COMMONS ACT 2006, Section 15

CITY AND COUNTY OF SWANSEA
(Registration Authority)

RE: LAND KNOWN AS THE RECREATION GROUND,
OYSTERMOUTH ROAD,
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 a

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 25th March 2014, for the registration of an area of land known as the Recreation Ground (or just as 'The Rec'), on the north side of the Oystermouth Road, Swansea, as a Town or Village Green under ***Section 15*** of the ***Commons Act 2006***. [I note in passing that some maps suggest that the adjacent main road is actually called Mumbles Road, by the time it reaches the vicinity of the application site; however the identity and location of the site was not in any kind of doubt or dispute]. The site is within the administrative area for which the Council is responsible, and is also, I understand, entirely within the freehold ownership of the Council.

1.2. The Council, in its capacity as owner of the site concerned, made an objection to the application in this case, as did one other person (see below). It is important to record at this point 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 relation to this matter in its capacity as landowner, other than by way of receiving evidence and submissions on its behalf as Objector 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 the 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 which had been 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 dated 25th March 2014, and noted as received by the Council on that day; it was made by Ms Kathryn Ann Dodd, of Flat 2, 41 Bryn Road, Swansea, SA2 0AP. Ms Dodd is therefore "the Applicant" for the purposes of this Report. I note however, from wording within the application, and from some signed statements accompanying it, that it was stated that the "We love the Rec" group had authorised Ms Dodd to act as applicant on the group's behalf.

2.2. The application form indicated that the application was based on ***subsection (3)*** of ***Section 15*** of the ***Commons Act 2006***, and suggested that the date on which 'as of right' use of the land had ended was 30th March 2012, or a few days thereafter. The application was supported by a considerable number of completed 'evidence questionnaires', some other written statements, and other material such as photographs, photocopied newspaper articles, etc.

2.3. On the question of the relevant 'neighbourhood' and 'locality', the form as submitted referred to the Uplands Electoral Ward, and the completed evidence questionnaires were generally accompanied by map, 'Map A', showing the boundaries of that ward.

2.4. As far as the application site itself was concerned, its boundaries were clearly shown on a map which accompanied the application.

2.5. The site is currently (as I was able to see it) a reasonably well maintained area laid predominantly to grass, but with many well-established trees around its edges (except for its western edge). The site is generally surrounded by fairly low fencing, but with several ungated gaps through that fencing, so that it appeared to be permanently accessible to people on foot.

2.6. Immediately to the west of the application site lies a further area of predominantly open ground, also belonging to the Council, whose principal current use seemed to be as a rather informally laid out car parking area.

2.7. Both the application site and the 'car parking' area to its west consist essentially of flat land, although the ground begins to slope up significantly in the area to the north of the site.

3. THE OBJECTOR(S)

3.1. I have already noted that the Council of the City and County of Swansea, in its capacity as the owner of the area of land covered by the application, registered an objection to the application.

3.2. A written objection to the application was also submitted by Mrs Joan Henry, of 40 Bellevue Road, West Cross, Swansea. Although she was given the opportunity to do so, Mrs Henry did not in fact participate in the Inquiry which I was appointed to hold, or submit any further representations. The Council, in its capacity as landowner, is therefore *"the principal Objector"* for the purposes of the remainder of this Report.

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 duly issued Directions to the parties, drafted by me, as to procedural matters. Matters raised in the Directions 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 procedural 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.

4.2. I note briefly at this point that, as well as dealing with procedural matters, the Directions in this case also asked the parties to consider addressing certain specific questions which appeared likely to arise at the Inquiry (as well as presenting their own intended evidence and submissions in the normal way). I consider the parties' evidence and submissions in relation to these particular matters (along with all the other evidence and submissions) in the appropriate later sections of this Report.

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 (but before the Applicant's closing submissions), on 3rd March 2016, I made a formal site visit to the site, accompanied by representatives of both the Applicant and the Principal Objector. In the course of doing so, I was again able to observe at least some of the surrounding area more generally.

6. THE INQUIRY

6.1. The Inquiry was held at the Civic Centre, Oystermouth Road, Swansea, over three days, on 1st, 2nd and 3rd March 2016.

6.2. At the Inquiry submissions were made on behalf of both the Applicant and the Principal 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, some of which I have referred to already 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 noted above, the original Application in this case was supported and supplemented by a number of documents, mainly consisting of completed evidence questionnaires.

7.2. Other written or documentary material was submitted on behalf of the Applicant [and also the Principal 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. ***Mr David Roger Brown*** gave his address as 31 Westfield Road, Waunarlwydd, Swansea. Mr Brown had completed one of the evidence questionnaires lodged in support of the application.

7.8. He said that he had been a teacher at Brynmill Junior School (later to become Brynmill Primary) from 1970 to 2005, and for most of that period he was Head of Sport. The recreation ground (the application site) was used on numerous occasions for sporting activities, especially rugby lessons, for all junior classes in the school. In the early 1970s they had used Singleton Park but the extra space and the lack of trees at the Rec (the name it was better known by) meant that they soon changed venues. No permission had ever been required to use the Rec to his knowledge. He would use markers brought from the school to mark out the pitch, and every Tuesday and Wednesday afternoon they would walk the children there and back.

7.9. The visit of the circus every so often would restrict them slightly, but they still had plenty of room for their lessons, and the children enjoyed seeing the wild animals being fed and exercised on the other side of the temporary fence. Similarly when the fairground visited play continued uninterrupted because the fair itself would invariably take place in the Easter or Whitsun holidays.

7.10. During his time in Brynmill at a sports teacher, the Recreation Ground played an important part in all sports. They played rugby and soccer there, also athletics and novelty games. However their official sports day was held every year in Singleton Park, where the track was marked out by the Council, which was something they never did at the Rec to his knowledge, during his time in charge between 1976 and 2005.

7.11. Mr Brown reiterated that no permission had ever been sought to use the ground of the Rec. As for the circus, that was principally in what is now the car parking space next to the application site. It only just came slightly onto the greenspace of the application site.

7.12. *In cross-examination* Mr Brown agreed that his address was not in the claimed locality of the Uplands Electoral Ward. However he had lived in Marlborough Road, Brynmill for 2 or 3 years before he moved to his present address in Waunarlwydd.

7.13. He said that when completing his questionnaire he had been made aware of the boundary of the suggested locality that the application related to. He has a strong affinity to Brynmill and its residents, and feels part of the local community on that basis.

7.14. Although he had seen the boundary of the suggested locality on the map accompanying the form, that was not the particularly relevant thing he was concentrating on. He was giving evidence as to the use of the Rec. The map had seemed about right however. The combined area of Brynmill and Uplands seemed about right and more or less fitted with the catchment area of his school. It all appeared just common sense to him; he did not give it a lot of thought.

7.15. When shown a map of school catchment areas, he agreed that the catchment area shown for his school does not coincide with the electoral ward boundary of Uplands. However at the school they used to get children from much of the ward area.

7.16. Nevertheless it is true that when he completed his form he was mainly talking about the Brynmill area. The locality to him had represented the area where he had lived and carried on working at the relevant time. He had not been thinking about the Uplands electoral ward as such.

7.17. As for the visits of the circus, the Big Top was not really on the grassy area of the application site. As far as he could recall the Big Top was on what is the car parking area. It was the circus animals who used to graze on the grassy area.

7.18. He thought that the area used for car parking mainly to the west of the application site had expanded over the years. However the amount of space that they had to play games on was only decreased very slightly. He could remember when many years ago the whole ground including the present car parking area was completely grassed over.

7.19. *In re-examination* Mr Brown confirmed that the present car parking area used to be a grassed area.

7.20. ***Mr Robin Wood*** gave his address at 8 Lon Cwmgwyn, Sketty, Swansea. In spite of its postal address that address is within the Uplands ward. He had completed one of the evidence questionnaires originally lodged in support of the application.

7.21. He first came to the University of Swansea in October 1987, and has lived in Swansea ever since. Initially he stayed in Waunarlwydd for a few days before moving to the Uplands area. Uplands was and is the place to be in Swansea. Hanging out at the Rec was part of students' life in those days, as it is now. This would be with a bat, a ball, a Frisbee, or using jumpers for goal posts.

7.22. After three years in shared student accommodation he started his first job with Swansea Council in 1990, and moved to a flat on King Edward Road, Brynmill. Not long after that in February 1993 he bought his first house on Brynmill Terrace, on the winding Brynmill Lane, and he started a family. Both of those addresses had been in the Uplands ward.

7.23. His young son Barney and he may have resided at Brynmill Terrace until he was 8, but they lived outdoors and made full use of the more formal surroundings and playgrounds in Brynmill Park, or Singleton Park and the botanical gardens, as well as the open spaces of the beach, and the Rec. The grass in the Rec tended to be longer.

7.24. The Rec was where Barney learned to ride his bike, on flat grass. They also flew home-made kites, played cricket and sent Stomp rockets into the sky. It was and remains the connecting ground between Brynmill and the sea front.

7.25. They often had to share use of the Rec with other users: informal football practice matches, American football training, Swansea Rugby Club, bike riders, dog walkers, and more formal commercial events such as car shows, circuses and funfairs. But even when things like that were going on they played around the

edges or joined in with other families' games. However, the shows, circuses and funfairs had not been on the part that is now being claimed as the application site.

7.26. They had never asked for permission to use the Rec, and they never for a moment thought they had to. There were no signs or gates or barriers. If anyone else was in the field they often built them or their activity into their explorations and games, even if those other people were not usually aware of that. In June 1995, while he was working for Swansea Council, he was involved with a charity event to raise money and awareness of homelessness. He was part of a team which built a hut out of scavenged wood and other materials. At least four other teams took part. That event was moved to the Rec at the last minute. He had not been aware of any permission sought or granted for the event, it just happened. There are probably photos of that event. Singleton Park had been too wet for the event.

7.27. The Rec has continued to be frequently used by himself and his growing family, who are not untypical, over the years, even after they had moved to a larger house in the area known as The Lons, which is where Sketty meets Cockett and Townhill, at the northern edge of Uplands Ward. They moved there in February 2003. They still use the Rec, and still feel part of the Brynmill/Uplands community.

7.28. He still considers himself as much a part of the Brynmill community, even though they have moved to another part of Uplands Ward. It is hard to tell where Brynmill ends and Uplands starts, and many people, especially students who have remained in Swansea, feel a really close affinity with Brynmill's Victorian or Edwardian terraces long after they move into work and home ownership. The Rec is part of that community. With so much open space within and surrounding the terraces, it is a combination which makes the community what it is, both for those who remain there and for those who move on. Uplands is like a village surrounded by other parts of the city.

