Norton Road in March 1992. The property overlooks Castle Acre Green, westwards towards the woodland and allotments. The three front bedrooms, but not their rear bedroom, have unobstructed views across Castle Acre, and out towards Mumbles Pier. Their house has a small back garden with some flower beds, but no play area.

7.76. From 1991 to 2000 he had worked at Swansea University, and frequently worked at home for part or the whole of a day. In 2000 he moved to Cardiff University as a Research Professor, and was able to work at home for two or three days a week. His wife had not been employed until 1999 when she became a Librarian at Swansea University. Up until 1999 she had the primary childcare responsibilities in their household. At the time of moving to Norton Road their younger daughter was 3 years old and their elder daughter was 8. One daughter started going to St David's School, West Cross Avenue for a few hours a day in September 1993, and full time from 1994 to 1999. Their other daughter attended the school full time from 1991 to 1994.

7.77. From 1992 to 1999 Castle Acre Green was used by their family as their principal recreational area. Weather permitting, they played all sorts of games, including rounders, football, cricket and hurling. They would also have races across the field, and he even taught his daughter Lucy to ride her bicycle on the field, because she was nervous of riding on the cycle path. Often after school, twice a week or so, the children would play in Castle Acre with their friends. It provided a safe environment, free of traffic for them to play unhindered. The games varied according to fashion.

7.78. After 1999 their use of Castle Acre Green for games was much less frequent, but occasionally, until their daughter Lucy was about 16, the balls and bats would be got out again and they crossed the road over into the field and played games until dinner time.

7.79. In 2006 Professor Boucher took up running as a sport, using Castle Acre Green almost every day to build up his distance and speed, over a 6 month period from March to September. The give in the ground makes much less impact on the knees and ankles. He continues to use Castle Acre at least twice a week to train, by running around the perimeter of the field, and for improving speed. He does this from one end to the other. However for longer distances he uses the cycle path and the coastal path, away from the application site.

7.80. Overlooking Castle Acre Green from their house, they are particularly well placed to notice the variety and frequency of use. The area is large enough to accommodate groups of children, and more often than not other games are played in different parts of the field. The field is used by families and groups of children, usually for ball games of one type or another. The frequency of use varies over the seasons, but during the summer months it is used almost every day for such purposes. Also during the summer months various adults use Castle Acre to sit and read newspapers in the sun.

7.81. He himself usually gets up about 7am to open the curtains, and finds throughout the year people from the area exercising their dogs on the land, usually throwing a ball or stick repetitively. Weather does not seem to deter them. During the winter, except when the field is flooded, dog owners put on their protective clothing and wellington boots and set their dogs loose. The walled environment makes it safe to let the dogs run free without causing a hazard to traffic. During the 1990s he had thought the main hazard for children playing games was dog dirt, until the Council became much stricter about the responsibilities of owners. He himself had never stepped in any and nor had his children, but he was conscious of the problem.

7.82. He was not aware of any interruptions to use of the land or of access to Castle Acre for recreational purposes. Access was restricted to the Norton Road entrance from 26th October 1998 to 5th February 1999. During that period a small area to the far east of the field, adjacent to Norton Road had been fenced off to carry out sewer works. However the field was still accessible and usable from the Oystermouth Road entrance.

7.83. When the signs went up in 2012, implying that people were using the land by permission, he had a kneejerk reaction to that. He thought that people were using the land by right of a long tradition of doing so. Even when they bought their house they were under the impression that anyone could use the field.

7.84. He recalled the time when Swansea had been named in the press as the *dog dirt capital of Britain*. People certainly did complain a lot about dog dirt on the cycleway and path around the coast.

7.85. As far as the battle re-enactment tents were concerned, the Council had never informed local people about giving permission for such tents. The area where the tents were was not roped off. He had walked through that area, feeling a little bit

intimidated but okay. He understood that the tents in this field had been overspill from the area around the Castle.

7.86. *In cross-examination* Professor Boucher said that during the 1990s there was a general problem in Swansea of dog dirt. He personally had been afraid that that might be the case in Castle Acre, although he never saw any there. But there had been a lot of fuss about dog dirt in Swansea generally. He himself had been pleased when the Council became more strict about the responsibilities of dog owners. The dog poo signs which went up were part of that campaign.

7.87. *In re-examination* Professor Boucher said that he was not surprised to see the sign to dog owners erected more or less opposite his house. It was part of the general campaign against dog mess in Swansea.

7.88. ***Dr Robert Leek***, the Applicant, gave evidence. He said that he had resided at 47 Castle Acre since he purchased the property in 2006.

7.89. He had regularly used the land for play with his grandchildren since that time, and had observed many residents of the neighbourhood of Norton use the land for a variety of purposes, especially exercising dogs or playing with children, over the period up until the present day.

7.90. However the principal purpose of his evidence was to present the results of his researches into the public archives in relation to the history, acquisition and use of the land for which registration as a village green was sought. As part of his evidence he produced a series of maps, or composite maps constructed from a number of separate maps. He would also make reference to internal memoranda and formal minutes in relation to the land.

7.91. He produced a copy of the conveyance document between the Duke of Beaufort and the County Borough of Swansea in 1927, in which land surrounding Oystermouth Castle was transferred to Swansea Council. Of note was an accompanying map, on which the proposed road linking Mumbles Road and Castle Road could clearly be seen even at that time.

7.92. He also produced copies of the map associated with the 1938 Swansea Local Planning Scheme No.1, which again showed the proposed road linking between Mumbles Road and Castle Road, and of the key to that map.

7.93. Among various other historic documents, Dr Leek identified a document from February 1964, referring to an internal Council meeting, which clearly showed an intention of the then Council to construct an extension of Glenville Road, which might be revised in order to create an alternative route that would impact less on potential residential development.

7.94. He also produced a 1964 Report of the Borough Engineer and Surveyor, relating to a proposal to change the line of the proposed by-pass, and possibly to enable more development to take place on the north side of the by-pass line, while retaining the idea of open space on the southern side of it, nearer to Oystermouth Castle. He had unearthed a minute of the Council's Highways Committee of July 1964 in relation to this. That minute also included a comment that *"to preserve the open space zoning and provide for the new traffic route the land originally intended for development should be acquired by the Council"*. It had been resolved among other things that the Borough Estate Agent be authorised to negotiate for the acquisition of the land referred to.

7.95. There was a minute of the Estates Committee recommending loan sanction for the purchase of the land, for £16,000 plus fees. Dr Leek commented that that was a generous premium at the time, if it was suggested that the land would be acquired just for open space purposes. Indeed he had unearthed a confidential memorandum of May 1965 from the District Valuer to the Town Clerk in which the District Valuer confirmed that the acquisition of the relevant land had been for *"highways and other purposes"*.

7.96. Dr Leek also produced a copy of the 1965 conveyance by which the Council acquired the land concerned. The plan accompanying that conveyance showed the land being acquired coloured both pink and blue.

7.97. He had also unearthed other historic documents relating to the road proposals for the possible construction of the Newton Road By-pass. He had found an approved drawing dating from 1959, showing the relationship of the line of the Glenville Road extension with the yet to be constructed Castle Acre Housing Scheme. The road as then envisaged clearly ran through the present subject land. Dr Leek had produced a composite map, with scales adjusted in order to show how the road line then envisaged related to the pink and blue areas on the 1965 conveyance map. Those areas could be compared with the present application site on Dr Leek's composite map. The conclusion to be drawn was that it was clear that the land of the application site was acquired predominantly for road construction.

7.98. It was also possible, by comparing the conveyance map of 1965 with the planning scheme map of 1938, to see that the blue land on the conveyance map was almost precisely coincident with the area envisaged in 1938 for public open space, whereas the pink land on the conveyance seems to correspond with land which was in 1938 envisaged as being used either for the new road construction, or for what must be presumed to have been the development of dwelling houses. The land of the present application site almost entirely coincides with the land coloured pink on the conveyance plan and envisaged in 1938 as being used for highway or development purposes.

7.99. Dr Leek explained that there were major gaps in the Council's records over the period from 1965 up to 1997, but it was clear that the issue of the Newton Road – Mumbles – Oystermouth by-pass remained a live issue during that period. He produced a minute from February 1987 of the Council's Mumbles Regeneration Forum, which he said showed that the Oystermouth by-pass was still a live issue at that time, and the effects of it were to be studied. However then in 1998 the Newton Road by-pass was deleted, following the instructions of an independent Inspector who had held a Local Plan inquiry, because schemes should only be included in such plans if the Council intended to commence work within the following 10 years. The Newton Road by-pass scheme, which went through the present application site, was accordingly deleted from the Council's plans.

7.100. However subsequently a substantial part of the claimed green was then designated for parking under policy M7 of the Swansea Local Plan Review No. 1, which covered the period 1993 to 2003. Dr Leek was able to produce a letter to local residents from the Council, dated 14th April 2005, which showed that there was still an intention to include the same land as a car park in the pre-deposit stage of the Council's intended Unitary Development Plan. It was clear from an associated briefing note that although policy M7 was challenged at the Local Plan Public Inquiry, the allocation was not recommended for removal from the final version of the plan. It was clearly therefore still envisaged that the car park proposal would take place, and thereafter the Council designated the land of the application site in a way which differentiated it from the way it had designated the open land around Oystermouth Castle, for example.

7.101. Dr Leek also produced a map extract which he said was part of Swansea Council's promotional publicity material, which purported to show open green spaces in Mumbles and the surrounding area. That map did not put forward Castle Acre Green as a green space, even though it showed nearly all of the other public green spaces in Mumbles. This map is a current document which is downloadable off the Council's website.

7.102. Dr Leek mentioned that the earlier witness, Mr Lewis, had recalled that the grass was cut by the Council in 1983 having previously been overgrown. It was Dr Leek's understanding that had the grass not been cut it would have been a potential fire hazard.

7.103. He produced a number of photographs showing signs on and in the vicinity of the application site. One photograph showed one of the new permissive signs which appeared in 2012 near to the Norton Road entrance. He also produced photographs of some of the dog fouling signs along the Mumbles promenade, and a photograph of the Norton House Hotel sign within the corner of the application site, and of the posts which used to carry the Beaufort Hotel sign. His understanding was that the man who ran the Beaufort stopped paying, and his sign was taken down. From that it can be seen that Swansea Council gain financially from the signs placed there.

7.104. He observed that where the Mumbles Way footpath goes through the land, it is currently labelled as such. He produced a photograph showing a picnic table and some benches in the woodland part of the application site, but said that those had appeared only about three weeks before the Inquiry, and were not there before. There were also photographs of the informal paths through the woods, which existed a long time before the Mumbles Way was set up, and before the bench and picnic tables had been erected there.

7.105. In relation to the medieval tournament camping which had taken place on the application site, Dr Leek had contacted Mr Roger Parmiter, who as chairman of the Friends of Oystermouth Castle had organised and staged medieval tournaments there. Mr Parmiter had signed a statement, which Dr Leek produced, which among other things explained that the main camp site associated with the tournaments had been in the castle grounds, and that only sometimes Castle Acre field (the application site) had been used as an overspill campsite.

7.106. *In cross-examination* Dr Leek acknowledged that the adjusted aerial photograph he had produced, with the application site boundary notionally marked onto the photograph, had excluded a small 'hook' of land on the west side of the northern tip of the land, which had been included in the original application plan. The intention had been to identify the site to mirror land which Swansea Council had put into its Local Development Plan 'Choices' documentation. The original application showed that little hook of land included on the edge, to some extent by an oversight. However the area including the small hook of land was what the actual application plan showed.

7.107. The western tip of the application site as shown on the application plan had been the same as on the Council's planning document. The site boundaries were not based solely on that, but also on the use made by local people. It was really for convenience that the application site had been based on the LDP candidate site. There was, it had seemed, logic in copying what the Council's own LDP did. Also the western end of the site was approximately where an existing footpath came through before the houses were built. That footpath had originally been in the grounds of the Norton House Hotel.

7.108. As far as the southern boundary of the application site is concerned, there is a delineation within the woodland along that boundary. There are some old railings buried in the soil. So it is an old boundary with some railings, part of a wall and a tree line following it. That boundary is clearly visible on old maps.

7.109. As for the historic planning documents from approximately 1938 which Dr Leek had found, the key to the Town Map showed that the land at the time was zoned mostly for residential. Dr Leek did not know what the extant plan was at the time when the Council purchased the land. He believed it may have been the Development Plan Town Map from 1955, an enlarged copy of which had been produced by the Objectors. From that it appeared that the area to the south of the

intended new road was designated 'POS', for public open space. However, from the key it seemed that the horizontal hatching on that land showed that it related to the second period of the plan; in other words it was shown as an aspiration, not the current state of affairs.