7.29. He firmly believes that development of this site would be detrimental to the balance of grass and tarmac within this lovely part of the world, and would remove a significant part of the connection between the community and the sea front.

7.30. When his younger children attended Little Acorns Day Nursery on Bryn Road, the Rec was effectively their extended garden. The Nursery staff would often take small groups out there for games, picnics or a calming walk into the trees to look for acorns, conkers or leaves. This continues for Nursery, school and play-scheme groups from most parts of Uplands Ward.

7.31. The Rec is thought of as common space, everybody's piece of grass to be used for whatever they want. This continues still to be the view of his family even though they have moved house. They have continued to use the area for games and playing as part of a route including the beach and parks. However activities such as learning to ride a bike on the Rec have become harder in recent years. Despite being on level ground, it is used by football, rugby and American football teams,

which means the turf is pretty bumpy. The lack of official maintenance by Council grounds staff is obvious.

7.32. As Chair of the Brynmill Lane History Society between 1999 and 2011, he was involved with a group of residents in trying to find out more about the organic and planned development of the area and the cultural changes which went with it. Their particular focus was on the period from 1860 to the centenary of the development of the houses on the Lane in 2007. They managed to find maps and records within the Council archives for the transfer of land and granting of permissions for development of roads and housing within the Brynmill and Uplands areas. In particular Council minutes had stated the regulations for road width and discussed the purchase of a triangle of land at the bottom of Brynmill Lane. However he believed that the Rec was not part of that transaction, and was never recorded as anything other than scrubland for general free use. Unfortunately many of the records they viewed around 2002 have since disappeared and were unavailable for reference in later legal disputes over the history and development of the area. He had understood that most of the open land around here had been owned by the Morgan family originally.

7.33. At no stage did they discover any evidence of the ownership of the Rec, and they assumed that it was part of Colonel Morgan's family estate along with the remainder of Brynmill. Alternatively it could just have been a commonly owned green belt for the unfettered use of everyone in the area, as it continues to be today. As such the Rec has immeasurable value to the local residents far exceeding the price which would be achieved by any sale for development. Regardless of what land records show, the people are the rightful owners of the Rec, and he wants it to be retained and passed on to his family and friends and the whole community of Brynmill and Uplands, for their continued enjoyment.

7.34. His own children did not attend Brynmill School. The reason was that it was very full. His younger children did attend Sketty School, which had large grounds.

7.35. He thought the issue raised about the catchment areas of schools was spurious. Brynmill is a really cohesive area. Ripples of that cohesion then extend through the whole Uplands area.

7.36. He had noticed that the Council does not list the Rec as a green area managed by it, even though lots of people use it. The Rec is a part of Uplands, which in his view is a cohesive community. Indeed the Council had put up signs saying *"Uplands"* with a reference to Dylan Thomas at places where roads enter the area.

7.37. *In cross-examination* Mr Wood said that those signs were on various of the more important roads coming into Uplands; they would not be on every street.

7.38. When he had referred to old Council minutes from the late 19th century, those were very old records, of which he imagined there would be copies in the Council's

archives. He was not sure he personally would have access to those archives however. He recalled seeing that there was a purchase of a triangle of land from Colonel Llewelyn Morgan in around 1880 – 1885. That triangle was at the bottom of Brynmill Lane where it joined Oystermouth Road. Its relevance is that the land was owned by Colonel Morgan, however he does not have a particularly clear recollection of this, until he is able to see those old minutes again.

7.39. Within the Uplands Electoral Ward there are various areas with different names. For example parts of the postal area of Sketty are in the Uplands Ward. Uplands is sometimes referred to as *"The Uplands"*. That is where most of the people would describe themselves as living. Some people would say *"Brynmill"*; however he cannot tell where the boundary is between Brynmill and Uplands. Most people would tend to use whatever name the Council or the Estate Agent tell them to use. He personally would say he lives in Uplands. People might then ask "*which bit of Uplands?*" The same goes for Sketty, which has various sub-parts to it. And of course his own postal address is Sketty.

7.40. As for his evidence questionnaire, he had signed the form and ticked various boxes showing what facilities were available in the Uplands Ward area. There is a Brynmill and Uplands Residents Association, which has its meetings in the Brynmill Community Centre. Those meetings he thought might influence people in the area. Undoubtedly there are tensions in the area between students and other residents. People in the Uplands and Brynmill area are more concerned about litter and student housing than anything else. There are significant local efforts to do something about those issues, and there is a shared community feeling, including the feeling that there is a threat from the influx of students.

7.41. *In re-examination* Mr Wood said that he could not recall having discovered the Act of Enclosure that had apparently existed in relation to the land including the application site.

7.42. ***Mr Craig Lawton*** lives at 22 Laburnum Place, Sketty, Swansea. That address is not within the Uplands Ward. Mr Lawton had completed one of the evidence questionnaires lodged in support of the application.

7.43. During his time at Swansea University from 2006 until 2010 he had used the Rec for a number of sports activities, namely American football and rugby sevens. That took place without seeking permission from Swansea Council or any other group or body. During that time there were no markings on the ground provided by the Council or any other body. Instead they provided their own marking, flags and other facilities, other than the use of the space itself. The same was the case when he trained on the pitch as part of a rugby sevens team. Although they used the space there were no lines or other facilities made available to use.

7.44. At times the group that he was part of used the space on their own, without any other groups or people being there. At other times there were other groups using

the space, including other students, and residents walking dogs or out with their children.

7.45. At some times of the year the Rec was used by Swansea Council for travelling circuses and other shows. During those times it was only some of the Rec that was used by those shows; a number of groups from the University, including American football, continued to use the rest of the space at the Rec at the same time.

7.46. That was also the case when Glamorgan County Cricket Club played matches at the St Helen's ground. The Rec was used as a car park in 2007, 2008, 2009 and 2010 for spectators of the cricket. That was around August in each of those years. However he recalled at that time the land still being used by other people. He recalled seeing children playing cricket and other ball games between and near the parked cars. He also recalled residents continuing to walk their dogs on the Rec while cars were parked there during those years.

7.47. When he attended the St Helen's stadium to watch Swansea RFC playing rugby, as he recalled, in 2006 and 2007, opposition teams used part of the Rec to warm up and prepare for matches prior to kick off. That was so that the pitch would not become cut up during poor weather. He recalled that happening while some people still parked on the Rec. At those times other people such as residents walking their dogs also continued to use the Rec as well. He had no knowledge as to whether those teams had permission to use the ground or not. He also recalled a number of occasions during 2006 and 2007 when opposition teams' buses would park on the grass of the Rec while they were playing rugby at St Helens.

7.48. When the Swansea 10k run takes place, cars park on the Rec. However he recalled times when the Rec was still used by local residents while the cars were parked there. This would sometimes be for walking dogs, while at other times it was to gain access to the road from the other side of the Rec, or vice versa. There are spaces to get through the fences, but people would also hop over the fences sometimes.

7.49. He acknowledged that he lives in Sketty, but would typically refer to a sub-area as being where he lives, for example he lives in the Sketty Park area of Sketty. Similarly in Uplands there are various sub-areas. The Uplands Ward has four Councillors on Swansea Council, because the size of the community requires it.

7.50. Apart from what he had described, he did not recall anything else taking place on the grassed area of the present application site. No permission was ever required to use that site. Singleton Park was typically much more bumpy and muddy than the application site at the Rec.

7.51. He had produced a number of photographs with his evidence questionnaire, which showed the American football pack.

7.52. *In cross-examination* Mr Lawton explained that he had been the community liaison officer for the local Welsh Assembly Member, and attended meetings in that capacity. Thus he had continued to stay in touch with the area. He had volunteered to take part in the campaign to save the Rec, and to sign one of the questionnaires. He believed he had been physically handed the document at a meeting in the area. The document would have had the plan attached. It had been a long meeting; he looked at the plan and he agreed that it was Uplands Ward that was a community in itself. He had agreed with the boundary shown; if the boundary had not been like that he might have had some input into the matter. However he had not really thought about where precisely the boundary should be drawn.

7.53. He is generally aware of boundaries within Swansea. The evidence questionnaire form did not actually mention the concept of a community. That was one of the things that had been discussed at a long meeting that he had attended.

7.54. He had not been educated at school level in Swansea. He knew however that there are a number of school catchment areas within Uplands Ward.

7.55. As for the travelling circuses and shows which he had seen, he could not speak as to exactly which piece was occupied by the circuses because he never went to them. He did recall circus vehicles being parked on the grass of the application site. He could not recall where the Big Top was placed.

7.56. The Rec was also used as a car park for cricket, and for many other activities. Having been to the cricket himself, he could not recall being specifically told where to park for it. Later on, he became aware that the Council did let people park there, in exchange for money. That was at the stadium end of the Rec area. That also was the area that travelling rugby teams would use to warm up.

7.57. There had been fences around the Rec for a number of years, to stop vehicles driving on there. He could not recall them being there in 2006/07, but was not sure on that matter either way. There are gates now which prevent car access onto the Rec.

7.58. *In re-examination* Mr Lawton said that he believed there was more than one community centre in the Uplands Ward. There is also a local police presence in the Uplands Ward.

7.59. He said there are many other issues and events which he could have given evidence about in relation to the Rec. For example last year he was spectating the 10k run from a position on the grass of the Rec, although he accepted that that was out of the period which the inquiry is most interested in. Things like that have happened from time to time over the years, but people still use the land for other things such

as to walk dogs, or carry on with their American football training. Undoubtedly there were instances when people parking on the Rec seemed to have been doing so with permission.

7.60. As for his observation that vehicles associated with the circus sometimes parked on the grass, he had seen no material change in the extent of the grassy area used for that purpose during his 10 years in Swansea.

7.61. ***Mr Philip Andrew*** said he lives at 7 Hazel Road, Uplands, Swansea. He has lived at that address for 30 years. It is within the Uplands Electoral Ward. He had completed one of the evidence questionnaires lodged in support of the application.

7.62. As a child he had lived at 28 Westbury Street until he was 17 years of age, and between then and moving to Hazel Road he had lived elsewhere in the Uplands, and nearby in Sketty.

7.63. As a child and teenager the Rec was an important part of his life. He regularly played with friends on the Rec between 1958 and 1966. He attended Brynmill Junior School until the age of 11 and while there they regularly had games lessons, rugby practice and rugby matches on the Rec. At weekends and in school holidays they played a variety of self-organised sports there, such as rugby, soccer, cricket, athletics and occasionally tree climbing. When he moved on to secondary school his friends and he continued to play exactly the same sports there, up to the age of about 16 or 17. They could arrive at any time, never having to ask anyone's permission. They would find room to play, and the ground was always flat and well drained.