7.110. Dr Leek noted that a Council minute from February 1964, which he had produced relating to this land, referred back to a 1938 agreement which had mentioned that some land adjacent to Oystermouth Castle was intended to be retained for public open space. Similarly the Borough Engineer's report from July 1964 which he had found referred to some of the land being scheduled for a public open space. However Dr Leek did not think that reference related to the 1955 plan, but back to the 1938 agreement. Dr Leek's view was that the 1964 documentation showed that the land intended to be acquired by Swansea Council was for two purposes, partly to preserve an open space zoning, and partly for a new road. He noted that the District Valuer's letter about the acquisition of the land, written in May 1965 had confirmed that the acquisition was for *"highways and other purposes"*. He accepted that 'other purposes' could mean public open space; clearly the reference to highways meant acquisition for highways purposes. So one of the major purposes of acquiring the land was to build a road.

7.111. The conveyance of 1965, by which Swansea Corporation acquired the land which included the present application site, did not recite a statutory purpose for the acquisition, nor explain the pink and blue colours on the plan. However Dr Leek noted that someone, on the Council's own copy of this conveyance, had written the word 'highway' in handwriting. On the other hand the reference in the District Valuer's letter to Highways and other Purposes did *not* say or mention public open space, or mention what the other purposes were.

7.112. Dr Leek agreed that even the most drastic plans for highway schemes which he had produced, dating from about 1959, did not say that all of the land concerned would be going to highway purposes. However, they did not say that the land would be going to public open space either. It was quite clear, in Dr Leek's view, that the Council's original objective for acquiring the land was to build a road.

7.113. As for the Council's 1989 Local Plan document (copies of the proposals map for which had been enlarged by both parties), Dr Leek accepted that pink dots marked on the plan to represent open space and landscaping extended to the north of the then still proposed road. The relevant policies at the time were said to be A1 and R6. A1 is a policy to do with allotments. R6 was a policy to do with informal incidental open space. There was also reference on the plan to the intended new road under policy T2; however the map with the local plan document was not an engineering plan showing exactly where the road would be. It was a planner's representation of the approximate line of the proposed road.

7.114. By 1998 it was apparent that the policy for the provision of the new road had gone. The intention by then was that the policy in favour of the road would be deleted.

7.115. The Swansea Local Plan Review No.1 was adopted in January 1999. That contained a policy M7 which envisaged the use of a substantial part of the present application site for the provision of public parking for cars. The other part of the application site was covered by a policy NE2, which related to defined landscape protection areas. A briefing note which Dr Leek had unearthed, dating from May 2006, had referred to there being an overlap between the M7 and NE2 allocations, to ensure that any car park included a landscaped buffer to the properties in Castle Acre. It was also noted in that briefing note that the car parking allocation here had not been included in the draft Unitary Development Plan for Swansea, which was under preparation, but that the Council's Highways and Engineering section had requested that the car parking allocation nearest to Mumbles Road should be retained as it was still an aspiration at that time for the Council's next local transport plan. It was stated that in a consultation exercise in 2004 it had been agreed that the car park allocation would be retained.

7.116. The extant plan for the area now is Swansea Council's Unitary Development Plan. That was adopted in 2008. In that plan the present application site is shown covered by Policy EV24, which the key shows as relating to Greenspace Protection. Paragraph 1.7.13 within the document showed that the areas covered by the policy had been defined on the basis of one or more of the following values: landscape significance, nature conservation value, local amenity benefit, local character, links to the countryside and informal recreational potential. That wording is in supporting text rather than being an actual policy. The policy EV24 was aimed at protecting the greenspace system, and in general not allowing development proposals adverse to the greenspace areas.

7.117. Dr Leek noted that in respect of the application site land there was no reference at all to UDP policy HC23, which is a policy about 'community recreation land'. That policy does not cover this present site.

7.118. Dr Leek agreed that the signs erected on the land in April 2012 did purport to give permission for use of the application site. He also agreed that some of the photographs showed paths on the site which had been made up so as to make them easier to use. However he did not agree that the making up of a path on the site implicitly gives people permission to use that path. Indeed the path concerned was there many years before it was made up. All that happened was that the Mumbles Development Trust decided to improve some of the paths through the woods.

7.119. None of the residents previously had permission to use the paths or the land, so he accepted that might make them technically trespassers. People might well have thought that they had a right to use the land by custom and practice.

7.120. An agreement between the Council and the Mumbles Development Trust was apparently signed in 2014. He did not think that there had been an agreement in 2006. It was his understanding that none of the money for the Development

Trust's work had come from Swansea Council. The funding had come from the European Commission and other bodies, but no money or manpower or equipment came from Swansea Council.

7.121. The wooden sign at the entrance to the path which the Development Trust had improved went up in 2007. In Dr Leek's view it was not a sign which was indicative of permission being given. All that the word *"access"* on the sign meant was to say that one could come in and use the path. However people could access the land perfectly well before the sign went up.

7.122. It was completely clear that the dog sign on the lamppost on Norton Road was to do with the pavement, and did not apply to the field constituting the application site. He did not see this as being a sign at the main entrance to the land. It was attached to a lamppost on the pavement, like all the other ones about dog fouling along the seafront. The reference on the sign to *"this area"* means the general area, not this particular piece of land. It signals an obligation on pavement users not to allow their dogs to mess there. It is not for example a sign which *"allows"* people to use the pavement; that would be nonsense. It is Dr Leek's understanding that the relevant piece of legislation authorising these signs allows that such signs are applicable to highways. It is clear that this legislation can be applied to pavements in an area subject to speed limits. If it had been desired to make it clear that the sign was intended to apply to the application site, the sign should have been put on the site, or indeed at all of the five entrances to the site. At every other place where there are council dog bins there are associated signs on the same site. In this instance there is only one sign, near one of the entrances to the site, which is not in fact used as frequently by the neighbours as a number of the other entrances. If this sign was intended to relate to the application site, why is there only one sign? Why are there no dog refuse containers on the land itself?

7.123. As far as the battle reenactments were concerned, Dr Leek accepted that some people must have been given permission to camp on the site. However he had not seen any paperwork saying that people had permission from the Council. Nothing had signalled to the people around the area that those people had been given permission to camp on the land. Many local people had felt that it was a bit like a hippy site.

7.124. As far as the hotel and pub signs in the corner of the application site are concerned, it appears that the Council has the right to give permission to people to put those signs up. It would be surprising if that was something that was allowed to be done on a public open space or a piece of parkland. Surely signs like that would not be permitted on that category of land.

8. **Submissions for the Applicant**

8.1. In submissions produced before the Inquiry, the Applicant argued that for many years the land of the application site was a component part of a substantially larger parcel that was held in private ownership. During that time some of the land located outside the application site was, it seems, zoned as public open space in earlier local plans. The application site however was not part of that zone.

8.2. Specifically, the application site was a small proportion of a larger parcel acquired by the County Borough of Swansea in 1965. The application land was designated mainly for a proposed highway, in the form of the Newton Road By-pass, up to and beyond its acquisition by Swansea in 1965.

8.3. The Principal Objector (Swansea Council) has not demonstrated that the land was acquired or held either under the ***Open Spaces Act 1906*** or the ***Public Health Act 1875***. Indeed holding the land under one or other of those Acts would have been inconsistent with the stated aim of highway construction. No evidence has been produced by the Principal Objector to support the claim that the public use of the land has been made under a statutory right conferred by its having been held under either of those Acts.

8.4. Up until April 2012 there was no signage on the land which expressly or implicitly indicated ownership by any party, or gave permission to use the land for recreation. In April 2012 Swansea Council erected signs near two of the many entry points to the land, which purported to give revocable permission to use it for public recreation. There is no signage at any other points of entry.

8.5. Several years after they acquired the land, Swansea Council began to cut the grass on part of the site. The Applicant believes that that was done in recognition of the prominent location of the site, and the importance of tourism to the local economy. However the Council did nothing to actively promote the use of the land for recreation by the public. As a consequence the use of the land by the neighbourhood remained substantially the same under public ownership as it had been when it was privately owned.

8.6. Swansea Council neither planted shrubs nor laid out the land as a playing field, nor provided any sporting equipment or other amenities. In fact, the obvious raised manhole covers on the field, built when the highway was planned, act more as a hindrance to the full exploitation of the site, as well as detracting to some extent from its visual attractiveness. The Council has merely maintained the land on a care and maintenance basis for aesthetic reasons, rather than actively developing the site or encouraging its use.

8.7. Use by local people has been made of the whole of the land. Entrances to the land have never been barred to prevent access, even temporarily, nor have there been restrictions or conditions applied, nor any charges made for access to the land.

8.8. It is believed that use of the land by local people meets the tests of ***Section 15(3)*** of the ***Commons Act 2006***.

8.9. The Applicant's definition of *"neighbourhood"* had been based on the pronouncements of the courts in relevant cases. The boundary of the neighbourhood of Norton had been drawn to reflect considerations derived from those cases, notably the cohesiveness of the community recognised as Norton.

8.10. In summary this land can be distinguished from the ***Barkas*** case in several respects, including that the land was neither acquired nor held for public recreational purposes; its use was not under a statutory right, even under housing legislation for example. It was acquired principally for highway construction. The land has never been laid out as a municipal recreation ground to encourage its use, or for example as a sports field. Members of the neighbourhood have never used the land for sport with the Council's licence or permission. Within the requisite time frame there have never been any notices on the land, or other publicity to communicate either permissive use or local bylaws, at any of the multiple entrances to the land.

8.11. In opening at the Inquiry itself Dr Leek emphasised that the land on the application site had been regularly used by local people for legitimate sports and pastimes. The contention is that this use was 'as of right'. There had been about 115 evidence questionnaires completed by inhabitants of the neighbourhood. They showed general use by local people rather than some kind of sporadic trespass. The most common activity would be dog walking or general walking. The evidence of the forms clearly demonstrates the level and range of use that was made.

8.12. Dr Leek explained the slight revision and expansion which had been made to the area which was being suggested as the neighbourhood of Norton. The issue of identifying the neighbourhood appeared no longer to be in contention.

8.13. The plan which was sent round with the questionnaires which were completed by local people did not in fact show as included the small hook shaped piece of land in the north-west corner, albeit that that had been included as part of the site on the plan with the application itself. Clearly the plan that went round with the evidence questionnaires has some status. However the plan with the application did include that hook shaped small piece.

8.14. It might be noted that when land on the application site was put forward in the Local Development Plan context for possible development it was described by Swansea Council as *"grassed area with some woodland"*, and not for example as open space or a public recreation ground.

8.15. It appears that right back to the 1930s, as far as planning was concerned, part of the area subsequently acquired by Swansea Council was zoned for residential, part for open space and part for highway. Most of the area which back then was zoned as open space was later given over to allotments when acquired by Swansea Council. About three quarters of the application land was zoned for highway construction, and part of it would appear to have been intended for housing development.

8.16. It was not acquired by the Council under either the 1906 or the 1875 Acts. Therefore local people were not using the land pursuant to any kind of statutory right, or because the Council had provided the land under some sort of statutory power, but they were using the land as of right. There was no express or implied permission ever given to use the land.

8.17. The land was never fenced to prevent access, nor was access restricted nor any charges ever made. There are a number of means of access to the land, and the land has certainly been used for lawful sports and pastimes. The evidence shows frequent use for dog walking and the like, and a range of other activities. A lot of this activity had gone on for very significantly longer than the 20 years specifically relevant to the ***Commons Act*** proceedings.

8.18. There had originally been two objectors, one of whom was Councillor Child. He does not live in the neighbourhood, and his comments were not relevant; indeed they do not appear to support the Objector's case really. The non-observation of events by an infrequent observer is not evidence. His involvement in the proceedings can be dismissed as not relevant.

8.19. As far as the Council's objections are concerned, the Council appear to concede a level of use over the 20 year period. In their original objection they said that that was either with an implied licence or by statutory right. They are not clear themselves as to what the basis of their objection is. The Council have produced few documents to show how the land of the application site was originally acquired or held by them. It might be noted in passing that Swansea Council had made a super-human effort to tidy up the land in the last month or so before the Inquiry, with some six people there with power blowers, blowing the leaves off the grass into the trees. Also a nice bench and table had latterly appeared in the woodland part of the land.

8.20. In his final submissions Dr Leek noted that Swansea Council as Objector had now conceded that there had been 20 years use of this land for lawful sports and pastimes, by a significant number of inhabitants of the neighbourhood. The Objector had not proved that residents had been excluded from the land for any part of the relevant 20 year period. As far as the Council's case was concerned there had been very little paperwork provided, and a lot of reliance on other officers' memories etc.

8.21. Use of the land by schools had not been really proved, but anyway even if schools using the land had ever been permitted to use it, use of the land by residents of the neighbourhood was not. Such school use of the land as might have taken place did not interfere with the use by local residents. The same applied to such use as was made by campers associated with the medieval re-enactments. To the extent that they were on the land they did not interfere with the use of the land by local residents.

8.22. As for the important question as to whether there were implied rights or permission to people to use the land, the Objector has not shown that the land was acquired as open space under the ***1906 Act***. The drawings that Dr Leek had managed to find show that about 75% of the grassed area of the site was intended to be occupied by highway construction. That intended highway was shown in the 1938 planning scheme, and then through all local plans right through to 1998. Even thereafter some 80% of the grassed area of the application site was intended to be used as a car park.