7.64. Between 2001 and 2007 he was head teacher at Brynmill Primary School. The school was near to the Rec, and served a wide catchment area including Brynmill, Uplands and the Glanmor District, and extended eastwards to include the area north of St Helen's Road as far as Brunswick Street. Pupil numbers were a little under 400, and it was then one of the larger primary schools in Swansea.

7.65. The school occasionally used the Rec for sports and games, e.g. athletics and cross-country, and regularly for rugby. He had coached the school rugby team and they trained weekly on the Rec, and occasionally played matches against other schools there, marking out a suitably sized pitch with cones. The Rec was always available for use and they never had to seek permission to use it. They very occasionally had to move a little towards the eastern edge if the fairground or circus were present. The only regular deterrent would be dog walkers leaving dogs mess on the ground.

7.66. Having to move out of the way for the circus rarely happened, because it was unlikely that the circus would be there during the rugby season. However if that did happen, there would always still be room to the east for rugby practices, and enough room for a pitch to play on.

7.67. In his evidence questionnaire he had said that Swansea University used the land for sports and pastimes. However it would have been more accurate to say that it had been university *students*, and indeed a range of other local students, who had used the ground.

7.68. As for the fairground, his recollection was that it was on the gravelled area at the far end of the Rec that it was predominantly held. He still thought of the term 'the Rec' as covering the whole ground including the area now mostly used for car parking. The fairground was in that western part which is now gravelled for car parking.

7.69. The college students using the land to play or practice games on were in general living in the Uplands area, he thought.

7.70. *In cross-examination* Mr Andrew acknowledged that car parking use took place on the grassy area of the application site. However that had never impinged on activities during the school term, so he did not really remember it personally. He acknowledged that in months like September or May or June the school would have been active; those times are within the school terms. He understood that those were times when it was suggested that various activities had taken place on the ground. The rugby practice that he had been involved with would typically have been in the Autumn and Spring terms, on Wednesdays and with games on Fridays. However he personally had not noticed the parking on the land in connection with events. He would not have gone to the Rec on other days, other than in connection with rugby.

7.71. At the grassy end (the application site) he acknowledged that he had occasionally seen some overspill onto the grass for parking, but he had no clear recollection as to when that was. He would have seen it while driving past. It had not seemed to be 'organised' parking. He had very occasionally seen indiscriminate parking at the grassy end of the pitch. He could not say whether the grassy area of the Rec had ever been used for organised parking.

7.72. The circus he thought had occasionally had to move a little to the east from its normal position. He recalled that on one occasion the circus came, and they had to move their rugby pitch and their activities a little to the east. However even then he did not think the Big Top had been on the grass, but he could not remember clearly.

7.73. As for his evidence questionnaire, it was Dr Johns who had given him a copy and left it for him to fill in. It already had the map showing the Uplands Electoral Ward attached to it. He had agreed with that as a suggested locality. Both where he lives now, and where he lived in Westbury Street, he regarded as being in the Uplands; the Uplands is an area with various different parts to it. Brynmill is often

seen as part of the Uplands. Glanmor is part of the Uplands. The same would be said for the Ffynone area.

7.74. In his witness statement he had used typical local definitions or descriptions as to the bits of the Uplands. Using the term Uplands by itself could be a reference to the part where the shops are. But *"the Uplands"* might be a reference to the whole of the area.

7.75. *In re-examination* Mr Andrew said that, on further consideration, the expression *"the Uplands"* perhaps conveys more the area where the shops are, whereas simply *"Uplands"* might typically be used to refer to the wider area in general.

7.76. ***Mr Peter May*** lives at 41 Finsbury Terrace, Brynmill, Swansea. He has been a resident in the community of the Uplands Ward since 1993. He has been a Councillor for the locality since 2004, except for the period between May 2012 and November 2014.

7.77. During that period he has instigated various schemes to promote the cohesion of the locality. The first was safer routes for communities. The locality contains two primary schools. Many pupils walked to school, and in particular to Brynmill School. In 2010 after three years of local consultation, planning and going through a grant process, a scheme was delivered to enable pupils to walk to school more safely. A significant number of the pupils live in the north of the locality, over the busy Sketty Road. A pelican crossing across that road was provided and is now well used. There was also traffic calming on Bryn Road, so that pupils could be walked up from the southern part of the locality, including the Recreation ground itself. Also there was a 20 mile an hour zone created near the school.

7.78. Then there was the local bus service. Councillor May had initiated the No.19 bus service which serves the Brynmill and Uplands shopping areas of the locality. As well as considering the route, provision had to be made to ensure that the bus could safely negotiate that route without obstruction. That included initiating traffic orders for double yellow lines in various positions on junctions. Previous bus services had had to be aborted and subsequently withdrawn as those measures had not been put in place. The route has now been sustainable for the locality since 2009. Bus shelters had also been added in various places.

7.79. In 2007 the police closed their Uplands sub-station in Gwydr Crescent and were going to withdraw from the area completely. He had negotiated with the police and the council which resulted in a sub-station being created in the Brynmill community centre building. It is manned, and officers on the beat serve the whole locality; also recently a neighbourhood watch scheme has been set up in the northern part of the locality.

7.80. In 2011 the council had wanted to split the refuse collection days for the locality, the norm being on Wednesdays. There were protests from residents and Councillor May intervened and had the council's decision reversed. As a result the Wednesday collections continue.

7.81. He had taken other steps to respond to residents and maintain the identity of the locality. One feature deserving of comment was the high proliferation of student housing in the locality. After graduating a good number of students buy properties and raise families of their own within the locality. So those people are not transient for their three year stay, but integrate and sustain the locality themselves in later life. He had also seen former students carry on to become lecturers at the University.

7.82. The Uplands locality is a great place to live. It is close to the centre and quite a vibrant hub. A market has recently evolved there, and there are four parks and the shoreline area for recreation.

7.83. *In cross-examination* Councillor May said that there are two primary schools in the locality, Ysgol Bryn y Mor, and Brynmill. Brynmill is multilingual while Bryn y Mor is a Welsh medium school.

7.84. What he had said about the pedestrian crossings being put in demonstrates that despite the barrier of the main road through Uplands the parents in the northern part still send their children to Brynmill School. The children do not go over to Sketty, typically. He himself is a Governor of the school, and also runs a summer play scheme. The addresses of parents are predominantly from Uplands Ward.

7.85. Shown a plan of the school catchment areas within the Uplands area, Councillor May said that the catchment area for Brynmill School is by far the largest within the locality. The road crossing that was put in definitely enabled the people to the north of the busy main road to get to the school. The catchment area is a significant portion of the locality. The catchment area for Brynmill School is also significantly the more densely populated part; some of the other parts of the Uplands locality are wooded and much less densely built up.

7.86. The No.19 bus was initiated in about 2009. There had been predecessor services to it which had failed, which had different numbers. The No.19 route does not go to the north of the main route consisting of Walter Road and Sketty Road. However there are other bus routes in the Ward. The No.19 does go on parts of Sketty Road itself. That bus is just one element of community linkage. There are other bus routes within the locality, but the No.19 is a strong example. There are in fact a plethora of different busses serving different parts of the Ward.

7.87. As far as the police are concerned, the area which they used to cover from the Gwydr Crescent police station had been similar to the area of the Ward, but he did

not know if it had been exactly the same. Nevertheless the local police have seemed to be familiar with the whole area of the Ward, including the northern parts. The police have local meetings with the people of the community in relation to policing matters, under the name of Partnership and Communities Together, or PACT.

7.88. Police officers do serve the whole locality and go on the beat on foot. Also neighbourhood watch schemes had been set up in the area, with police presence from the local police station. Certainly the officers serve a significant proportion of the area of the Ward. As far as he is aware there is not a fixed route for the police beat on foot, nevertheless the police are very visible. They are always at hand and are very knowledgeable.

7.89. As for the question of refuse collection, all the local people like to have their refuse collected on Wednesdays. There had been a proposed split to different days, and Councillor May had concentrated on making sure that did not happen in his Ward. In fact the scheme started, but then reverted back after only one week.

7.90. There is a great deal of student housing in Uplands, not least because Swansea University is next door. However many former students have stayed on and lived in Uplands, as he had previously mentioned.

7.91. ***Mrs Irene Mann*** lives at 7 Richmond Terrace, Uplands, Swansea. Mrs Mann had completed one of the evidence questionnaires lodged in support of the application.

7.92. She had lived at her present address since 1994. Before that she had lived in Kensington Crescent, now known as St Helen's Avenue. That had been her birth home, and she lived there from her birth in 1950 until 1993 when she moved to her present address.

7.93. During her early formative years she and her friends played extensively on the Rec. They visited there after school (they all attended Brynmill School), with their Sunday school group, and latterly with the Youth Club. When they went with the Sunday school or Youth Club they played organised games like rounders or cricket. To her knowledge no adults organising the games, or any of the children present, ever had to seek permission from any council official or groundsman to use the Rec. Indeed there was no park keeper or groundsman to her knowledge. It was common practice that they all just used the land. That would have been between about 1955 and 1965.

7.94. After that she attended University, and then began a teaching career in Swansea which extended nearly 40 years. Her usage of the Rec was sparse during the early part of that time, but she did visit the Rec to collect specimens for nature and harvest tables for her class, because of the abundance of conkers on the Rec.

7.95. In 1993 when her daughter was born, the importance of the Rec resurfaced as it formed a pleasant and safe walk as part of a longer walk including Singleton Park and the boating lake. At that time her husband was working overseas in Botswana, so they would go walking as a family group which included her brother, the family dog, her mother, as well as her daughter in a pram. On those walks they accessed the Rec from the back of the St Helen's cricket ground, not from St Gabriel's Walk, as the steps coming down were not suitable for a pram. Also her mother was more comfortable walking on the flat. They then walked straight onto the green space of the Rec from the path at the back of it. Again there was no question of permission, or anyone there to ask. They left it at various places depending on where they wanted to go. While there they often saw other people playing football or walking dogs.

7.96. Sometimes when they went down at Easter or in the summer, the Fair was present. As far as she could recall the Fair was always on the hard standing to the west, that used to be cindery and is now a car park, not the current green space of the application site. If there were any caravans attached to the Fair they might be parked on the green space, but the family just walked past and around them. They were not in an enclave but just scattered and did not interfere with walking.

7.97. Very occasionally there would be a circus. There were a few occasions when part of the circus was present on some of the green area of the application site, but that was not a large proportion of the area, and did not interfere with their enjoyment of the green space. In fact it added to that enjoyment as sometimes one could see acrobats practising on the grass. There was no problem about just standing near them and watching. Again if there were any performers' caravans on the green area they did not form an enclave, and it was perfectly possible to walk around. No-one ever stopped you. Once they saw a lady carrying things out of her caravan with her acrobatic tights on.

7.98. During the summer months they often sat and collected daisies on the site and made daisy chains; that was not interfered with when the circus or the fair were there. She remembered seeing one Car Show on the land. She did not remember the exact date, but her daughter was in a pushchair not a pram, so she would be a toddler; the year must therefore have been about 1996/97. They went down with her by then elderly mother, and took her frame chair with them. They used to hang it off the pushchair. She sat on the chair on the green grass towards the back of the Rec and had a cup of tea. They had a wander round the cars. They then left the pushchair with her mother as they were encouraging their daughter to walk at the time. She did not remember any restriction on going into the Rec, and did not remember having to pay anything, they just walked on and off when they wanted.

7.99. After the death of her mother, her brother and their dog, and with her daughter growing up, her usage of the Rec became less again. Thus her regular period of use finished in about 1998/99, but her daughter carried on using it herself.

7.100. *In cross-examination* she said she had attended the event known as "Proms in the Park", but she had never seen the grassy area used for a car park. When the 10k run was going on, she had certainly seen cars on the cindery part to the west of the application site, but not seen car parking on the grass. When shown an aerial photograph with cars parked on the grassy area of the application site, she said that she herself had never seen that sort of situation. Over the last few years she personally had not really used the Rec; clearly on one occasion it had been used for car parking. If vehicles were parked to the density shown in that aerial photograph, she accepted that that would impede use of the Rec to a degree, but it would not stop use with a pram, or walking a dog.

7.101. ***Mrs Elizabeth Byatt*** lives at 4 Westfa Road, Uplands, Swansea. She said that between April 1992 and March 2012 she had been a regular user of the recreation ground. In fact she had been a regular user for most of her life. From April 1992 onwards she used it several times a week for a variety of purposes, such as taking her son and his friends to play ball games, fly kites and general recreation. It has also been invaluable for dog walking, especially when parts of the beach are denied access to dog walkers. Even at times when the Fair and exhibitions have taken place on the recreation ground, it has still been accessible.

7.102. At no time has she ever been questioned or denied access to the facility of the recreation ground, and there have never been any signs prohibiting its use. The recreational area is a huge part of the local community's environment and should remain so.

7.103. Prior to living at her present address, Mrs Byatt had lived at 68 Bryn Road, where her parents had lived, and still live. So she had grown up in Bryn Road.

7.104. She came back from a period overseas in 2003, and then from 2003 to 2005 lived in Bryn Road. Then she moved to St James' Gardens and then back to Bryn Road until four years ago.

7.105. She uses the Rec basically for dog walking. Her own son was in the Bryn y Mor Welsh school.

7.106. Between 1st May and 30th September one is not allowed to use the beach with dogs. Also the prom is dangerous for people walking with a dog because of the busy bicycle lane there.

7.107. The land including the recreation ground used not in the past to have a big car park on it. In her recollection there used to be a little shop somewhere on what is now the car park. When there were fairs and exhibitions they used to be on the area now used for car parking.

7.108. She had never seen any signs prohibiting use of the Rec, or sought permission to use the land. As far as her own personal use was concerned, she had been away from Swansea for about 5 years; she thought that would probably have been from about 1998 to 2003.

7.109. ***Mr Colin Williams*** lives at 96 Bryn Road, Swansea. He has lived at that address continuously since 1980.

7.110. Since 1980 he and his family have used the recreation ground on practically a daily basis. That had been primarily for walking their dogs over the years. Their son also used to play football there, and now their grandchildren who are regular visitors, use the grassed area for walking, football and even picnics.

7.111. They have never had to ask permission to use the area. Mr Williams's father-in-law had purchased 94 Bryn Road in 1957, so his wife and her family have used the grounds for various activities since 1957. Since moving to Bryn Road in 1980, one of the more pleasing characteristics of the area had been the availability of the Rec. They still continued to use the grassed area on a daily basis for walking their dog, as access to it is over flat ground, which at their time of life is a necessity.

7.112. Since 1980 they have always had a dog, although not the same dog for that entire period. They typically walk down St Gabriel's Walk, which is quite a safe walk with a dog because there is no hassle from cyclists. They walk their dog there twice a day on most days. It is the best place for a short walk with a dog.

7.113. *To me* Mr Williams said that he had seen cars parked on the application site, but towards the car park end of that area. He had only seen the Fair in the vicinity on one occasion, and his understanding was that it was always held in the car parking area rather than the application site.

7.114. As for cars on the application site, that was not something which had happened often. When the Circus was there he had seen cars parked on the western part of the grassy area, but he only remembered that on one occasion.

7.115. *In re-examination* Mr Williams said that he thought that that parking on the grass had been just for visitors to the Circus. The Circus itself had been on the normal car parking area.

7.116. ***Dr Sandy Reid Johns*** lives at 61 Glanbrydan Avenue, Uplands, Swansea. She has lived there since 1985.

7.117. She had been born and brought up in Swansea, and her parents too were from Swansea. They were all well familiar with the Uplands/Brynmill area, and her mother used to work in a grocery store on Uplands Crescent, during the Second

World War. Although she herself (Dr Johns) was brought up in West Cross, she was familiar with Uplands, and the Uplands/Brynmill area, as her parents had so many fond memories of it.

7.118. Because she lived in West Cross her only usage of the Rec at that time was sometimes during the Fairs. She did however see it frequently on their weekly shopping trip into town. They would always go on the top deck of the double-decker bus from West Cross. When they passed the Rec there was almost always someone kicking a ball around or walking their dog, or just walking there.

7.119. She moved away in the early 1970s to study medicine in Cardiff. Having qualified she then worked away while continuing her training in her chosen speciality of psychiatry. That included one year working at Cefn Coed Hospital, Swansea. She returned to Swansea permanently in 1985 as a consultant psychiatrist, and deliberately chose to buy a house in the Brynmill/Uplands area because she felt it had such a strong identity. No-one seems very certain as to the distinction between Brynmill and Uplands. People's use of the two names varies according to who they are. She calls the area where she lives Uplands.

7.120. As she had no children or pets, and worked long hours, she had no time to use the Rec herself, but she travelled past it at least 3 times a week on work journeys between hospitals. That would have been between 1985 and her retirement in 2003. Those journeys would have been by car. While passing the Rec she always tried to look to see what was going on there. Sometimes the traffic was going slowly or she was caught in a jam and could take quite a long look. Those journeys would be at various times of day and also at weekends if she was on call. There was almost always somebody or other walking or playing ball or playing with dogs on the Rec. She used to look to see what was going on. On occasions she saw more organised groups of adult players. She did not recall ever seeing any form of pitch markings or anything formal.

7.121. When she used to go to the Fair as a child in the 1960s, it seemed to be on what was then the hard cindery part of the ground which is now the car park. She did not recall it being on the green grassy part, although there might have been a few caravans on it. She had never visited a Circus on the site as a child.

7.122. From 1985 onwards, when she used to see the Fairs while passing the ground, they always seemed to be on the area that is now the car park. There were sometimes a few scattered caravans on the green part which is the application site. She could also remember seeing the Circus tent, but her impression was that that was predominantly at the car park end. It may have sometimes gone slightly over onto the green space but not by much. There were also sometimes caravans or a trailer on the green part, but scattered.

7.123. As she would have been driving and having to keep her eyes on the road, she could not recall whether or not she saw other people using the Rec at the same time as the Fair or Circus were present.

7.124. As a resident since 1985 she had always appreciated the distinctive character or the Uplands/Brynmill area, including its variety and somewhat cosmopolitan and bohemian feel. She is interested in music and would often attend music sessions in local pubs. Those would not be just the closest ones to her, but she would go out with a friend to other music venues in the locality on a regular basis; they would often see people they knew doing the same thing. There was a thriving local music scene which attracted an audience from across the locality.

7.125. Since her retirement in 2003 up to the present she had had time to become more involved in voluntary groups such as the Friends of Brynmill Park. She attends regular meetings and participates in community events which are held three times a year. Their committee is made up of members spread across the locality, and the events attract people from across the locality. She is also a member of a voluntary community action group called Swansea Sustainable Community Initiative, which is a Brynmill/Uplands based group concerned with local issues. They get themselves involved with street clean-ups in liaison with Keep Wales Tidy and the Council. They also sometimes liaise with the Swansea Students' Union, local schools and other groups. She has participated in street clean-ups across the locality. They try to do a few of them each year. She has also been involved with planting projects in various parts of the locality.

7.126. They had also been vocal on the problems associated with the high density of houses in multiple-occupation in the locality. This is a problem throughout most of the locality, but can also be something of a unifying force, she said.

7.127. With regard to shopping, she uses the shopping areas of Uplands Crescent and Brynymor Road. They both have an unusual variety of independent traders. She also attends the Uplands street market which is held monthly in Gwydr Square. She has been a member of the Brynmill Community Centre, and helped to start a local library based there when the previous library closed down. She feels that there is a distinctive Uplands locality which extends throughout the area. The Rec is part of that. When she went and took peoples' memories of the Rec, it impressed her how important it had been to them, and made her realise its importance even more than she had done previously.

7.128. She recalled hearing when the permissive signs had gone up on the Rec. She had not been sure of the wording on them so she walked down to the Rec to investigate. She saw them and took a photo of one of them with her digital camera. She then downloaded it to her computer, which tells her that the photo was taken on 15th April 2012. She had not separately recorded a written copy of the date, as she had not then been aware of the significance of the date, or indeed the sign. Once she came to understand the significance of the signs and what they really meant she

became involved with the Town and Village Green application. She had been aware before that of concerns regarding the Rec, and there had been various petitions and campaigns to take it out of the 'Swansea Bay Strategy'. However April 2012 was the first time she became actively involved in a specific village green application. At that time she tried to find out the exact date when the Council put up the signs, by contacting the Council, but despite repeated attempts she was totally unable to discover this.

7.129. Dr Johns also produced a considerable amount of interesting evidential material as to the appropriateness of the Uplands Electoral Ward area being regarded as a locality or neighbourhood for the purposes of the ***Commons Act***. She established that the Uplands Electoral Ward appeared to have existed on its present boundaries for considerably longer than the 20 year period with which this present dispute is principally concerned. As part of her evidence she also identified a statutory instrument dating from 1983 which had produced the result that a defined *"Community"* of Uplands had been created, through the appropriate process at the time [by the ***Swansea (Communities) Order 1983***].