8.23. The ***Open Spaces Act 1906*** in ***Section 10*** envisages that a local authority will hold land to which that provision applies on trust for open space purposes and for no other purpose. So this land could not possibly have been acquired under the ***Open Spaces Act*** by the Council. There clearly was another purpose here, to build a road. ***Section 10*** of the ***Open Spaces Act*** could not apply if the land was purchased for the inconsistent purpose of road construction. Clearly the land required for the highway could not have been purchased under the ***Open Spaces Act***.

8.24. Even if Swansea Council had held the land *pro tem*, pending the construction of the road, that cannot have created a statutory trust, as the trust only arises where land is actually held for public open space purposes.

8.25. Dr Leek had yet to understand under what exact power the land was acquired by Swansea Council. It clearly was not acquired for open space purposes, and nor has the Council shown any subsequent express appropriation under the ***Open Spaces Act***. There had been no by-law signs under either the 1875 or the 1906 Act.

8.26. As far as the zoning in the current Unitary Development Plan is concerned, zoning in a document like that is a question of planning policy, not the actual use of the land. Zoning for planning purposes is in no sense equivalent to appropriation. The development plan sets out the Council's broad intentions; it is not an appropriation of land for the purpose envisaged in those intentions. Nor is land appropriated or held for a purpose simply because that purpose is the use to which land is currently put.

8.27. The fundamental position must surely be that unless land is appropriated to some other purpose by a local authority it remains held for the purpose for which it was previously held, or originally acquired.

8.28. Turning to the present case, if Swansea had (say) zoned a substantial part of this land for open space purposes since 2006, that would not mean that the land had been appropriated to public open space. Swansea Council had a chance in 1974 to transfer the land to its Parks Committee. Instead they transferred it from Highways to the Estates Department. In fact later on there was a conscious decision by the Council to split the land, and transfer some to Leisure and some remaining with Estates, with no record produced as to the reason for that.

8.29. The various planning intentions which the Council had produced for the land are merely indicative. For example the 1989 planning map produced by the Council shows both A1 and R6 uses with no delineation between them. This is ambiguous and confusing. The same map also shows an inaccurate representation of the then proposed by-pass road. Then in 1998 there was a deferment of the road project. Here Swansea Council had an opportunity to appropriate the land to recreational activities, but they did not do so. Instead they included part of the land, a large part of it, as an intended car park. Then under the new Unitary Development Plan they designated the land as an EV24 site, not an HC23 site. This difference is very significant, and does not just reflect ownership by different committees of the Council. HC23 is in effect a policy which could be described as being 'owned' by the Council's Parks and Leisure Department, relating to land put to that sort of purpose. In contrast EV24 reflects land owned by the Council's Estates Department.

8.30. The explanatory text to policy EV24 does not in fact explain the basis under which particular pieces of land are given that designation. It is clear from the text that it could have been on landscape or nature conservation grounds, or local amenity benefit, or local character. It is not a designation which says that the land concerned is devoted to recreational use at all. Supporting paragraph 1.7.14 rather indicates that the intent of the policy is not to prevent appropriate socio- economic development. That is quite distinct from the policy provisions for HC23 sites, which are in community recreational use. There was obviously a deliberate policy to distinguish between the two types of land.

8.31. As far as the grassed part of the site is concerned, extensive use has been shown by the evidence. It may well be that the Council as owners have tolerated this use, but it cannot be said that they encouraged such use. There was no seating provided, nor any pitches, and the Council did not address deficiencies in the site. There were no signs around the land in the way that they are normally provided for the Council's parks. The Council did not identify this site in their Green Spaces Guide for the Mumbles area.

8.32. As far as dog fouling was concerned, there was a single sign near the site, close to only one of the multiple entrances to it. That sign was sited ambiguously, and not visible to users who were actually on the land. Yet those signs are ubiquitous throughout Swansea, as can be seen on the Mumbles seafront promenade. If the Council had intended that dog fouling sign to relate to use of the application site, it could have moved it to the permissive sign which it erected on the land fairly close

by in 2012. Furthermore the wording on the dog sign refers to 'the area', which obviously means the area along Norton Road. No witnesses have ever said that they requested that the Council erect a sign to do with dog fouling on the application land. No bins were ever provided on the land, as are required under the legislation relating to dog fouling. However a bin was provided further along the pavement of Norton Road.

8.33. In any event dog fouling signs, even if they did relate to the land, cannot be seen as having been equivalent to the giving of permission to use the land. There were no signs to label this land, especially the grassed area. The only signage on the land appeared after the objection had been made to the Local Development Plan's proposed allocation of the site. There have never been any by-law signs on the land. The signs that were erected for the two nearby hotels were a beneficial use for which the Council received payment. This is unlike the normal use of a public park, indeed it may signify a lack of commitment on the Council's part to the use of this land for recreation purposes.

8.34. It is true that the Council's Parks Department have cut the grass, but that does not imply that they were giving permission to use it. One should note that one of the criteria for the Council's policy designation EV24 relates to landscape significance, and it would be logical to cut this grass for cosmetic reasons. Cutting the grass does not signify active intent to encourage use of this land for lawful sports and pastimes.

8.35. As far as the medieval camps were concerned, it was clear that local people were not excluded, and no part of the present application site was within the area which people had to pay to get into. The fact that permission was given to actors to camp on the site is not relevant. They were not resident in the neighbourhood, and the whole business was incidental to the fair being held up at the Castle. In any event there was mutual deference between the local people and the campers, of the same kind that had arisen in the ***Redcar*** case which the House of Lords had pronounced upon.

8.36. The paths which go from the grassed area into the woodland were well established before any work was undertaken to improve them, and they were not created by Swansea Council. Also there was no encouragement by Swansea Council to use the grassed part of the site.

8.37. As far as the woods now managed by the Mumbles Development Trust are concerned, that Trust is a community company limited by guarantee. Swansea Council has no representative on its Board. The Mumbles Development Trust is not mandated by the people of Mumbles. If the Trust had been given a permission by the Council to do something on the land then that permission was given to it as a corporate body. Indeed there was not actually a management agreement between the Council and the Development Trust signed until 2014. Even if there had been some kind of permission involving Mumbles Development Trust, that does not

equate to permission given to the community of Norton. The actual agreement between the Trust and the Council was from February 2014.

8.38. Mr James had said that such an agreement had been on the cards since 2008. It seems therefore that we are being asked to accept that another agreement pre-dated the formal one, and that its terms were the same as the ones eventually agreed in 2014. That is hard to believe, and there is no proof of it. It is improbable that even if there was an informal agreement the terms remained unchanged, or that no wrangling took place, if it in fact took so long to sort the issue out and get the formal agreement entered into. Indeed there had been a remarkable inability by Swansea Council to turn up papers relevant to this case. The only document with any status really is the February 2014 agreement.

8.39. As for the footpaths on the site, Mr James had said that they were created by the Mumbles Development Trust. However the only piece of path created by the Trust was outside the application site, on the section in the woodland where steps were created. On the site itself the only thing done was to improve the existing paths in selected places. It is accepted that the instigation of the Mumbles Way opened up use to the rambling fraternity to an extent. They might well use the path as a transit route. However local residents use the path both for lawful sports and pastimes and for transit purposes. Witness evidence had been quite clear about local children playing in the woods, engaging in typical lawful sports and pastimes. So it is clear that use of the paths in the woodland has been made for both purposes by local people. Indeed local people generally get into the wood by walking across the grassed area. Use by local inhabitants is more likely to occur from the grass to the woodland, and there were no signs anywhere to encourage use of that kind.

8.40. As for the signs at the entry to the wood, the Council claims that these are permissive. However to be permissive they have to be clear and unambiguous which they are not. The signs seem to relate to the Mumbles Way paths. Also the signs are only at the ends of the path, and not in the woods. It also needs to be asked, who erected the signs? There is no evidence that Swansea Council had anything to do with the erection of the signs or made any contribution to them. The signs are coincident with the Mumbles Way path, both in their location and their timing. Swansea Council was a passive participant in this process throughout.

8.41. Also, what are the signs for? They are partly to advertise the organisations associated with the project. In that sense they are somewhat like the adverts which companies place in local papers. They clearly show that those organisations were supporting the Mumbles Way.

8.42. But Swansea Council did not put up signs around Castle Acre Field. The signs relating to the Mumbles Way path simply cannot be regarded as permissive in respect of use of the woodland, still less the remainder of the land, for lawful sports and pastimes.

8.43. As for the important ***Barkas*** case, the land there was held under recreational enabling legislation. Land of that kind would have been HC23 land in Swansea. It is clear that the land in ***Barkas*** looked like a recreation ground, with a pitch laid out for football. There were dog fouling notices at each entry. It was clearly fundamentally different from Castle Acre Green.

8.44. Our land here was not acquired or held under recreational enabling powers. Nor is the use that has been made of it similar to that in ***Barkas***. There are no pitches, seats, benches or facilities, or indeed dog bins.

8.45. Even Lord Carnwath in the ***Barkas*** case in paragraph 64 recognises that a local authority must validly and visibly commit the land to public recreation before it can be exempt from registration as a town or village green. In this present case the Council took money for the erection of hotel signs, and it also failed to advertise this land as any kind of open space. They even distinguished this land from other EV24 land which they do advertise on their map as open green space. Facts such as these clearly trump the existence of a dog bin on a pavement in the vicinity of one of the entrances to the present site.

8.46. It should also be noticed that the ***Barkas*** land was not dual purpose land. This land is also not like that which was the subject of the ***Beresford*** case, where the Supreme Court in ***Barkas*** said that the House of Lords had come to the wrong decision. The Supreme Court were not saying in that case that the grass cutting in ***Beresford*** implied permission. The land there was a sports arena, for which cutting the grass was critical. But cutting the grass in this present case does not indicate implied permission.

8.47. It is to be accepted that ***Barkas*** has raised the barrier for village green applicants in the case of local authority land. Indeed it may be thought that the very pieces of land which look least like village greens now seem to have become the most likely to be registrable. In the ***Barkas*** case it was clear that the land was intended for some kind of public recreational use right from its inception. That is quite unlike the present case, where the land seems to have been acquired for road building. Our land here was not acquired for public open space, nor was such a use intended from its inception. In fact the road building was the intended dominant use of the land right from the inception of the Council's ownership. It is not at all clear that Swansea Council had ever held this land under a statute enabling them to use the land for recreational purposes. They have never done anything to display that intention in relation to the land. This is quite unlike the situation in the ***Barkas*** and ***Beresford*** cases. The land in ***Barkas*** was provided under Housing Act legislation which permitted the provision of recreation grounds, and the land in ***Beresford*** was acquired and provided under the ***New Towns Act*** which, among many other purposes, would have permitted provision of the sports arena in that case. There is no similar background in the present case. There is no background power which conveys statutory powers to the Council to provide this land for recreation. One of the most important points to appreciate about the ***Barkas*** case is that it expressly recognises that not all local authority land is exempt from registration as a town or

village green. Castle Acre Green is an exemplar crying out for registration, as an archetypal village green which meets the statutory criteria.

9. THE CASE FOR THE OBJECTOR – EVIDENCE

9.1. ***Mrs Wendy Parkin*** is a legal executive employed as a Senior Lawyer in the Property Team of the City and County of Swansea. She said that the Council's records show that the application site was originally acquired by the Council's predecessor by a conveyance of 23rd July 1965. That conveyance does not recite the reason for the Council's acquisition of the site. She produced a minute from July 1964 which appeared to authorise the Borough Estate Agent at the time to negotiate for the acquisition of land between Norton Road and Oystermouth Castle. No copy of the plan submitted by the Borough Engineer and Surveyor, referred to in that minute, can be found. It appears from the minute that part of the site was acquired for highway purposes, and part for the purpose of holding as proposed open space land between Oystermouth Castle and Glenville Road.

9.2. She produced a copy of the Council's record card for the site which set out the history of the site's ownership by the Council. Such a card would normally set out the purpose of acquisition, and in this particular case the record card shows that the site was originally held by the Council's Highways Department and/or committee. The card also shows that since local government reorganisation in 1974 the land has been vested in the Council's Estate's Committee. It appears that no formal appropriation from one council purpose to another took place. The land is still owned by the Council's Estates Department, which is in fact now known as Corporate Property and Building Services. That department of the Council pays the Council's Parks Department to mow the grass on the site each year.

9.3. To all intents and purposes the site is being maintained by the Council so that the public can use it for recreation, just like any of the Council's parks, and indeed the original acquiring minutes refer to part of the land acquired under the 1965 conveyance as being for open space.

9.4. Under the Council's current Unitary Development Plan the site is designated as a *"Greenspace"* which is protected by Policy EV24. Under the proposed Local Development Plan, this site, along with various other sites in Swansea, has been withdrawn from the process of allocating potential development sites at present. At a future stage the Council will publish proposal maps that identify land allocations and settlement limits, mainly for housing proposals. There will then be public consultation about this.

9.5. The Council's objection to the application is supported by the fact that it took action in the early 2000s to erect notices under the ***Dogs (Fouling of Land) Act 1996*** (now repealed). That could only have been done under ***Section 1*** of the ***Act*** if the land in question was open to the air, and was land to which the public was entitled or permitted to have access with or without payment. She considered that this was entirely consistent with the Council's case that the land was allocated or

designated and dealt with by the Council as recreational space. That is further evidenced by the fact that the Council's Parks Department maintains the area by grass cutting at least 14 times a year, thereby allowing use of the land by the public at large.

9.6. *In cross-examination* Mrs Parkin agreed that someone had handwritten the word *"Highway"* onto the 1965 conveyance in the Council's record. She thought that was because it was the Council's Highways Committee that originally acquired the land. She thought that the reason for the land acquired in 1965 being coloured in two different colours on the conveyance plan (pink and blue) would be something to do with previous conveyances of that land; otherwise she could not say what the reason for it was. It was unlikely to be to do with a designation in a planning document. It was possible that the two areas may have been owned by different people in the past. The boundary between the pink and blue land is not an obvious line on the ground. She did nevertheless accept that there was a remarkable similarity between the boundary line between the pink and blue and a line which was apparent on the planning document from 1938 which Dr Leek had exhibited. However there was no explanation for this in the conveyance in 1965.

9.7. She agreed that it seemed fairly convincing that a plan from the 1960s which Dr Leek had found in the Council's records was the plan referred to by the Borough Engineer in the third paragraph of a report from 2nd July 1964, which had also been produced both by Dr Leek and Mrs Parkin.

9.8. As far as she was aware it was generally true that the old minutes of the Council's predecessor, and in particular the ratifying minutes, did not tend to refer to the acquisition power being used when land was acquired. She accepted that in this instance there was a note from the District Valuer (dated 17th May 1965) which gave the purpose of the acquisition as *"highways and other purposes"*. Often records do show somewhere which Act a piece of land was acquired under, but that is not always the case. There is no reference to the ***Open Spaces Act*** in the Council's terrier record. What we do know is that the land was acquired for highways and other purposes, but we do not know what the other purposes were. The land is now with the Council's Estates Committee.

9.9. However the records show that part of the land acquired in 1965 must since have been passed on to the Council's Parks and Leisure Committee. None of the land acquired in 1965 went to West Glamorgan County Council (then the Highway Authority) when it was formed in 1974. Everything then went to the new Swansea Council's Estates Committee. Subsequently, at an unknown date, part of the overall area of land was put under Parks and Leisure. There must have been something happening at the time within the Council to cause that to occur, but she did not know why it had happened. It might have been something to do with the other part of the larger site acquired in 1965 having allotments on it, but that is mere conjecture. Also it is not entirely allotments on the part of the 1965 land which was moved to the Council's Parks Department. None of that Parks Department land is included in the present application site.

9.10. There was no formal appropriation recorded from the previous council's Highways Department to the present Council's Estates Department. The Estates Department nowadays pay the Parks Department to cut the grass on the land. Mrs Parkin did not really know why the land should still be in Estates Committee ownership. The payment to the Parks Department is just to secure that the land is maintained. The Estates Department do not have their own people who cut grass or do anything like that.

9.11. The original objection had said that grass cutting commenced in the 1970s. Mrs Parkin had got that information from her instructing officer at that time. She believed she had an email confirming it. That must have been the case as she put it in the objection letter. It could have started around 1974 when land was transferred from the old Council's Highways Department to the new Estates Department. The Council would not have maintained the land if it was not being used, she thought.

9.12. She did not know if the grass verges of highways are cut by the Council's Parks Department. She also did not know whether the grass might have been cut in order to provide a reasonably attractive introduction into Mumbles.

9.13. She could not see that the Council would have been keeping up maintenance of this land if the public were not using it. However she accepted that it is a visible site as one enters Mumbles. She herself was not party to any decision to cut the grass; she had merely been speculating as to why the Council cut the grass on this site. She has not found any document explaining why the Council decided to cut the grass.

9.14. She accepted that there is no evidence that the Council or its predecessor purchased this land under either the ***Open Spaces Act*** or the ***Public Health Act 1875***.

9.15. As far as the planning documents which had been produced were concerned, she agreed that when a piece of land is re-designated in a plan, it does not in planning terms require an appropriation. Designation in a planning document is not an appropriation.

9.16. In planning terms the site is now covered by Policy EV24, which is for greenspace protection. It is not covered by HC23, which is to do with community recreation areas. Nevertheless she felt that it was justified to say that this land is similar to others of the Council's parks. She accepted that this site is not mentioned in the Council's publicity map for open green spaces in the Mumbles and surrounding area.

9.17. She knew that the site had been a candidate site for housing development. However she is not a planning lawyer; her understanding is that the site has been

withdrawn at present, and she does not know any more than that. She does not know why that was the case.

9.18. As far as the dog fouling signs were concerned, she accepted that the dog fouling legislation could apply to highway land within speed limit areas where the limit is below 40mph. She also accepted that on the dog fouling sign near the application site it refers to *"this area"*, and says that the area concerned is designated. She did not have any information as to what was meant by the reference to 'this area' as designated under the relevant Act.

9.19. She thought that there were other parks with signs in them like the one in the corner of this park for the Norton House Hotel. There may, for example, be a sign for the University in Singleton Park in Swansea.

9.20. *In re-examination* Mrs Parkin said that the 1938 planning document produced by the Applicant had been a plan showing intended policies. It did not show actual use. The 1965 note from the District Valuer referred to acquisition for highway and other purposes. She thought that the other purpose referred to was to preserve the open space zoning on part of the land being acquired. Her general understanding was that planning policy documents did not themselves change the basis on which local authorities hold or provide land.

9.21. ***Mr Adrian James*** is a Chartered Surveyor employed as Property Manager in the Corporate Property Strategic Estates section of the City and County of Swansea. He has held that position since November 2012.

9.22. In his evidence he noted that the application in this case defined a relevant neighbourhood of Norton. That is a sub-division of the electoral ward of West Cross, and coincides with a Census Output Area identified by the Office for National Statistics. He noted that the doctor's surgery, health centre and dentist referred to in the application are outside the claimed boundary of the neighbourhood.

9.23. The Applicant had submitted 115 evidence questionnaires in support of the application. Examination of those showed that 50 of the respondents had not used the site for lawful sports and pastimes for a minimum of 20 years. In addition 4 of the respondents who claim a minimum of 20 years use live outside the neighbourhood.

9.24. The Council's records show that the site was originally acquired by the Council's predecessor in 1965. It was acquired in connection with the proposed construction of a new highway, known variously as the Mumbles By-pass or the Norton By-pass.

9.25. He acknowledged a number of the historic documents which the Applicant had unearthed relating to the acquisition of the land by the Council's predecessor. Those documents referred to the acquisition of the site by the Council for the sum of £16,000 in 1965. The surviving records from 1965 were somewhat confused in a number of detailed respects, but it did appear that the correct general picture had emerged.

9.26. The western boundary of the site put forward in the application is in Mr James's view unusual, as it does not coincide with a physical boundary or any physical feature or demarcation on the ground. It does however coincide with the notional division in ownership of the land between the Council's Estates and Leisure Departments. He produced a plan showing that division. However any distinction between the application site and the contiguous land immediately to its west is artificial. A great many of the evidence questionnaires refer to access being gained to the site via a public footpath from Castle Road. That path does not bring one directly to the application site, but to the contiguous piece of land to the west.

9.27. The site was used on a number of occasions with the permission of the Council as a medieval camp site in connection with medieval re-enactment events at Oystermouth Castle. Those events took place in July each year from 1999 to 2002 inclusive, and were organised by the Council in conjunction with an events management company. Several of the evidence questionnaires refer to these events. Camping was permitted for one weekend only in association with the events. That use, with the express permission of the Council, is therefore clearly recalled by many people in the locality.

9.28. The southernmost part of the application site comprises an area of woodland. That area forms part of a wider area of woodland which is owned by the Council, and has been managed by the Mumbles Development Trust since about 2008, although legal completion of the management agreement did not take place until February 2014. The MDT has been in effective control of the woodland area since approximately 2006, and in accordance with the management agreement the general public have been afforded access to the woodland area. A clause in the 2014 agreement refers to management in the interests of recreation, education and nature conservation. Another clause provides that the MDT will cut back the hedgerows within the woodland in order to maintain public accessibility.

9.29. Grant money from the Forestry Commission has been spent in this area by MDT, in consultation with the Council's Parks Department. Works undertaken included the creation of a number of footpaths through the wooded area, including one specifically linking with and providing public access to the grassed area of the site. Mr James produced a photograph showing the path leading to the grassed area. Other informal desire-line paths give direct access from the woodland area to the grassed area.

9.30. The Council has made no distinction between the application site and the adjacent land in its ownership, including the wooded area, and has not at any time sought to prevent members of the public from gaining access to the site for the purpose of lawful recreation. The Council has maintained access to the site from the public highway at Norton Road; also from Castle Road; also from Mumbles Road via the woodland area comprised in the management agreement with MDT; and from the grounds of Oystermouth Castle.

9.31. Mr James produced photographs in particular of the access to the site from Mumbles Road, showing a sign adjacent to the access which (he said) clearly invites members of the public to access the area. Photographs were also produced of similar signs erected adjacent to the path leading to the site from Oystermouth Castle. There is at least one other such sign on the application site land.

9.32. In the early 2000s the Council's Cleansing Department, at the request of local inhabitants, erected close to the access to the site from Castle Acre and Norton Road a notice under the ***Dogs (Fouling of Land) Act 1996*** (now repealed). The Act only applied if the land in question was open to the air and was land to which the public was entitled or permitted to have access without payment.

9.33. In relation to the Town Map from 1955 which had been produced to the Inquiry, it is clear that there was a proposal for an area including the application site to become public open space in the second period of the plan. That Plan was reprinted in 1955. Mr James's researches led him to believe that the second period of the Plan began in 1961.

9.34. As to the erection of the dog sign, and why it was put up where it was on the lamppost near the Norton Road entrance, the Cleansing Department of the Council had told Mr James that they had received complaints about dog fouling on Castle Acre Field (the application site) and that the sign was put up in response. However unfortunately there was no written record of that.

9.35. As for the hotel sign in the corner of the application site, Mr James acknowledged that there had been one there for Norton House Hotel for some time. The Council had granted a licence to the previous owners of the Hotel. It is certainly true that money changes hands for an annual licence fee for such a sign. There had been another sign there for the Beaufort Arms as well. The licence fee in that case went unpaid and the Council removed the relevant sign.

9.36. *In cross-examination* Mr James confirmed that he had been in his present position since 2012. Prior to that he had worked for Welsh Water. Thus he had no personal memory of events before 2012 relevant to this case. Most of the enquiries he had made of colleagues were verbal ones so there was no written record.

9.37. He accepted that the application site was part of a considerably larger parcel of land which was acquired as a whole by the Council in 1965. The present application relates to only part of that land, and its boundary is unusual. This is the first town or village green application that he had seen which did not have an obvious physical boundary.

9.38. He could not explain the boundary between the land owned by the Council's Leisure Department and the other part owned by the Estates Department. It was a distinction drawn many years ago. The adjacent land owned by the Council is public open space, and paths lead from that onto the application site. However there is nothing on the ground to suggest that permission to use that land extends to the application site land.

9.39. There is a footpath from Castle Road to the land at the western corner of the site, but that does not go onto the site itself. However Mr James accepts there is no physical barrier preventing people walking from the end of that footpath to the western end of the application site. There is no boundary line nor any physical feature. He thought that the boundary drawn by the application was somewhat artificial.

9.40. He had not been employed by Swansea Council at the time when the medieval pageants took place, so everything he had said about that was from his researches with other officers of the Council. He had been told that the medieval campsite was part of the pageant. In other words that the site was used in connection with the medieval pageant, even if it was not a 'medieval campsite'. It was certainly a campsite though.

9.41. The agreement between the Council and the Mumbles Development Trust covered a considerably wider area than just the southern part of the present application site. An agreement existed in draft form back in 2008. Under that the Trust were allowed into occupation of the land, i.e. under the draft agreement. There were then ongoing discussions about the draft, but it was sufficient for the purposes of grants etc. that the Trust had been allowed onto the land. The formal agreement was in 2014. That was largely the same as had been agreed in draft in 2008, and covered the same physical site area, with largely the same obligations. He could not explain why it took 6 years to complete the agreement, in spite of his having read the files. It is not unusual for agreements of that kind to take long periods to be completed. There had been agreement in principle which allowed the Trust to get public money for its work.

9.42. None of that money was from Swansea Council. It was from the Forestry Commission, supplemented by the European Regional Fund from the European Union. He understood that there are separate management agreements for each site which the Development Trust manages. There are a number of other such sites.

9.43. It is relevant that the management agreement in its discussion of hedgerows includes an obligation to maintain the hedgerows and public accessibility.