7.130. It subsequently transpired, as will be seen later in this report, that in the light of this material produced by Dr Johns, the Council as principal objector conceded that the Uplands Electoral Ward was capable of being a locality or a neighbourhood for the purposes of the Commons Act legislation, not least because it is identical to the statutorily defined community area which has existed since the 1980s.

7.131. In the light of that concession by the principal objector it is not necessary or appropriate for me to take up more space in this report summarising in any further detail the material which Dr Johns produced on this topic.

7.132. ***Ms Kathryn Dodd***, the Applicant, lives at Flat 2, 41 Bryn Road, Brynmill, Swansea. As well as completing the original application form and providing other supporting material, Ms Dodd had in fact also completed one of the original evidence questionnaires provided with the application.

7.133. She has lived in the Uplands area since 1987. She first moved to a flat in Bernard Street while an undergraduate in her final year. In 1992 she moved to 13 Brynmill Crescent, which had a garden. It was there that she first developed an interest in bird watching and began to make use of the grassy area that has become the present application site for that purpose, as it was easy to see birds on the grass and in the surrounding trees with an unobstructed view, using her binoculars. In 1997 she moved to a rear flat in Bryn Road, and it was here that she eventually learned that some of the neighbours called the grassy area of the application site *"the Rec"*.

7.134. It was in her new flat that she was able to develop her bird watching habit really well. The rear garden at her new premises already had a bird table which she used every day to feed wild birds. In addition she started using hanging bird feeders. She began to notice how many different species of birds were visiting the area, and

found that the Rec was even used by wading birds such as oystercatchers. By standing away from the trees in the middle of the grassed area and using her binoculars, she could see perched birds or those using the ground at a more distant point towards the edges of the grass, under the trees. Up to the early months of 2012 she had noted more than 30 species of birds using the area including the Rec. Nuthatches for example, not seen in her garden, she had seen in the Rec using notches in certain trees there. The last time she saw mistle thrushes was in the Rec, in January 2012. In September 2009 a ring-necked parakeet appeared in the are, and could be spotted quite easily from the southern end of the Rec. Its call was easily heard and sounded very exotic.

7.135. Winter migrants such as redwings can be both seen and heard on the Rec, and for the first time recently she saw a great spotted woodpecker on one of the trees at the northern end of the Rec. Flocks of long tailed tits prefer the trees at the eastern corner of the southern side. Early mornings are a good time to watch birds there, but one can get good sightings at any time, even when there is noise and human activity around.

7.136. While bird watching she also came to notice how many different forms of fungi can be found on the grass of the Rec, or growing on the trees at different times throughout the year, not just field mushrooms but others as well. No two years are ever exactly the same.

7.137. Living so close to the Rec she is aware of much of the activity on it. Often there is more than one game being played on it at the same time, and people seem to treat each other in a very civil manner when using it. Nobody minds the Circus events being there from time to time, since the entrance points are always open anyway.

7.138. There have never been signs prohibiting use to the casual user, or giving permission to use the ground, up to and including March 2012, but a sign went up in April 2012.

7.139. She explained the efforts she had made, partly through a Freedom of Information request, to find out more information about the basis on which the Council holds the land including the Rec. There appeared to have been some inconsistency in various responses from the Council, as to whether the land was held as 'public open space' or not.

7.140. There had also been a notice issued by the Council in March 2014 advertising the intention of the Council to appropriate the ground at the Rec (including some other land, it was understood) for the purposes of a public open space. A notice in respect of that appeared in the Evening Post three days after the application in present matter had been lodged. Yet by December 2014 the Council was claiming that the land at the Recreation ground was already held by the Council as public open space, and that therefore no appropriation was required.

7.141. Ms Dodd's researches had also unearthed a statutory declaration by a Mr Sims, the Senior Conveyancer of the Council, in 2001, asserting that the land including the Rec formed part of the Ancient Corporate Estate of the Council, granted to the former Borough of Swansea upon its having been enclosed in pursuance to the ***Townhill and Burroughs Enclosure Act 1762***. The purpose of the statutory declaration of 2001 was understood to be in connection with the registering of the land as the property of the Council with the Land Registry.

7.142. An earlier statutory declaration of 1968 in relation to the land, made by an official of the then Council, was referred to.

7.143. Ms Dodd had made a Freedom of Information request in January 2016 of the Council, seeking information as regards the location of events which had been held on the recreation ground and the adjacent gravel hardstanding area used as a car park. Her request had asked whether various particular events had been held on the grassed area or on the gravelled car parking area. Four of those events were Showmen's Guild Fairs held between 2009 and 2012, and one of them was an event held in January 2010 by the BBC. The FOI request was answered to the effect that all of the events were held on the hard standing area [as opposed to the grassy area of the present application site].

7.144. She had made that FOI request having seen the original letter of objection to her application by the Council as landowner. She believed, from examining late 19th century Ordnance Survey maps and other documentation, that the application land was not in the area then known as St Helen's Fields. However she accepted that the ground was one of the areas covered by some Byelaws of 1918 in relation to pleasure grounds, made by the old Swansea Corporation.

7.145. Her researches had led her to believe that a lease and leaseback arrangement had existed in relation to the land including the Rec, which expired in 1920. She believed that arrangement expired naturally in 1920, and that there was no surrender of a lease before that.

7.146. She also produced information she had been provided with in relation to various events which had been held either on the hardstanding car park to the west, or on the grass of the application site area, during the period 2005 to 2013. That information had been provided by the Council pursuant to another Freedom of Information request. She also produced a photograph showing a Circus 'Big Top' erected on the car park area to the west of the application site.

7.147. She produced a letter dated 18th February 2006 from Mr Edward Harris, solicitor, in relation to the proper legal understanding of the history of the ground of the Rec. [Since the content of that letter goes more to the legal issues in the case than to the evidential basis for the decision I shall not summarise it at this point].

8. THE SUBMISSIONS FOR THE APPLICANT

8.1. In representations forming part of the application itself, the Applicant had asserted that a significant number of the qualifying inhabitants of the Uplands Electoral Ward had indulged as of right in lawful sports and pastimes on the application land for at least 20 years prior to 30th March 2012.

8.2. The use 'as of right' had not continued to the date of application, because some signs purporting to give permission for the use had been observed by local inhabitants in early April 2012, and had been photographed on 15th April 2012. However it had not been possible to discover from the Council the precise date on which those notices had been erected, so 30th March 2012 was included in the application as the date when it was believed that as of right use might have ceased. 30th March 2012 was the last working weekday of March 2012. It was accepted that in reality the notices might have been erected a number of days after that, i.e. some days into April 2012. The application was made under ***sub-section 3*** of ***section 15*** of the ***Commons Act 2006*** because of these circumstances. Assuming that those signs erected in 2012 were legal, the Applicants had realised that they only had a period of 2 years within which to make an application. The application was thus made under ***Section 15(3)*** on 25th March 2014, less than 2 years after the erection of the purportedly permissive signs.

8.3. In addition to the representations made before the inquiry by the Applicant herself, in a letter sent to the Registration Authority in November 2014, the Applicant's solicitors, Capital Law, made a number of points of submission which it is appropriate for me to note.

8.4. [Some of these points related to the questions on which the Council as landowner subsequently made concessions at the inquiry, namely that the Uplands Electoral Ward can be regarded as a locality for the purposes of ***Section 15*** of the ***Commons Act***; and that the evidence had shown that a significant number of inhabitants of that locality had indulged in lawful sports and pastimes on the application site for more than 20 years and continued to do so. In view of those concessions it is not necessary for me in this Report to summarise any submissions which went to those particular issues, because the position on those is now established in the Applicant's favour].

8.5. The Applicant's solicitors made the further point that the Council had made a series of assumptions as to the statutory power under which the recreation ground is held. The land was vested in the Council by virtue of the ***Townhill and Burroughs Enclosure Act 1762***, the effect of which was to enclose the wasteland of the Manor. The land was registered in 2001 by the Land Registry. There is an entry on the Title which says *"The land tinted pink on the filed plan is subject to such restrictive covenants as may have been imposed thereon before 29th October 2001 and are still subsisting and capable of being enforced."*

8.6. The solicitors continued that while they had received a copy of the application for registration from the Land Registry they had not yet received the supporting documents. The entry they had referred to was, they said, strong evidence that the Council relied on the statutory declaration supporting its use and occupation of the site, as opposed to relying on the statute which conferred ownership upon it.

8.7. The point is an important one if the Council was in occupation of the Rec as at the date of the application. This occupation would be to the exclusion of the public, and therefore use by the inhabitants was as of right not by right (***Lambeth Overseers v London County Council*** [1897]). The fact is that the Council is not sure how it holds the Rec. On 28th March 2014 it advertised its intention to appropriate the land for the purpose of a public open space. In an email of 15th July 2014 the Council's senior lawyer had said that the Council's intention was to regularise the use and classification of this parcel of land as a recreation ground, as it is currently not formally appropriated for such use. It was further indicated that this parcel of land was a part of a programme of appropriations of vacant Council owned land which had been going on for some time.

8.8. The Rec therefore is just vacant land which has not been laid out for recreation. There are no facilities on it; it is a grassed area forming part of a larger parcel of land owned by the Council.

8.9. Since objection was made to the intention to appropriate, on behalf of the Applicant, the Council had now decided that it holds the land pursuant to ***Section 164*** of the ***Public Health Act 1875***, although it actually has no evidence for this. The fact that there is a byelaw does not necessarily support the Council's contention, as Byelaws can (and could have been at the time) be made under general powers.

8.10. In April 2012 the Council erected a sign on the land as follows: *"The Public have permission to enter this land on foot for the purpose of recreation but this permission may be withdrawn at any time."* Prior to the erection of this sign, the use of the Rec was as of right, not by right. In any event, even if that were not the case, and if (which is denied) the Rec was held pursuant to ***Section 164*** (or indeed the ***Open Spaces Act***), the sign would have no effect because unless and until the statutory trusts are discharged, the Council could [not?] exclude the public from the land anyway.

8.11. In the ***Barkas*** case, their Lordships did consider that public land could be the subject of Village Green rights. In the ***"Trap Grounds"*** case, (***Oxfordshire County Council v Oxford City Council*** [2006] 2 AC 674), a village green was successfully registered even though the land was in public ownership. It had not been laid out or identified in any way for public recreational use. Until the sign was erected here in 2012, that was the case in relation to the Rec. The Council should be required to disclose evidence to support the assumptions it has made but not substantiated.