9.44. The plans which he had produced showed that the land subject to the ***Commons Act*** application is vested in the Council's Estates Department and not its Parks Department. The Council's Parks Department is the department that leads on recreational and leisure issues. His own department had been involved in the negotiations with the Mumbles Development Trust; an officer in the team which Mr James now leads had been involved in the negotiations. However the Parks Department was the principal department which was interfacing with the Mumbles Development Trust. He himself had not come along in 2014 and said 'we must have an agreement here'. He accepted that no money had gone into the Development Trust scheme from Swansea Council, so it would not be untrue to observe that Swansea Council's involvement had been somewhat passive. Nevertheless he had been aware of the works required by the 2014 agreement.

9.45. The Mumbles Development Trust created a number of paths. By that he meant that they laid gravel with wood edgeboards on the land. It might be truer to say that they improved paths which were already there. Indeed he himself had already referred to other informal desire-line paths on the land. However the new steps created in the wood in effect constituted a new path, but outside the present application site.

9.46. He accepted that the Council's Leisure Department may have been keen on the creation of the Mumbles Way. The new or improved paths also allow people to come on a gravel path into the western end of the application site.

9.47. The claimed green is at one end of the claimed Norton neighbourhood. People coming there from the neighbourhood may not need therefore to come via Oystermouth Castle. However the Council saw the Mumbles Way path as enabling access to the general public, not just to people from the neighbourhood. He could not comment on how the Mumbles Development Trust came to choose which paths to improve.

9.48. As to the two distinct bases of ownership of the Council's land in this vicinity, there was no distinction in management or access terms. The distinctions between planning policies EV22 and HC23 are planning distinctions. HC23 refers to recreation areas for specific purposes. So there is a distinction in planning policy terms.

9.49. The access to the land from Mumbles Road is maintained by the Mumbles Development Trust, not by Swansea Council, under the management agreement. Nevertheless that access is on a path which previously existed. There is a sign by that access inviting the public to enter. There is another sign in the Oystermouth Castle woods, with a Mumbles Way marker on it, and another sign up near the Castle.

9.50. He did not know when these signs were erected, but 2007 would roughly accord with his understanding. He did not know whose idea the signs were. Signs like that often record grant funding. He accepted that there are no signs like this which encourage people to go onto the grassed area. The only signs are at the entrances to the woodland on the Mumbles Way. But they are adjacent to access points which lead to the present application site. There are no signs where one leaves the woods to get onto the grassed area.

9.51. As for the dog fouling signs, his understanding was that requests were made by local residents in the early 2000s. He was only recording the recollections of officers which had been given to him. There were no documentary records. He had been informed by an officer of the Cleansing Department that that person had acted on complaints specifically in relation to Castle Acre Field. Mr James did not think that all dogs would enter the field by the entrance near the sign which was erected. He could not comment on why further signs were not put up at other entrances. Perhaps the cost of erecting lots of signs and poles would have been prohibitive. The signs relating to dog fouling pre-date the permissive signs erected in 2012.

9.52. *In re-examination* Mr James confirmed that the Council makes no distinction between the different areas in the vicinity of the application site, coloured differently on the plan which he had produced. Only the allotment gardens owned by the Council are treated in any way differently. Leaving aside the allotments, there are no physical features on the ground which distinguish the two different areas of Council ownership, belonging either to the Estates or the Parks Department. The whole of the present application site belongs to the Estates Department; nevertheless a significant part of the boundary between that department's land and the Parks or Leisure Department's land has no physical feature on the ground.

9.53. There had been substantial agreement between Swansea Council and the Mumbles Development Trust well before the formal agreement was signed. In effect a licence was granted back in 2007 or so, well before the formal agreement in 2014. The Council did not receive any money under the licence, nor pay any contribution to the scheme. The access points to the area covered by the scheme are maintained and marked by the Mumbles Development Trust. Not all the paths on the site which had been subject to some improvement formed part of or led directly to the Mumbles Way.

9.54. As far as the dog fouling sign on the Norton Road lamppost was concerned, he assumed that the reference on the sign to *"this area"* is a reference to the field in front of the sign.

9.55. ***Mr Nigel Jones*** said that he had been employed by the City and County of Swansea and its predecessor Swansea City Council since December 1985. Since

1987 he had been Special Events Manager, whose responsibility among other duties included the management and support of special events that take place within the city's boundaries.

9.56. He was able to give evidence both from his own memory of events and from reviewing notes and correspondence on the Council's relevant files. Between 1999 and 2002 inclusive, he had been involved in assisting the Friends of Oystermouth Castle, and in particular working with Dr Roger Parmiter, to provide help and assistance on behalf of the Council to support the medieval re-enactments and campsites that took place at Oystermouth Castle. As part of the overall weekend experience the Council gave formal permission to the re-enactors to stage an authentic medieval campsite, which was located on the application site on each weekend that the event was staged. Mr Jones produced copies of some of the promotional posters in respect of these events.

9.57. The Council's Parks section dealt with these bookings. The standard practice at the time would have included various exchanges of documentation such as booking forms, legal indemnities, evidence of appropriate public liability insurance etc., to allow the re-enactors to camp on the site. The number of participants varied from year to year, but Mr Jones recollected somewhere around 50 – 70 people camping there on each occasion, usually over a period from the Friday night to the Monday morning.

9.58. Due to pressures on Council storage space, and given that the last of these events took place over 12 years ago, the files would now have been destroyed as per Council protocols for file management. However he had visited each of these events and could confirm that the Council worked with the organisers to allow the events to take place, and monitored the overall control of the campsite, which included items such as damage, litter and waste clearance, and any vehicle access, and noise management.

9.59. It was his understanding that no money changed hands for the Friends of Oystermouth Castle to be able to use the application site. The people involved had to fill a form out to do with indemnities, risk assessments etc. There are also terms in relation to noise. The Council staff did not tell the campers where to go.

9.60. Some of them camped at Oystermouth Castle itself, and others down below, on the application site. He himself did not deal with where on Castle Acre they camped. He thought they camped mostly by the woods along the south side of the site. They had been higher up in the second year, he recalled. Their number decreased in the third and fourth years of the event.

9.61. As for the hotel sign in the corner of the application site, he confirmed that there are other arrangements whereby commercial signs are put up on Council land, such as in Singleton Park in Swansea.

9.62. *In cross-examination* Mr Jones said that he deals on behalf of the Council with all sorts of events, some of them with 100,000 or more people attending, right down to small events.

9.63. Roger Parmiter and his associates were not particularly experienced with managing events. The Council's officers therefore gave them a little bit of financial advice in the first year. Mr Jones himself visited for a few minutes in the first year. His memory is pretty good, but he has no files over 7 years old. He was sure that there were forms filled out, for example to deal with public liability. One would not keep those forms for 12 years. However there are still two members of staff within the department who were involved with that work.

9.64. He accepted that some of the publicity material he had produced referred to 'authentic medieval campsites'. Castle Acre Green was not mentioned in those posters or advertisements. He accepted that the medieval sites were in the Castle grounds.

9.65. The people camping on Castle Acre Green were nevertheless among the re-enactors. Those re-enactors came from far and wide. Certainly some slept up at the Castle, and some of those had fully traditional tents. However what were referred to as 'plastic' tents were down in the field at Castle Acre Green, on the right hand side going down; they were on the border of the woodland. People involved would walk up and down to and from the Castle through the woods. Those people camping in the Castle Acre Green field were allowed to go there. The organisers had taken quite a risk in putting this event on.

9.66. The medieval campsite was part of the event in a formal sense, but it was not on Castle Acre Green. The medieval campsite was entirely up in the Castle grounds. Outside that, down on Castle Acre Green was what was referred to as the 'plastic' camp with, for example, VW campervans and the like.

9.67. Most of his own personal attention had been in relation to the site up at the Castle. But nevertheless the Parks Department had to have agreements covering the whole. But he accepted that Castle Acre Green was peripheral to the operation. His understanding was that there were separate agreements and indemnity provisions etc., for the campers down below from those for the medieval event. Anyone camping overnight had to sign an indemnity in order to protect the Council.

9.68. The inside of the Castle and the camps up near the Castle were covered under one agreement. The organisers of that had to do a risk assessment and get public liability insurance. There had been discussions about that with Swansea Council.

10. **The Submissions for the Objector**

10.1. In its case summary produced before the Inquiry, the Objector noted that the application had been made under ***Section 15(3)*** of the ***2006 Act***, on the basis that lawful sports and pastimes use had been made of the land for a period of at least 20 years from 1992 until 12th April 2012, when the Council erected notices giving formal permission to use the land for recreation.

10.2. The claim in relation to the neighbourhood of Norton was noted. It was also noted that the questionnaires accompanying the application indicated that recreational use of the land had been made by a significant number of people living in and around the locality for many years. While some of them did not give actual evidence of 20 or more years of use, many of them did so, giving evidence of such use from as early as the 1930s.

10.3. The land was acquired by the Council's predecessor by a conveyance dated 23rd July 1965, originally in connection with the proposed construction of a new highway known as the Mumbles By-pass or the Norton By-pass. The western boundary of the application site is unusual in that it does not coincide with any physical boundary or physical feature on the ground. Also the southernmost portion of the land comprises an area of woodland which forms part of a wider area of woodland also owned by the Council and managed by the Mumbles Development Trust under a management agreement since 2006, albeit only formalised in 2014.

10.4. The proposed highway scheme was never completed, and was ultimately deleted from the Swansea Local Plan. The application land is now designated as an urban green space subject to Policy EV24 of the Swansea Unitary Development Plan. Consequently the land originally required for the highway works, together with further land to the west of the application land, has since the 1970s been left as public open space and maintained as such by the Council's Parks Department. Later on the land was used on a number of occasions with the permission of the Council as a medieval campsite in connection with medieval re-enactment events at Oystermouth Castle.

10.5. No distinction has been made by the Council between the application land and the adjacent land in its ownership, including the wooded area. At all times access to the public has been permitted to the application land and the adjacent area for the purposes of lawful recreation. Indeed the Council has maintained access to the land from the public highway at Norton Road, from Castle Road, and from Mumbles Road via the woodland area, and from the grounds of Oystermouth Castle.

10.6. No formal paths had been constructed on the part of the land laid to grass, but formal paths had been created through the woodland part, and these lead onto the grassed area. The land is often used by the inhabitants of Norton as a shortcut to gain access to the shops in Mumbles, or to the nearby allotments.

10.7. Between 2004 and 2006 the Council erected notices prohibiting fouling of the land by dogs being walked on the land. That was done as a result of complaints received by the Council from members of the public.

10.8. Notice of the town or village green application was formally served on the Council as landowner on 4th January 2013, and an objection was duly lodged against it in accordance with the appropriate regulations. It is common ground that any use of the land was by consent from 12th April 2012 onwards, after the Council had erected signs granting permission to use the land for recreation. The issue therefore is whether the land was used by inhabitants of the neighbourhood as of right for a period of 20 years before that date.

10.9. The burden of proof is on the Applicant in respect of all the statutory criteria. It is conceded that on the evidence put forward in the application the Applicant can establish that a significant number of them have indulged in lawful sports and pastimes on the land for a period of at least 20 years. It is also conceded that the reference to 'neighbourhood' in the ***2006 Act*** has materially relaxed the previous restrictions relating to 'locality', with the result that the Applicant's chosen neighbourhood of Norton, situated in the locality of the West Cross Electoral Ward, will most probably satisfy the requirement for a neighbourhood.

10.10. However while the Council accepts that the site is an area of open space to which the public have had and continue to have access, the Council maintains that such access is enjoyed either by virtue of an implied licence or by virtue of a right to enjoy it under the ***Open Spaces Act 1906*** or the ***Public Health Act 1875***. As such the public have the statutory right to use the land as a public open space, unless and until such a right is determined in accordance with other legislation.

10.11. Thus, rather than there being public use of this land as of right, any use here had been by right granted under statute. So the requirements of the ***Commons Act*** are not satisfied, in that although the inhabitants might have indulged in lawful sports and pastimes, they have not done so as of right for a period of at least 20 years. The Council relies on the decision of the Supreme Court in ***R (Barkas) v North Yorkshire CC*** [2014] UKSC 31.

10.12. In addition, insofar as the land is or has been used for educational purposes by schools in the localities of West Cross and Oystermouth, those schools are controlled by the Council as education authority for the area, and such use of the land has at all times been with the express or implied permission of the Council as landowner.

10.13. Furthermore, insofar as part of the land in the wooded area is managed by the Mumbles Development Trust, that too would have been used by members of the public by the express or implied permission of the Trust under its management

agreement with the Council. Also insofar as members of the public have merely used the land as a means of access to other land beyond its boundary, such user would not meet the statutory tests. As a result the requirements of the ***Commons Act*** are not satisfied.

10.14. In further submissions at the commencement of the Inquiry it was noted that the application site land has various access points, and that it had been acquired by the Council's predecessor as a result of a 1965 conveyance. The site was originally acquired for a highway by-pass, but the land as a whole which was acquired at that time included land acquired for open space.

10.15. The western boundary of the present application site does not coincide with any physical boundary on the ground. The southernmost part of the application land is in woodland, and includes part of the site covered by a management agreement with the Mumbles Development Trust.

10.16. The highway scheme affecting the application land was deleted from the Council's Local Plan in 1998. The site is now designated as an open space in the development plan. However the land has effectively, since the 1960s, been left as open space and maintained by the Council's Parks Department.

10.17. The land had been used on a number of occasions in the 1990s and following years as a medieval campsite with permission from the Council. More generally the Council has maintained open access to the land. There are no formal paths on the grass, but there are in the woodland part, and the land is used as a shortcut.

10.18. The main question in this case is whether the land was used as of right for the 20 years up to April 2012. While the Council accepts that this has been an area of open land which has been used by local people, that has either been by implied licence or under the ***Public Health Act*** or ***Open Spaces Act***. These arguments are put in the alternative. It is also the case that the notices erected to do with dog fouling implicitly permitted use to be made of this land. The upshot of it all is that ***Section 15(3)*** is not satisfied in this case.

10.19. Although the witnesses called for the Council do not include the Head of the local school, nevertheless use of this land by the school has been with the express or implied permission of the Council as landowner. In the case of the medieval campsite use, that had been with express permission from the Council.

10.20. As had been mentioned earlier, part of the land consisted of the wooded area managed by the Mumbles Development Trust under agreement with the Council. Against all this background the requirements of the ***Commons Act*** could not be satisfied.

10.21. In closing submissions on behalf of the Objector I was referred to the case of ***Mann v Somerset County Council*** (2012) EWHC on the question of implied permission. That case suggested that an owner must do something on his land to show that he is exercising his rights over his land and that the public's use by his leave relies on there having been a positive act by the owner vis a vis the public, although notice is not necessary provided that the circumstances relied on allow the inference to be drawn that there has been implied consent. Although the facts in that case were a little more extreme, in this present case there are facts which give rise to the implication of permission being granted to the public to use the land. As far as a significant part of the land is concerned, there was a grant of a licence over the land to the Mumbles Development Trust. The purpose of it is apparent from the eventually formalised licence which Mr James had produced as a document. Clearly however there was an unwritten licence before the 2014 formalised version. It was part of the purpose of that agreement, for example in the hedgerow clause, that things should be done on the land that facilitated public use. It was accepted however that the grassy part of the present application site is not within the MDT agreement. Nevertheless that agreement operated in effect from about 2006. And it is common ground that notices were erected by the Mumbles Development Trust, or in association with them, from about 2007 which encouraged access to the land. The notice by the Mumbles Road entrance made it clear that permission was being granted to use the land.

10.22. A second act of implied permission was the granting of licences to the battle re-enactors. That was done by written agreements. It matters not what was the nature of the tents that were erected on the application site. Those events were regular occurrences between 1999 and 2002 inclusive.

10.23. The third act of implied giving of permission was the granting of licences for signs to the hotel and a pub for payment. All of this showed that the Council were exercising control over the land.

10.24. The fourth instance making clear that implied permission was being granted was the erection of a dog fouling notice. It was obvious to anyone approaching the principal entrance to this land that this notice was there for them to see. The mere fact that the sign is on a lamppost just off the land is neither here nor there. Similarly the nearby dog poo bin being off the application land is neither here nor there. These things showed that access to the land was by permission. And then finally in April 2012 notices were erected giving formal permission to the public to use the land.

10.25. Reference was made to the unreported case of ***Oxy-Electric v Zainuddin*** (1990). In that case it had been held that where a local authority passes a resolution to do something that would only be valid if there were a statutory appropriation of the land to a new purpose, such an appropriation can be inferred from the resolution.

10.26. I was also referred to a number of other reports by inspectors who had held inquiries into applications under the ***Commons Act*** in circumstances analogous to

the current ones. Among the points referred to was the power, at present to be found in ***Section 120(2)*** of the ***Local Government Act 1972*** for local authorities who have acquired land for one of their purposes to use such land, until required for the purpose of the acquisition, for the purpose of any of the functions of the local authority. It is clear that a provision to that effect was also in force under earlier local government legislation, including ***Section 158*** of the ***Local Government Act 1933***. Those reports included extensive discussion of the circumstances in which there could take place either implicit appropriation of land to purposes such as open space, or the implied grant of permission to local people to use such land. I do not set out the details of those other inspectors' reports in this Report.

10.27. As far as the planning situation is concerned, it is clear that at least all of the land to the south of the then proposed road was envisaged by the 1955 Town Plan as being developed as public open space. Later on in the 1989 Local Plan policies of an open space nature were extended northwards beyond the line of the intended road. The land was subject either to a policy relating to allotments, or a policy (R6) in relation to informal open space.

10.28. Then in the 1999 revision to the Local Plan there were two relevant policies, one of which envisaged use of a large part of the site as a car park, and the other as a landscape protection area.

10.29. In any event, whether for planning or financial reasons, the designation of part of the application site for car parking has now gone. The current UDP policy for the site covers the entirety of the site. Thus, at the latest by 2008, there must have been an implied appropriation to open space purposes. By virtue of the adoption of the UDP in 2008 there was an implied appropriation, so that the ***1906 Act*** would have applied to the site. There therefore could have been no use by local people *"as of right"*.

10.30. The ***Barkas*** case and its decision by the Supreme Court entirely support the Council's arguments in the present case. It would be ridiculous to see the public using this land as being trespassers. The Council never took any steps to discourage public use of this land, but in fact to encourage it. Extensive elements of the ***Barkas*** judgments, both by Lord Neuberger and Lord Carnwath need to be read, and entirely support the Council's case. If the question is whether people on the land between 1992 and 2012 were trespassers, the answer is clearly *"No"*.

10.31. It is accepted that open land belonging to local authorities is not automatically exempt from registration. But it is going to be rare for such land to be registrable. This present case is almost a paradigm case of an implied trust under the ***1906 Act***. Whatever the boundary line is between cases where local authority land is capable of being registered under the ***Commons Act***, and cases where, following the ***Barkas*** principles, such land is not registrable, we are nowhere near that boundary line in the present case. It is not for the Objector to have to establish where that

boundary line is. It could depend on the nature of the land, such as in the ***Oxford City Council v Oxfordshire County Council (Trap Grounds)*** case. Or it could arise where land had been expressly acquired for a different purpose, for example for highways, and nothing else at all resolved in relation to the land. However it is not for the Objector to have to distinguish ***Barkas***. This case falls fair and square within the ***Barkas*** principles, and the land should not be registered under the ***Commons Act.***

10.32. Reference was also made to extensive quotations from the judgment of the High Court in the case of ***Naylor v Essex County Council*** [2014] EWHC 2560 (Admin). It was suggested that this judgment also supports the case of the Objector in the present dispute.

11. DISCUSSION AND RECOMMENDATION

11.1. The application in this case was made under ***Subsection (3)*** of ***Section 15*** of the ***Commons Act 2006***. That section applies where:

> *"(a) a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years; and*
> *(b) they ceased to do so before the time of the application but after the commencement of this section; and*
> *(c) the application is made within the period of two years beginning with the cessation referred to in paragraph (b). "*

The application was dated 28th March 2011, and stamped as received by the Council as Registration Authority on the following day, 29th March 2011. The latter date therefore is the 'time of the application'. The application states that use of the claimed land 'as of right' ceased on 21st April 2009, which was less than two years before the time of the application. 21st April 2009 is therefore the date from which the relevant 20 year period needs to be measured (backwards).

The Facts

11.2. In this case there was significant dispute in relation to some of the underlying factual background as to the history and extent of the use of this site over the relevant years. The Objectors correctly took the point that the law in this field puts the onus on an applicant to prove and therefore justify his case that the various aspects of the statutory criteria set out in ***Section 15(3)*** have in reality been met on the piece of land concerned.

11.3. To the extent that any of the facts were in dispute in this case, it is necessary to reach a judgment as to the disputed aspects of the evidence given, insofar as that evidence was relevant to the determination whether those statutory criteria for registration have been met or not.

11.4. Where there were any material differences, or questions over points of fact, the legal position is quite clear that they must be resolved by myself and the Registration Authority on the balance of probabilities from the totality of the evidence available. In doing this one must also bear in mind the point, canvassed briefly at the Inquiry itself (and mentioned by me earlier in this Report) that more weight will (in principle) generally be accorded to evidence given in person by witnesses who have been subjected to cross-examination, and questioning by me, than would necessarily be the case for written statements (particularly 'pro forma' statements), questionnaires and the like, which have not been subjected to any such opportunity of challenge.

11.5. I do not think that the nature of the evidence given to me in this case necessitates my setting out in my Report, in a formal, preliminary way, a series of 'findings of fact'. Rather, what I propose to do, before explaining my overall conclusions, is to consider in turn the various particular aspects of the statutory test under ***Section 15(3)*** of the ***2006 Act***, and to assess how my conclusions (on the balance of probabilities) on the facts of this case relate to those aspects. It should not however be assumed that any facts I mention under one heading are only relevant to that heading. I have taken into account the totality of the underlying facts in reaching my conclusions under all the headings, and (of course) in reaching my overall conclusions as well.

*"**Locality**"* **or** ***"Neighbourhood within a Locality"***

11.6. In the event, by the time of the Inquiry which I held, there was no real dispute between the parties in relation to this aspect of the statutory criteria. The application had originally been framed with reference to the *"neighbourhood of Norton"*, in the *"locality of the West Cross Electoral Ward"*. The suggested boundaries of the neighbourhood of Norton were shown on a plan accompanying the application.

11.7. At the Inquiry the Applicant maintained the view that the application was in respect of the use of the land by the inhabitants of Norton, but produced a plan showing a slightly enlarged (on its north-west corner) boundary for that neighbourhood. The Objector in the event took no issue with this enlargement, or with the identification of Norton as the appropriate neighbourhood.

11.8. In my judgment this revised stance on the part of the Objector was both eminently sensible, and correct. Norton is clearly a part of the overall Mumbles area of the City and County which has its own distinct identity, and of course its name. People regard themselves as living 'in Norton', and it quite clearly has a cohesive character as a particular neighbourhood, even if (as is commonly the case) its

precise boundaries at its outer edges could be the subject of debate or minor disagreement.

11.9. It seemed to me that the revised boundaries for the neighbourhood of Norton put forward by the Applicant in his documents produced for the Inquiry were entirely reasonable and understandable ones, and related to the evidence provided in terms of users of the claimed green.

11.10. Once it is clear that there is a valid 'neighbourhood' for the purposes of an application, it seems to me that very much less significance then attaches to the rigorous identification of the 'locality' in which the 'neighbourhood' sits. This is especially so, given that there is judicial authority at the very highest level to the effect that a 'neighbourhood' can straddle the boundaries of more than one 'locality'.

11.11. In this case the Applicant identified the relevant 'locality' as the West Cross Electoral Ward. That certainly is an area or division of the country which is known to the law, but I have some professional reservations about regarding inherently ephemeral and changeable areas (albeit legally recognised ones) such as the electoral wards for unitary authorities, as 'localities' for the purposes of a piece of legislation (the ***Commons Act***) which turns on consistent patterns of activity over a period of 20 years or more.

11.12. Although no issue was taken about this between the parties at the Inquiry, I note from various of the larger scale maps and plans provided for the inquiry that there clearly exists a legally defined Community of Mumbles, within whose area the suggested neighbourhood of Norton appears entirely to be contained.

11.13. It was also obvious from documents, and observations at the time of the Inquiry, that there exists a Mumbles Community Council to serve that area. On the face of it, the legally defined area of that Community would appear to me to be a much more appropriate 'locality' than a relatively ephemeral 'unitary level' electoral ward.

11.14. In any event, I note from evidence which I was given that the whole area of Norton clearly sits within the (legally defined) area of the City and County of Swansea, and that even before local government reorganisation in 1974 it had sat for many decades within the (legally defined) area of the old County Borough of Swansea. There is thus, in my view, no doubt that the identified 'neighbourhood' of Norton sits, and for all material purposes has sat, within a legally significant 'locality' which accords with the interpretation which the courts have chosen to give to that term.

***"A Significant Number of the Inhabitants"* [of the neighbourhood]**

11.15. Once again, although it originally appeared that this was a matter of contention, by the time of the Inquiry the Objector had conceded that the Applicant was able to show that a significant number of local inhabitants from the neighbourhood had used the land over the requisite period.

"Lawful sports and pastimes"

11.16. Similarly, before the Inquiry itself, the Objector had conceded that those local inhabitants had indulged in 'lawful sports and pastimes' on this piece of open land.

"For a period of at least 20 years"

11.17. It was a matter of agreement between the parties, this being an application brought under ***Subsection (3)*** of ***Section 15*** of the ***2006 Act***, that the 20 year period to be considered was the one ending when 'permissive' signs were erected on the land on 12th April 2012. It was further conceded by the Objector, in its Case Summary for the purposes of the Inquiry, that the Applicant's evidence could be seen as substantiating the claim that a significant number of the inhabitants of the claimed neighbourhood had indeed indulged in lawful sports and pastimes on the application site for at least the requisite period of 20 years.