8.12. The Council had also objected on the grounds that it has maintained control over the use of the Rec, and has interrupted any use alleged to have been made over the 20 year qualifying period. The fact that the Council confirms that it has retained control over the land is further evidence to support its rateable occupation of it, and further enquiries need to be made of the Council as to this, and as to the rents and receipts it received from the occupations noted. Notwithstanding that, the examples of uses that it has permitted on the Rec, and for the periods shown, are insufficient to have interrupted user as of right. These temporal interruptions have continued for a *de minimis* period and are insufficient to disrupt the user. In any event they were insufficient to displace the use as of right, and the inhabitants did not defer to the uses described. It is well known that village green rights can accrue alongside temporary uses permitted by the landowner.

8.13. Some further pre-inquiry submissions by the Applicant herself (in response to the Council's objection) had mainly dealt with the subsequently non-controversial issue of use of the land by a significant number of local inhabitants. It was also accepted that public events had been held on part of the Rec, but argued that this had not caused significant interruption of usage. When events had been held, there was still no barrier to the public entering onto the Rec to wander round, or for normal casual use. Any charges levied would have been to purchase items, purchase a ride, or go into something specific, and would always be paid direct to the tradespeople concerned, not seen as being paid to the Council.

8.14. Anyway, by no means all the events identified by the Council had taken place on the Rec (i.e. the application site). For example, the fair took place on the hard-surfaced car parking area; the Air Show actually happens above the Marine Foreshore Parade, although people go on the Rec to watch it; the Gower bike ride does not actually take place on the Rec, which is merely an assembly point for it; and the circus has tended to keep to the area closest to the car park, leaving a large segment of the application site uncovered; any entrance fee was only to enter the performance tent.

8.15. In opening submissions at the Inquiry, Ms Dodd explained that the evidence being called (as well as the material already produced) in support of the application would show that all the statutory requirements of ***subsection 15(3)*** are met in this case. It was clear that, in erecting signs in early April 2012, the Council were trying to bring the situation in line with that which had been considered by the courts in the ***Barkas*** case, so that they could argue that any subsequent use was by permission, and not 'as of right'.

8.16. Against that background it had seemed illogical to the Applicant and her colleagues to apply for registration under ***subsection 15(2)***, when at the time of the application the use of the land 'as of right' had not yet been proved by the Applicant to the Registration Authority. The purpose of this present inquiry is to determine if use has been made of the land 'as of right'. The wording of ***Section***

15(7) that the Council seems to rely on appears to assume that use of the land has already been proven to have been 'as of right', and focuses on the time limit within which an application should be made, in a case where 'as of right' use has already been proven. For those reasons the application here was appropriately made under ***section 15(3)*** of the Act.

8.17. Notwithstanding those arguments, if the view is taken that the application should have been made under ***section 15(2)***, then favourable consideration is invited under that heading, as it would have no material impact on the case from either party's point of view. The House of Lords in the well-known ***'Trap Grounds'*** case had held that registration authorities have a discretion to accept amendments to an application, or to register only part of the area originally claimed, if only that part meets the registration criteria.

8.18. In closing submissions Ms Dodd, the Applicant, said that it was very welcome that locality was no longer an issue. What now seemed to be the important points were that it should be seen that there was no express permission to people to use the land, no implied permission to them to do so, and no interrupted usage.

8.19. On the question of express permission, it was acknowledged that it had now been established how the land was acquired by the predecessor of the Council. The Freedom of Information request which Ms Dodd had submitted had led to it being shown that the land was acquired under an 18th Century Act of Parliament. Then in the 19th Century there had been a leasing arrangement in respect of the land, and it was clear that the sub-lease concerned was not under the ***1875 Public Health Act***. Anything which went with the sub-lease which had been identified would have expired in due course, and Swansea Council as it then was would have been the unencumbered freeholder from 1920 onwards.

8.20. The 1918 Byelaws for pleasure grounds represented the first time that this recreation ground figured in such Byelaws. Ms Dodd accepted that the 1918 Byelaws were made under the ***1875 Public Health Act***. However there was a question as to whether the land of the Rec was held under that power in 1918. It was only from 1920 that the Council was free to do what it liked with the land. There were then gaps in the evidence, particularly in relation to the early 1920s.

8.21. Since 1992 a good many different activities had taken place on the land; there clearly were lawful sports and pastimes indulged in by the inhabitants of the locality. It was entirely appropriate that specific cricket and football clubs might seek permission to use the land, but that would not be detrimental to the claim of the local inhabitants to have used the land as of right.

8.22. The Applicant disputes that the Council has been maintaining the land, either as a car park or as a statutory recreation ground, during the relevant period. It seems to the Applicant that the Objector has not provided a clear picture of use of the recreation ground for car parking. The Applicant disputes that the land was used to

the full extent that the Objector at the Inquiry sought to suggest. The Applicant also disputes the extent to which other licensed activities which took place there from time to time covered the ground of the site. Mr Hughes's evidence had mentioned the full extent of the circus's occupation when it was on the land; however quite a number of witnesses had said that the fairground until the last 2 years had been on the hardstanding, not on the application site. Therefore the Applicant does not agree with the extent of other uses as claimed by the Objector.

8.23. As to the suggestion that the public had been excluded from parts of the land, it was more appropriate to say that their inclusion had been made conditional, i.e. conditional on payment. The Applicant specifically disagrees that the overflow of parking onto the application land had been as extensive as had been claimed. If it had been it would have generated a lot of letters about parking on the grass.

8.24. The Applicant does not accept that the Parks Department of the Council maintain this land. There is no evidence that it is maintained as a recreation ground. The Applicant also disputes the number of events which the Objector claims take place there. The Applicant's witnesses suggest that those events were on the hardstanding area. Local people have never been excluded from the ground at the entrances to the application site, the points of access onto the application site through which the public can walk have always been open. It is accepted that there have been licensed uses on part of the land, and the Applicant accepts that the public could not get into the Big Top of the circus without paying. However that had always been on the car park area until 2012.

8.25. She noted that in September 2012 a Circus had been scheduled on the land, and had seen the photographs which Mr O'Brien had produced. The Applicant did not believe Mr Hughes's evidence that the land was so covered with cars at any stage that one could not indulge in recreational activities there. The Applicant likewise cannot see on what basis the Objector can claim that permission to use the land would have been implied. The Objector had not provided sufficient evidence that the land could not be accessed at any material time.

8.26. There was no evidence that a ***Mann v Somerset*** type situation existed on the land during the relevant 20 year period. The only cordon incident was post-2012. There had never been cordoning off of any part in order to park cars in the period relevant to the application. Nor had there been any instance cited in evidence showing that the application land had been full of cars or vehicles at any one time. Nor had it been shown that anyone was ever told to get off the land during events. It was still possible to play football there even between cars when they were parked there.

8.27. When the bicycle race was on in Swansea that was not by any means all on the application land; it was essentially on the promenade. Also cars, when they are parked there, are there for such a short while that they do not interfere materially with the use for lawful sports and pastimes. On University open day events the

cars were there just for an hour or two. Also it was noted that Mr Hughes had said that the grass area would not be used for the circus if the weather was poor. No staff kiosks had ever been erected on the grass part of the Council's land, only on the hardstanding. The Council has not come up with any evidence that people were ever excluded from the land at the entrances to it, or evidence of anything analogous to the ***Mann*** case.

8.28. There had been activities on the land which the 1918 Byelaws could not have envisaged, but that fact did not damage the Applicant's case.

8.29. The Applicant's submission is that such licensed activities as had taken place on the application land did not affect people's use for lawful sports and pastimes. There were no signs there before April 2012, either permitting or prohibiting use. There had been clear evidence of more than 20 years use during the relevant period. That is why the Applicant is cautious about 2012 being changed to 2014 as the end date [if it is argued that the application should have been made under ***subsection 15(2)*** of the Act, with the relevant 20 year period running up to the date of the application]. It was realised that the issue about the location of the Circus Big Top on the grass might be detrimental to the application here, in those circumstances, because of the ***Mann*** case.

8.30. Lawful sports and pastimes and licensed activities have happily co-existed on this land for longer than the relevant 20 year period. The land was not maintained as a recreation ground, despite having recreational activities taking place on it. The nature of the licensed events which had taken place, and the nature of the car parking which took place from time to time, and the lack of normal maintenance of this land meant that this could not be seen as a piece of land on which local members of the public had had permission, express or implied, to use it.

9. THE CASE FOR THE PRINCIPAL OBJECTOR – Evidence

9.1. ***Mr David Deer*** gave his address at the Guildhall, Swansea, and said that he had been employed by the City and County of Swansea and its predecessor Lliw Valley Council since 1992. Since 1999 he had been part of the Special Events Team, and his responsibilities included management and support of special events that take place within the city boundaries.

9.2. Between 1999 and 2015, he had been involved with several events that had taken place on the recreation ground. He produced a schedule of usage of the recreation ground taken from his files. This schedule showed a considerable number of occasions between 2005 and 2013 inclusive when use had been made of the land of the recreation ground for a variety of purposes. Many of those days or periods of use were for parking, in relation to a variety of special events or circumstances, but others related to actual activities of different kinds on the land.

9.3. He was aware that prior to 1999 a number of special events had been held annually on the recreation ground, dating back to at least 1985. The Council's Parks section had dealt with those bookings. The standard practice of formalising such a booking during the relevant period would have included various exchanges of documentation such as booking forms, legal indemnities, evidence of appropriate public liability insurance etc., and then a licence would be granted to allow the events to take place. He produced a number of examples of licences to use the land of this kind, generally granted to circuses or for the purpose of setting up fairgrounds on the land.

9.4. The number of participants at such events varied from year to year, with most events taking place at the weekend. The events take place on the recreation ground, and either occupy all or part of that ground. Access to the majority of those events he said is on payment of a fee.

9.5. He had produced the schedule showing usage of the recreation ground between 2005 and 2013, on the basis of having checked the relevant diaries and correspondence files. In relation to the sample licences provided for activities held on the recreation ground, the references in those licences to the recreation ground would he believed have been to the grassed area generally, leaving the hardstanding (off the application site) available for parking.

9.6. For example the Big Top of the circus was on the majority of occasions (albeit not all of them) set up on the grassed area, i.e. within the application site. He personally had seen the circus Big Top set up on that area. The circuses generally prefer to go on the grassed area, because it eases their erection of the Big Top. Having the car parking associated with it on the hard area (off the application site) assists the circus as well. Erecting the Big Top uses pegging into the ground, which is why using the grassed area is more convenient. Then the associated caravans etc. would be set up around the Big Top, which provides security for it. There would also be in such cases a barrier where the paying public have to pay if they wish to pass it.