"On the land"

11.18. It appeared to me, both from the evidence which was presented, and from examination of the site on my site inspection, that the boundaries of the application site had been set in a perfectly reasonable and acceptable way. Some of the Objector's witnesses criticised the drawing of the extreme western (very short) boundary of the application site at a point short of where the narrow open grassed area logically stopped, a little further to the west up the hill. It is true that nothing on the ground really marks the application site's western boundary, but as a matter of fact (and the evidence) it does appear to coincide with the boundary between the land technically 'administered' by the Objector Council's Estates Department, and that administered by the Leisure (or Parks) Department. It seems to me therefore that the drawing of the application site's western boundary was reasonable, and understandable. Also in the event no submissions were put forward at the Inquiry on behalf of the Objector suggesting that the drawing of the site's western boundary caused legal difficulties in terms of the registrability of the application site, if all the other statutory criteria were met.

11.19. This last point is also true in respect of the application site's southern boundary, in spite of its having been the subject of some apparent critical comment in the proofs of evidence lodged on behalf of the Objector. The long southern boundary is wholly within the woodland at the southern edge of the site, and for almost its entire length the application site land abuts to its south other woodland, also in the

ownership of the City and County of Swansea, which stretches up (and southwards) towards Oystermouth Castle.

11.20. On the other hand it was convincingly explained in evidence for the Applicant that the boundary chosen for the application site was an historic one, traces of which can still be seen on the ground, and that did in fact appear to be the case when I conducted my detailed site inspection, in the company of representatives from both sides. Given these facts, and that no substantive point was taken in relation to this aspect in the Objector's submissions to the Inquiry, I see no difficulty in accepting that the application site's southern boundary is a reasonable and acceptable one.

11.21. The other issue which arose in relation to the application site's boundaries is of an entirely different nature. It was completely clear, from then plan forming part of the application, that the application site included, at the north western corner of its northern part, a 'hook-shaped' piece of land, which in fact includes one of the main entrances to the land, close to the junction of Norton Road and the street called Castle Acre.

11.22. Yet for reasons which remained unclear to me the plan circulated with the Evidence Questionnaires – which were eventually completed by some 115 local inhabitants – entirely *excluded* that hook-shaped part of the land. It could thus be said, quite fairly, that none of the evidence contained in those completed questionnaires went in any way towards establishing evidence of long-standing 'lawful sports and pastimes;' use by local people on the hook-shaped area. That must be correct.

11.23. However it became apparent at the Inquiry that the omission of the 'hook-shaped' area from the Evidence Questionnaires plan was in effect a mistake, for which there was no real logical justification or explanation. It was also quite clear, from all of the oral evidence to the Inquiry, that there was no distinction between the way the small 'hook-shaped' area had been used by local people, and the use they made of all of the rest of the grassed area. Indeed it was clear that the 'hook-shaped' area, albeit small, is a significant and important part of the whole site, in terms of its use.

11.24. No point was taken on behalf of the Objector at the Inquiry in relation to this aspect of the case. Given that, and the fact that the site plan forming part of the application clearly shows the site as *including* the hook-shaped area, the view which I have formed is that the application should be considered in relation to the whole area covered by the application site plan. In other words, it should be understood as correctly *including* the hook-shaped area which I have referred to.

"As of right"

11.25. In the event, the only substantive issue remaining between the parties by the time of the Inquiry turned upon the legal significance of these three words in the statutory criteria, in the context of the evidence in this case. This is not especially surprising, as the concept of use of land 'as of right', particularly in circumstances where the land concerned belongs to a local or other public authority, has been the subject, at least in part, of a significant proportion of all the reported litigation in the field of 'town or village green' law.

11.26. In essence the eventual position reached here is that the Objector, the Council as landowner, concedes that local people from Norton have indeed been using the application site for lawful sports and pastimes, for more than 20 years up to April 2012, but says that they have been doing so either by implied permission, or possibly 'by right' as the exercise of statutory powers by the Council would have given the public the right to be on the land. Hence, the Objector argues, local people were not using the land 'as of right', which requires people to have been on the land, using it ***as if*** they had the right to be there, when in fact they did not.

11.27. Far and away the current leading case on this topic is the judgment of the Supreme Court in the case of ***R (Barkas) v North Yorkshire County Council*** [2014] UKSC 31, and I was referred to a large number of the paragraphs in that judgment by both sides in this present case, particularly by Counsel for the Objector.

11.28. The facts in ***Barkas*** were somewhat different from those at Castle Acre Green, in that the land concerned had been deliberately laid out as a recreation ground, within what had originally been a council housing estate of the traditional kind, pursuant to statutory powers to do just such a thing, in that case under the ***Housing Act 1936***. However the two substantive judgments of the Supreme Court, given by Lord Neuberger and Lord Carnwath, range considerably more widely than just in relation to ***Housing Act*** recreation grounds, and include a specific, unanimous finding of the court that the previous, often cited decision of the House of Lords in ***R (Beresford) v Sunderland City Council*** [2004] 1 AC 889 was, in substance, wrong.

11.29. I was also invited to give consideration to a considerable number of passages from the more recent judgment of the High Court in the case of ***Naylor v Essex County Council*** [2014] EWHC 2560 (Admin) – a case with which I am familiar, having (as it happens) been the Inspector whose reasoning and recommendation were in the event upheld by the judgment of the Court.

11.30. I have read, and re-read, and carefully considered the whole of the judgments of the Supreme Court in ***Barkas***. I do not propose to set out in this Report lengthy quotations from those judgments. A short summary of the main point decided by the Court might be that where a local or public authority, having statutory powers to do so, has deliberately provided a piece of land for public recreational purposes,

it can be taken to have 'appropriated' the land to such purposes, even if it has not gone through a formal process of appropriation under ***Section 122*** of the ***Local Government Act 1972***. The (local) public using such land recreationally are not there as trespassers, or *"as of right"*; they are using the land 'with permission' or 'by right', in the way the owning authority envisaged that they would.

11.31. Although I have considered it carefully, it does not seem to me that the judgment in ***Naylor v Essex*** adds anything significant for the purposes of the present case beyond what can be gleaned from ***Barkas*** – not least because the Essex case turned on a somewhat unusual factual situation, where the evidence led to the conclusion that the land concerned (which was in private ownership) had been managed or controlled by the District Council for the area concerned, under specific powers to do just that, under ***Section 9*** of the ***Open Spaces Act 1906***, or some analogous provision. The Council concerned had erected, and replaced, 'dog poo bins' on the land involved, as well as generally maintaining it, picking litter from it etc.

11.32. An important factor to be borne in mind in relation to ***Barkas*** is that the Supreme Court very specifically did *not* say that its judgment meant that no open land belonging to local or public authorities can ever be registered as 'town or village green', if the statutory criteria are otherwise met. I have in mind in particular paragraph 66 of Lord Carnwath's judgment, but it is in my view completely clear that Lord Neuberger, in the other substantive judgment, was in agreement on that point. It was also specifically accepted at my Inquiry on behalf of the Objector that open land belonging to a local authority is not automatically exempt from registration.

11.33. With that in mind it seemed to me important to seek to establish what, in the light of ***Barkas***, might be the criteria or considerations which would go to determine whether a particular piece of local-authority-owned open land was or was not effectively 'exempt' from registration; and I asked the parties, in particular counsel for the Objector, to assist me with submissions as to what those criteria or considerations should be, to enable a logical boundary to be drawn between the two types of situation, leading to registrability, or non-registrability, as the case may be.

11.34. The relevant submission in the event made on behalf of the Objector was, in effect, that wherever that boundary line might be, this case is nowhere near it; it was not for the Objector to have to establish exactly where the boundary line is. It was said that the considerations could relate to the nature of the land, or to the land having been expressly acquired for a different purpose, e.g. highways, and nothing else ever having been resolved about its use. It was argued that there was no need for the Objector in any way to have to distinguish the ***Barkas*** case.

11.35. I have to say that I did not find this approach to the matter quite as helpful as I might have wished. The implicit acknowledgement that a piece of land acquired (say) for highway purposes, but then just left, with no further resolution as to its

use, might (if the statutory criteria are met) be registrable, does however appear to me to be significant, and accords with my own judgment as to the principles to be derived from ***Barkas***.

11.36. The view which I have formed, after giving the matter much careful consideration, is that the key relevant points to be derived from the ***Barkas*** judgment are as follows. Where a local authority can be seen to have 'lawfully allocated' a piece of land for public recreation, then (local) public use of the land is 'by right' (which equates to 'with permission'), rather than 'as of right'. It is possible to infer from the circumstances that a local authority has lawfully allocated the land; it does not depend on having identified a formal appropriation to recreation use under ***Section 122*** of the ***Local Government Act 1972***, for example. But on the other hand, where local authority land has not been laid out or identified for public recreational use, it might still be registrable (if the statutory criteria of the ***Commons Act*** are otherwise met).

11.37. I set the above paragraph out more as an aide memoire to key points, rather than as an exhaustive list of everything relevant that was said by their Lordships in ***Barkas***. I also take note of the point, which did not loom large in ***Barkas***, and which was only briefly mentioned at my Inquiry, that ***Section 120(2)*** of the ***Local Government Act 1972*** authorises a local authority which has acquired land for one purpose, for which it is not immediately required, to use the land for the purpose of any other of the council's functions.

11.38. How then do all these considerations relate to the factual circumstances at Castle Acre Green? Thanks in large part to the diligent researches into the history of this land carried out by the Applicant, a considerable amount of information was unearthed for the benefit of the Inquiry as to the way in which this land had been seen by the Council and its predecessors over the years. It seems that as long ago as 1938, well before what is often referred to as the 'modern era' of planning control, the then Swansea Corporation had a Swansea 'Local Planning Scheme No.1' which envisaged the future use of the present application site partly for residential development, partly for the construction of a new road, and with a small part near the southern boundary envisaged as being within a proposed public open space, most of which was to be on other land further south.

11.39. Within the 'modern era' of planning, the County Borough of Swansea's Town Map of 1955 still envisaged a new road crossing the site, with residential development to the north of it, and public open space to the south of it, but it is clear that those were planning aspirations for a 'second period' of that piece of planning policy, and did not in any way represent the situation 'on the ground' at the time.

11.40. The Council's predecessor did not acquire the land until 1965, and then only as a lesser part of a substantially larger parcel of land, the remainder of which was further south. A number of reports, minutes etc., were produced, relating to the period leading up to that acquisition. The thinking behind them is not entirely

clear; none of them cites the statutory power under which the acquisition (which was by ordinary conveyance) was to take place. It is clear that the creation of a 'new traffic route' from Mumbles Road to Newton Road was a key motivation, but also that the preservation of an area of open space southwards, towards Oystermouth Castle, was seen as a significant consideration.

11.41. The 1965 conveyance makes no mention of the underlying statutory power either. However it is noteworthy that the Committee of the old Swansea Council which resolved to authorise the Borough Estate Agent to negotiate for the land was the Highways Committee. The District Valuer in 1965 certified that the acquisition of the land was for 'Highways and other purposes'. And I was informed by Mrs Parkin for the Objector that records show that it was indeed the Highways Committee and Department which held the land of the application site prior to local government reorganisation in 1974.

11.42. However, on that reorganisation the land was not transferred to the then newly created West Glamorgan County Council, which became the highway authority for the area for about the following two decades or so. Ownership was retained by the (new, district level) Borough of Swansea. The '1965 land', including the application site, was in 1974 put into the nominal 'ownership' of the new Swansea Council's Estates Department. No surviving records were available to show why this had happened.

11.43. Mrs Parkin also gave evidence that at a subsequent, unknown date (and again for unknown reasons) the southern portion of the '1965 land' was transferred in the Council's records to the notional ownership of the Council's Parks and Leisure Committee, whereas the northern portion, most of which is the present application site, was 'retained' by the Estates Committee.

11.44. There was some uncertainty in the evidence as to whether it began in the 1970s or the 1980s, but I heard from both sides that for a good many decades the Council's Estates Department has 'paid' the Council's Parks and Leisure Department to cut the grass on the application site several times a year. No records were available showing why that arrangement was entered into, but I was told that the Estates Department does not itself employ staff who cut grass.

11.45. In planning terms there was a considerable chronological 'gap' through the 1960s, the 1970s and much of 1980s, in respect of which I was given no evidence as to what the Council's (or its predecessor's) aspirations were for the land including the application site. However the Proposals Maps of the Swansea Local Plan of 1989 still envisaged the site being crossed by a new road, but with the rest of it shown, indisputably, as part of a much larger area (extending southwards),nas being subject to policy aspirations for intended 'informal incidental open space' (Policy R6), and a policy relating to Allotments/Leisure Gardens (Policy A1).