9.7. In relation to the examples of days when the land was recorded as having been used for parking, for small events the parking would be on the hardstanding area (and therefore off the application site); however for larger events, especially events held in Singleton Park, the parking of vehicles often would extend onto the grassed area. The grassed area was used regularly as an overflow car park. As to how often that would be, it changes year by year. When there is a fireworks display in November, that always uses the grassed area as overflow parking. When concerts are held, which is about twice a year, they would use half the grassed area for parking. Also when cricket is being played at the adjacent St Helen's ground the parking is very busy on the grassed area. The University also uses that land (including the grassed area) on a regular basis as a car park.

9.8. In *cross-examination* Mr Deer confirmed that he has worked for the Council since 1999 and is based in the Guildhall.

9.9. His department have car park attendants whose regular job it is to be present at the Rec.

9.10. He acknowledged that the application site here relates to the grassed area, not the hardstanding area. His own personal involvement with the land had changed somewhat over the last six months as it happened, but he had been a senior member of staff in his department for the last 8 years. As for the actual lettings of the land for various purposes, a colleague in his team would oversee the administration of that. But Ms Johns, the Lettings Officer, would come to him for advice, and to avoid clashes etc.

9.11. Many of the events planned for the recreation ground area are kept quite secret at first; even within the team things are dealt with on a needs and risk basis. When he had given a list of occasions when the land was used for parking, it was a 'paid-for' parking service that was provided.

9.12. Looking at the variety of the uses made of the land as a whole, some things do not work on the grassy area, and other things do not work on the hardstanding area to the west of it. He acknowledged that the funfair had in fact used both areas, as had some of their vehicles. He was shown a picture of the Big Top of the Moscow State Circus, which appeared to show the it set up on the hardstanding area. However other circuses have predominantly been on the grass, and they are by no means always the Moscow State Circus. If there was a circus letting on the land, he himself would visit at the start to inspect the ground conditions. He would then visit during the presence of the circus, and then again after the circus had finished. How that was handled would depend on the nature of the event.

9.13. When the Air Show is held there, he or a colleague would be on the site throughout. Four of the recent Air Shows on the land had also had a funfair and exhibition on the grassed area of the land (the application site). However the very last Air Show had had its funfair in the civic centre car park. The majority of the 'normal' funfairs had been established on the hardstanding area, but with the grassed area then used for associated car parking. However he could produce a complaint letter about the fairground for the Air Show being set up on the grassed area.

9.14. As for the management of the events, the larger events would be managed in a slightly different way. Car park attendants would be provided if it was on a weekday. If it was a weekend they also might provide parking attendants, sometimes free and sometimes charged. And the Council's parking staff decide when to allow overflow onto the grass area.

9.15. He was a shown a version of his schedule of usage of the recreation ground onto which, in answer to a Freedom of Information request, a member of the Council's staff had put handwritten annotations showing whether the event concerned took place on the hardstanding or the grass area of the 'recreation ground' as a whole. These annotations had been made by Mrs Christine Johns, who is the Parks Lettings person.

9.16. Bookings for parking would always be booked into the hardstanding area, but then may extend onto the grass area as an overflow.

9.17. He accepted that a photograph had been produced showing the Moscow State Circus established on the hardstanding. Between the hardstanding and the grass there is a removable barrier. They would usually have 4 – 6 staff there on such an occasion.

9.18. On a normal day from Monday to Friday inclusive there would be two staff employed on the hardstanding area in connection with the car parking there.

9.19. In respect of another photograph showing the presence of the Cottle and Austen Circus at the recreation ground, he could not say if that circus was on the hardstanding or the grass area.

9.20. With reference to a note that in 2010 the land was used twice as a 'BBC base', that could well have been for the purpose of filming the well-known 'Dr Who' programme. They get quite a lot of BBC bookings; 'Dr Who' seemed quite likely in this instance.

9.21. There is not a policy to put the fairground on the hardstanding, there is just a preference to use the hardstanding if possible.

9.22. *In re-examination* Mr Deer said that he could not recall having known anything about the Freedom of Information request about which he had been asked some questions. Normally that would be dealt with by a central response team of the Council.

9.23. When there is a contract for the use of the land at the Rec for parking, such a contract would just mention the recreation ground in general, and would not specify the hardstanding in particular. Thus if the Rec is let for parking, the users would be able to overflow onto the grass if they wanted to or needed to.

9.24. *To me* Mr Deer confirmed that on any normal day he would have two staff at the car park end of the ground, in other words the hardstanding area which is not within the application site. However when there were special events being held at

the recreation ground there would be more staff, who may or may not be collecting money.

9.25. ***Mr Alex O'Brien***, gave his address as the Civic Centre, Swansea. He is a chartered surveyor employed as Property Manager in the Corporate Building and Property Services department of the Council. He had worked for the Council since 2012. He is jointly responsible for the management of the Council's property holdings.

9.26. The Council's records show that the site forms part of what is known as the *"Ancient Corporate Estate"* held by the Council. It forms part of a larger area of former common land which was acquired by the Council's predecessors under the ***Townhill and Burroughs Enclosure Act 1762***. The deeds in respect of the Ancient Corporate Estate had he understood been lost or destroyed, and the Council's freehold ownership has therefore been registered at the Land Registry based on a statutory declaration made by the former City Estate Agent in 1968. He produced a copy of that statutory declaration and its plan.

9.27. It was apparent that the site had been the subject of a lease which by the late 1800s was in the possession of one Colonel Morgan. In the 1870s the Council's predecessor, the Swansea Borough Council, commenced discussions regarding the possible acquisition of the site from Colonel Morgan for use as a recreation ground. Mr O'Brien exhibited articles from the Cambrian Journal relating to those discussions, showing (he said) that by 1885 the lease of the site had been relinquished by the lessee, and the site was in the possession of the Council under the auspices of its Parks Committee. He thought that Council minutes had been destroyed during the War, and therefore full records were not available.

9.28. The powers under which the Council accepted the surrender of the lease from Colonel Morgan and set out the site as a recreation ground were not specifically mentioned in any of the contemporary Council minutes. However in view of the purpose for which the land was acquired he inferred that the statutory authority was likely to have been the ***Public Health Act 1875***.

9.29. The site was made subject to Byelaws in respect of pleasure grounds in 1918. Mr O'Brien exhibited a copy of those Byelaws.

9.30. The site has remained under the management and control of the various Parks and Open Spaces Committee of the Council and its predecessor. He produced some copies of committee and Council minutes in that regard.

9.31. The Council's property records show the site as being subject to an internal letting arrangement from 1928 onwards, between the Estates and Parks departments. That arrangement was based on the principle that the whole of the Ancient Corporate Estate was vested in the Estates Committee. He believed that there had been a

misinterpretation of the situation in respect of the site, which from the minutes he had examined showed that it had in fact been vested in and managed by the Parks Department of the Council since the surrender of the previous lease on the land in the late 1880s. However even if the entry in the Council's records is correct it shows that the site has been held and managed by the Parks Department as a public recreation ground since at least 1928. He produced a record showing the internal letting between the Estates and Parks Department for the nominal sum of £50 per annum.

9.32. The Council had a number of Ordnance Survey plans from the early 1900s which clearly showed the land in question being referred to as the Swansea Bay Recreation Ground. He produced copies of those plans. He also produced a copy of the Parks landscaping specification for the current year of 2015/2016. However his colleagues in the Parks Department, and the minutes which he had examined, all indicated management of the landscape of the park going right back before 1988.

9.33. The Council had previously granted consent for the use of the recreation ground to the Swansea Cricket and Football Club for training purposes between certain times of the day. As part of the agreement the Council granted consent for the Club to install floodlighting at their own cost. Mr O'Brien produced a copy of the relevant consent and supporting documentation, dating from 1992/3.

9.34. The Recreation Ground has also been used historically for a variety of other events, as had been explained by Mr Deer.

9.35. The Council had erected signs at the site in April 2012 stating that the public has permission to use the site on foot for recreation purposes, but that that permission could be withdrawn at any time. Similar signs were erected on a number of other Council owned sites during the same period.

9.36. The Council erected perimeter gates and railings at the application site in the early 1990s, although the evidence of the precise installation dates is limited. He understood that the railings were originally installed by the Council for health and safety reasons, to prevent any objects or persons straying onto Oystermouth Road. He understood that the gates are locked on a permanent basis to prevent vehicular access, and are only opened for organised events. The surrounding railings however have a number of open access points to allow pedestrian public access.

9.37. Mr O'Brien produced a number of new copy photographs. One of them showed some runners on the esplanade, with Oystermouth Road visible to the left, and beyond that cars parked on the grassy part of the recreation ground. He had no date for that photograph. Another photograph showed an inflatable slide on the grassy area of the recreation ground. That photograph had been uploaded in the year 2010 to an internet photograph sharing site (Flickr). That photograph would have been taken in approximately the middle of the grassy area, looking

northwards towards Bryn Road. One can clearly see the grassy surface in the picture, and also a mobile chip shop on the grass. The worn area in the foreground of the picture appeared to be at the position where one enters onto the grass through the normally locked gates.

9.38. A third photograph, uploaded in 2010 to Flickr, showed a fairground ride on the grassy area of the application site. He believed this was related to the Air Show, as a number of RAF symbols are visible in the photograph. There is also a flight simulator in the foreground of the picture. All of this was on the grassed area of the application site.

9.39. He also produced a number of other photographs relevant to the application site. One was a copy aerial photograph thought to be from the 1960s, an observation supported by the fact that the railway line along the Swansea Bay seafront was still visibly present in the photograph. This photograph showed a very large number of cars parked on the grassy area of the recreation ground.

9.40. He also produced an aerial photograph believed to be from 2005, showing the gates and railings around the grassy part of the recreation ground (the application site), but also showing the areas where the grass had been worn away near to the vehicular entrance to the grassy area, indicating that it had in fact been used to accommodate vehicles (he said).

9.41. He produced a number of other photographs showing circus or other attractions taking place on the grassy area of the application site. One of the photographs, which had been uploaded to the internet in 2012, showed a circus ticket office for the Moscow State Circus on the grassy part of the application site. Another group of photographs, also apparently uploaded in September 2012, showed a number of different circus attractions on the grassy part of the application site, including the ticket office just referred to, but also the Big Top of the Moscow State Circus, which could clearly be seen to have been erected on the grass of the application site. He also produced a photograph without a date showing a classic car show taking place on the grass of the application site. Although the photograph had no date assigned to it, Mr O'Brien ventured the view that it was a fairly recent photograph.

9.42. He produced an 'Event Management Plan' document dating from May 2011, relating to a Swansea Pride 'Pink in the Park' event which was it seems held on the land in June 2011. The actual main event was held in Singleton Park, but there was a reference in the document to parking for the event being available on both the hardstanding and grassy areas of the recreation ground.