11.46. I shall not here repeat the detail of what happened, but it seems that in the context of the preparation of what became the Swansea Local Plan Review No.1, adopted in 1999, the proposal for a new road across the application site was formally dropped, on the recommendation of an Inspector appointed to consider the Review. Instead the Review Plan as adopted allocated the majority of the grassy (northern) part of the application site to a proposal to provide public parking (Policy M7), with the southern, generally more wooded part included in an area defined as a 'Landscape Protection Area' (Policy NE2).

11.47. Finally, in the Council's current Unitary Development Plan, adopted in November 2008, the application site is shown within an area allocated as part of the 'Greenspace system', subject to Policy EV24 of the Plan. My attention was drawn to explanatory text (paragraph 1.7.13) indicating that areas covered by this policy had been defined on the basis of one or more values, including landscape significance, nature conservation value, amenity benefit, etc., but also 'informal recreational potential'.

11.48. I was also asked (by the Applicant) specifically to note that the application site land was *not* included or allocated under another policy in the Unitary Development Plan (Policy HC23) which identifies and aims to protect 'Community Recreation Land', whereas other nearby land, such as that around Oystermouth Castle, was made subject to that notation. The Applicant was also keen that I should note that, in a 'document' (in fact a map) available on the Council's website, showing 'Open Green Spaces in the Mumbles and Surrounding Area', the application site was not identified, even though numerous other sites were shown, including some which are smaller than the application site.

11.49. In relation to the history of planning policy which I have just recounted, I should first note that I was in fact given even more detail of the preparatory stages of some of the more recent policies. I have had regard to that evidence, but have only thought it necessary here to summarise the main points of the planning policy history.

11.50. Secondly, and more importantly, I should say that I have considerable reservations, in the context of a ***Commons Act*** determination, over giving too much importance to the planning policy 'status' of a piece of land at various times. Planning policy is for the most part inherently aspirational, and does not necessarily reflect at all the actual purpose(s) for which a piece of land was being used, or (where relevant) 'made available', during a defined period of its past history.

11.51. So I have set out at some length a summary of the 'planning policy history' here, partly in deference to the importance which both parties here appeared to attach to it, and partly because I can see that, in the rather particular factual circumstances of this case, the Council's planning 'stance' in relation to this land over the years might assist, in combination with all the other evidence, in coming to a proper

understanding of the basis and circumstances on or in which the application site land has come to be used over the relevant years.

11.52. One conclusion which I came to in the end, having regard to all the evidence I received, and the Supreme Court judgments in ***Barkas***, is that the view expressed by Counsel for the Objector, that this case is nowhere near whatever 'boundary line' now exists between 'registrable' and 'non-registrable' local authority open land, is not correct.

11.53. There are points arising from the evidence here which, quite plainly in my view, pull in different directions. The Council's Estates Department has, over several decades, had the grass mowed regularly, and the site's appearance thus kept as a presentable, indeed pleasant one. There plainly was a long term aspiration that at least some of the overall area of land acquired in 1965 should go to a 'public open space' type use.

11.54. Yet the '1965 land' was in fact acquired by the old Swansea Corporation's Highways Committee and Department, in circumstances where the only specifically identified purpose of the acquisition was 'Highways'. The 'new' (post 1974) Swansea Council then made at some point the conscious decision to transfer the southern part of the '1965 land' to its Parks and Leisure Committee, while retaining the more northerly part, most of which is the application site, in the hands of the Estates Committee, whose normal functions do not seem to include the provision of (and still less the maintenance of) parks, public open spaces and the like.

11.55. The fact that the Estates Department 'paid' the Parks and Leisure Department to cut the grass is not insignificant, but I agree with the Applicant that a perfectly plausible understanding of that arrangement, given the location of this land, is that it was done to maintain a pleasant appearance on a noticeable open site next to the main approach road to the seaside resort of The Mumbles. And the long term aspiration to provide an open space area north of Oystermouth Castle can sensibly be seen as having been given effect to by 'hiving off' the more southerly land (but not the application site) to the Council's Parks and Leisure Department.

11.56. The judgment which I have come to therefore on this aspect of the matter is that, taking a balanced view of all the considerations involved, the land of the application site here is more akin to a piece of open local authority land, acquired for a different purpose and not laid out or identified for public recreational use, but which just happens, through circumstances, to have been available (in a practical sense) for use by local people for 'lawful sports and pastimes'. That view, in my judgment, more accurately reflects the circumstances of this particular land than seeing it as land which the Council and its predecessors had somehow 'allocated' for public recreational purposes, even by some less formal process of appropriation or allocation.

11.57. This judgment leads me to conclude that, if the other statutory criteria are properly met, the application site, even though Council-owned, ***is*** properly capable of being registered under the ***Commons Act***.

11.58. However, before reaching a final conclusion on the matter, I must consider three other more specific aspects of the history of the land here which, the Objector argued, showed that use of this land by local people was in reality permissive, rather than 'as of right'. These three matters were the 'Medieval Tournament camping', the issue of the Dog Fouling Sign (and bin), and the signs associated with the Mumbles Development Trust, and the Mumbles Way.

'Medieval Tournament' camping

11.59. It was quite clear from the evidence that at no point was any part of the application site used for the 'tournament' or battle re-enactments themselves, for attendance at which payment was taken from the public within an enclosed area up at Oystermouth Castle. All that appears from the evidence to have occurred on the application site is that in some or all of the years concerned, from 1999 to 2002, some overflow camping was allowed on part of the site. It seems likely, rather than definite, that some form of insurance-related 'disclaimer' agreement might have been signed between the overflow campers and the Council.

11.60. The evidence therefore suggests that the overflow campers were there, 'with permission' from the Council, over the four days of the weekends concerned. However the evidence seems equally clear that these campers did not interfere with local people's general use of the application site. Although the campers' arrival caused some surprise, especially when it first happened, the campers were not cordoned off, and it was perfectly possible for local people still to wander among such tents or 'caravanettes' as might have been there.

11.61. In my judgment, this was not the same sort of situation as the learned judge was dealing with in ***R (Mann) v Somerset County Council*** [2011] (transcript provided), which was briefly referred to at the Inquiry. The situation during the re-enactment weekends was more akin to the sort of reasonable 'give and take' addressed by the Supreme Court in ***R (Lewis) v Redcar & Cleveland Borough Council*** [2010] UKSC 11. I therefore conclude that the evidence, such as it was, about the tournament campers does not undermine the Applicant's case under the ***Commons Act***.

The dog-fouling sign

11.62. This sign, warning of possible fines for dog owners allowing their dogs to foul in "*this area"*, was attached to a street lamppost very close to the entrance to the site from Norton Road. The Applicant convincingly established that these signs, almost invariably accompanied by nearby 'dog poo bins', had been set up on

pavement and walkway areas quite widely over the Mumbles area, including notably the sea-front promenade. In this particular case, the associated dog poo bin was attached to another post, further west, on the pavement of Norton Road, and not as close to the application site entrance as the sign.

11.63. No evidence was produced by the Objector to establish exactly what was the area *"designated under"* the ***Dogs (Fouling of Land) Act 1990***, as referred to on the sign. It was quite clear that the legislation concerned could be applied to street pavements etc., within an urban area subject to speed limits. In my judgment, having regard to all the evidence, it seems much more probable that the sign in Norton Road was part of a general 'campaign' by Swansea Council against dog fouling on the pavements and walkways of Mumbles, than that it had anything to do with the application site specifically. This is especially so given the absence of such signs at or near any other entrances to the land, or on it. I therefore conclude on balance that the anti-dog-fouling sign on Norton Road has no bearing on this application, and in particular did not in any way purport to give the public 'permission' to go onto the application site.

The Mumbles Development Trust (MDT) signs

11.64. It appeared to be agreed between the parties that a small number of wooden signs had been erected in the woodland, both within and to the south of the application site, at some time around 2007/8. The most notable one on the site itself is the one near the entrance from Mumbles Road. All of these signs are associated with sections of the footpath(s) through the woods where improvements had been carried out to the surface (of pre-existing paths), and in particular on the footpath route known as the Mumbles Way. Some of the signs include footpath way-markers. The surface improvements were (as I understood the evidence) carried out by the Mumbles Development Trust, apparently with funding from a number of public (including European) bodies, but not including Swansea Council. The wooden signboards bear (though not always clearly) the insignia of these funding bodies, presumably as a record and for promotional reasons.

11.65. All this happened despite there being no formal agreement between Swansea Council (the landowner) and Mumbles Development Trust until 2014, well outside the relevant 20 year period, although I accept the Objector's evidence that there must have been some informal agreement or arrangement before that.

11.66. Most of the signs mention 'Oystermouth Castle Wood', although one says 'Oystermouth Castle Community Orchard' [there was no suggestion that this last one had any connection with the application site].

11.67. The wooden signs also all bear the legend *"Respect – Access – Enjoy"*, in English and Welsh. I am inclined on balance to accept the Applicant's view of these signs, that they are there in effect to 'advertise' the footpath improvements, and the Mumbles Way path that the MDT were promoting, rather than to imply that the MDT (or anyone else) were purporting to give permission to the public to enter

into the woodland (which in any event the MDT had no formal power to do until 2014), or still less to any other part of the site.

11.68. There were (as noted) no signs other than associated with the path improvements; there were (and are) no signs on entering into the woodland from the grassy part of the application site, which I agree is the way inhabitants of the Norton neighbourhood would logically come on most occasions to enter the wooded part of the site. And there are no signs at all for people entering onto the main grassy part of the site from the built-up parts of the neighbourhood.

11.69. In the light of all these considerations, I conclude that the wooden signs I have been discussing do not undermine the Applicant's case. They did not in reality purport to 'give permission' to local inhabitants to use the site generally, or the wooded part of it. Even if some (non-local people) had felt they were invited or encouraged to use the Mumbles Way as a result of seeing those signs, that would not in my judgment undermine the convincing evidence from the Applicant's side as to 'as of right' use of the site generally.

11.70. Finally on the question of signs, the fact that there was (and remains) a sign at the north-east corner of the site, advertising one hotel, and there was (apparently) previously another one for a local pub, does not in my view have any material effect one way or another on the considerations relevant to the Council as Registration Authority.

Final conclusion and recommendation

11.71. In the light of all the matters which I have discussed and considered above, my conclusion is that the Applicant succeeded in making out the case that there was 'as of right' use for lawful sports and pastimes of the whole of the application site by a significant number of the inhabitants of the neighbourhood of Norton (as identified by the Applicant in his documents produced for the Inquiry) for at least the relevant period of 20 years.

11.72. Accordingly my recommendation to the Council as Registration Authority is that the land of the application site ***should*** be added to the Register of Town or Village Greens, under ***Section 15*** of the ***Commons Act 2006***.

ALUN ALESBURY
4th March 2015

Cornerstone Barristers
2-3 Gray's Inn Square
London WC1R 5JH

APPENDIX I

APPEARANCES AT THE INQUIRY

FOR THE APPLICANT – Dr Robert William Leek (on behalf of the Friends of Castle Acre Green)

The Applicant, Dr Robert Leek –

He gave evidence himself, and called:

Ms Julie Vallack, of Myrtle Cottage, 23 Norton Road

Mrs Mandy Thomas, of 100 Castle Acre, Norton

Mr Haydn Lewis, of Callander, Glen Road, Norton

Mr Brian Jenkins, of Elm Cottage, Norton Road

Mr Nigel Phillips, of 36 Glen Road, Norton

Professor David Boucher, of Bath Cottage, 4 Norton Road

FOR THE OBJECTOR – The Council of the City & County of Swansea, as Landowner

Mr Rhodri Williams – Queen's Counsel

- Instructed by Mrs Wendy Parkin, Senior Lawyer

He called:

Mrs Wendy Parkin – Senior Lawyer, Property Team, City & County of Swansea

Mr Adrian James – Chartered Surveyor - Property Manager, Corporate Property Strategic Estates Section, City & County of Swansea

Mr Nigel Jones – Special Events Manager, City & County of Swansea

APPENDIX II

LIST OF NEW DOCUMENTS PRODUCED TO THE INQUIRY

N.B. This (intentionally fairly brief) list does not include the original application and supporting documentation, the original objections, or any material submitted by the parties or others prior to the issue of Directions for the Inquiry. It also excludes the material contained in the prepared, paginated bundles of documents produced for the purpose of the Inquiry on behalf of the Applicant and Objector, and the Applicant's 'Response' (paginated) bundle, all of which were provided to the Registration Authority (and me) as complete bundles.

It also excludes any correspondence which may have taken place after the Directions, but before the Inquiry itself, in relation to procedural matters.

FOR THE APPLICANT

Enlargement of Proposals Map, Swansea Local Plan (1989)

Policy HC23 and Amplification, from Swansea Unitary Development Plan

FOR THE OBJECTOR

Minutes of Cabinet Meeting, 28th August 2008

Enlargement, County Borough of Swansea Development Plan Town Map 1955

Swansea Local Plan (1989) – Policy Extracts and enlarged Proposals Map

Swansea Local Plan Review No.1 (1999) – Policy Extracts and enlarged Inset Plan and key

City & County of Swansea Unitary Development Plan (2008) – Policy Extract (with supporting test), and enlarged Proposals Map extract.