9.43. He produced a letter dating from October 2012 from a Mr Wilson, living in Bryn Road, who was complaining vigorously about the use of the grassy part of the recreation ground to accommodate a circus and its vehicles, which Mr Wilson had thought to have been a ridiculous thing to allow.

9.44. He also produced a transcription of a handwritten record in the Council's historical records dating from November 1882, which appeared among other things to note the moment at which the decision had been taken that the present application land, with the area currently used for car parking to its west, should henceforth be called the *"Swansea Bay Recreation Ground"*. He noted from other records that this recreation ground was from then on managed by the then Borough Council's Open Spaces Committee.

9.45. As for circuses on the recreation ground, he himself had been to a circus on the Rec during the last 20 years, and had seen it on the grassed area of the land, i.e. within the application site. He was not saying that the circus covered the grassy area of the application site entirely, but it definitely took up part of the site. He had definitely seen the Big Top of the circus on the grassy area. That was not a one-off occasion, he believed.

9.46. He recalled the funfair, as opposed to the circus, being on the hardstanding, but in his recollection the circus had predominantly been held on the grass.

9.47. As for car parking on the land, he had himself on numerous occasions parked on the grass; this had been mainly for the fireworks events, which he had attended on two or three occasions. There is substantial use of the grassed area on that occasion, when it is used as overflow car parking.

9.48. *In cross-examination* Mr O'Brien confirmed that he has been employed by the Council since 2012, but he is a Swansea man, and is familiar with the ground over a longer period.

9.49. On his understanding the records showed that the Council had always owned the freehold of this land, but that it had been leased to another party in the 1820s. Then in the 1870s that lease reverted back to the Council. The historical records he had produced were the only records there were, he believed. He had enquired in this respect of the Council's archivist. The historic newspaper articles from the Cambrian Journal had referred to the ground as the Swansea Bay Recreation Ground or as St Helen's Field, which later became the Swansea Bay Recreation Ground.

9.50. It was clear from Council records dating from 1883 that the site at that date was under the control of the Council, because there was reference to planting of trees on the Swansea Bay Recreation Ground, and the removal of illicit entrances which had been made onto the recreation ground from other properties, both in that year. He himself had spoken to the Council's archivist about the availability of documentation, and as far as he was aware everything available had been provided to the Inquiry.

9.51. ***Mr Thomas Brian Hughes*** gave his address as the Guildhall, Swansea. He is employed by the Council in its Leisure Department, in the role of Outdoor Leisure Manager. That involves responsibility for car parks, activity areas, sports clubs etc. The car parks he is responsible for are those on Leisure Department land, not general urban car parks. He has been employed by Swansea Council since the 1996 local government reorganisation in Wales, although he had spent 35 years in total in local authority employment. He has held the same job during his period working for Swansea Council.

9.52. That job includes responsibility for car parking at the Rec, Oystermouth Road. There is an entrance onto the hardstanding car park area to the west of the application site from Mumbles Road, just past Brynmill Lane. There is an exit from that car parking area further east, near to the end of the hardstanding area. Only the exit is now gated, although both accesses were until about 4 years ago. There is fencing around the grassed area of the Rec, and also down the length of Mumbles Road alongside the hardstanding area. There are double gates and a barrier at the entrance from the hardstanding area onto the grassed area of the application site. Those gates are usually locked, and a shroud is placed over the locks to prevent their removal. His staff based at the Rec keep the keys for those locks.

9.53. On a normal weekday, for car parking purposes they would only use the hardstanding, and the grassy area would remain locked. On such a normal day he has two members of staff taking money from cars parking on the hardstanding. There is also a permit system for regular parkers. In general they do not need to use the grassy area in the week.

9.54. On a normal weekend his staff do not work, so cars can park free on the hardstanding area. However, in practice the land is not used that much on a weekend when no event is taking place. However the gates of the hardstanding are left open.

9.55. When there are special events, once the hardstanding is full with parked vehicles they would open the gates to allow additional cars to park on the grassy area. The staff on site would then be up to four. On such occasions the parking is sometimes paid parking (in the sense that money is collected), and sometimes free parking. Sometimes the organisers of events request that the Council staff charge individual users, and sometimes the Council is paid a block sum so that the users get free parking.

9.56. In terms of charges to event organisers, there is a two tier charge, one being for just using the hardstanding and the second being for the hardstanding plus the grass overflow area. The latter type of charge would, for example, be one typically made to the University or the Metropolitan University. They are generally the ones who use that service.

9.57. There are probably some 7 or 8 events on the ground in a typical year. The University has three major events each year, all of which require both the hardstanding and the grass area for parking. Other events on the ground typically use the hardstanding for car parking, with the actual events taking place on the grass. The Circus nowadays takes place typically on the grass, leaving the hardstanding for car parking.

9.58. So for the last two years or so the circus Big Top itself has been on the grass.

9.59. In a typical year the grassy area is used between 10 and 20 times for general overflow parking, for example at the start of University terms etc. When the grass is used for overflow parking, there would typically be an agreement to use only the first one third of the grass for parking for general overflow (the western end of the grassy area). If however it is a University open day for example, the whole grass area is made available. The University typically warn his department beforehand of the number of cars expected. The hardstanding will hold about 400 – 450 cars, and a similar number can be held on the overflow grassy area. However the overflow area is only ever fully used during University open days. Thus it would be three times a year that there would be maximum capacity use of the grass. Other than on those days they would only typically use the western third of the grassy area for parking.

9.60. *In cross-examination* Mr Hughes said that the circus Big Top had been on the grassy area over the last two years.

9.61. *To me* Mr Hughes said that prior to two years ago the Big Top of the circuses used to be on the hardstanding, with use of the grassy area for parking; however bad weather had made that difficult.

9.62. Typically the Air Show however has used the hardstanding for car parking, and the grass area for the actual events, and for locating toilets etc. The Air Show takes place once every two years.

9.63. There is also a church or religious event which takes place once every two years, where the event is on the grass, with its parking on the hardstanding. Other events also use the grass area, for example when the BBC use the land. They use the grass to locate their trailers and equipment etc., while using the hardstanding for car parking. The land is used for a variety of different types of event.

9.64. *In re-examination* Mr Hughes said that he could by reference to some of the photographs produced by Mr O'Brien see that the circus booking or ticket building had been on the grassy area of the application site, and also that the Big Top was on the grass. With that in mind, on reflection it might well have been longer ago than two years ago that the new normal practice became that of using the grass for the circus Big Top. It could well have been some four years ago, having regard to

the fact that photographs uploaded in September 2012 showed the circus Big Top and other attractions clearly on the grassy area.

10. THE SUBMISSIONS FOR THE OBJECTORS

10.1. As noted earlier in this report, there were in fact two objections to the application I am considering. The principal reasoned objection was made by the Council as landowner. However another objection was made by Mrs Joan Henry, who lives in West Cross, Swansea.

10.2. ***Mrs Henry*** thought it was ludicrous that a public area only minutes away from the city centre could be considered as a village green. She thought it was inappropriate for such an area, or for suburbs to claim to have village greens. She thought that the people applying for town or village green status here already had sufficient space to walk their dogs in Singleton and Brynmill Parks. What with those parks and the shoreline they already had more green space than any other suburb of Swansea. She believed that the Rec is used extensively by teams playing American football, and visitors to the St Helen's ground. She wondered if those people would be allowed to continue to use the space.

10.3. As for the **Principal Objector (the Council as landowner)**, in submissions lodged in writing before the Inquiry the history of the recreation ground was noted. It was pointed out that it had been acquired by the old Swansea Corporation under a local Act of Parliament of 1762. The Commons of Townhill and the Burroughs had been owned by the Duke of Beaufort as Lord of the Manor, and the Burgesses of the Borough of Swansea had had certain rights of common over the two commons. Under the 1762 Act the commons were divided between the Duke of Beaufort and the Incorporated Burgesses of the Borough of Swansea. The land now constituting the recreation ground was part of the land then allotted to the Corporation. The Corporation was given power to lease the land allotted to it, but the land allotted to the Corporation was not vested in it for any particular purpose. It was therefore available to the Corporation for its general purposes.

10.4. The land was then leased by the Corporation to Colonel Morgan for agricultural purposes for a time until (it was initially argued) that lease was surrendered back to the Corporation in the 1880s so that it could be used as a recreation ground. The recreation ground was then laid out by the Corporation in the 1880s as a public recreation ground, and the land subject to the present application has been used as such ever since, under the control of the relevant committee or department of Swansea Council or its predecessors. Late 19th and early 20th century Ordnance Survey maps show that the land was part of what was then known as *"Swansea Bay Recreation Ground"*. In 1918 the Council of the Borough made Byelaws in respect of a number of pleasure grounds including the Swansea Bay Recreation Ground. Then in 1928 records show that the recreation ground was notionally let by the Corporation's Estates Department to its Parks Committee.

10.5. Swansea Council and its predecessors have maintained the recreation ground as a public recreation ground since the 1880s. In addition they have authorised a number of events on the recreation ground, some of which involve the exclusion of the public except on payment of an entry fee. Such events could be shown to have dated back before April 2007. The Council has also licensed the use of the recreation ground by sports clubs.

10.6. In 2001 the Council's ownership of the land was registered with the Land Registry. Then in 2012 permissive signs were erected by the Council on the recreation ground.

10.7. The land covered by Ms Dodds' application is only the eastern part of the original recreation ground, because the western part has been turned into a car park.

10.8. It was noted that the application had been made under ***section 15(3)*** of the ***Commons Act 2006***. The Council submitted that the Applicant had brought her application under the wrong sub-section. If there had been qualifying use of the application land for more than 20 years before the date when the permissive signs were erected in April 2012, the effect of ***section 15(7)(b)*** is that qualifying use would not have been terminated by the permissive signs, and would have been deemed to be continuing at the time when the application was made. The application should therefore have been made under ***section 15(2)***.

10.9. There is clear legal authority that applicants for registration of town and village greens must be required strictly to prove that all the relevant criteria under ***Section 15*** of the ***Commons Act*** are met. However this does not mean that the standard of proof is any higher than the civil standard of proof, i.e. on the balance of probabilities.

10.10. Another general principle to be derived from the authorities is that the decision maker should deal with the application as made. The Registration Authority has no investigative duty which requires it to seek to reformulate the applicant's case, or itself to seek out evidence which might support that case.

10.11. The Council as Objector took three main points, any one of which would be sufficient to defeat the Applicant's application. The first is that recreational use of the application site was not *"as of right"*, because the land has been held under ***Section 164*** of the ***Public Health Act 1875***. Second, and in the alternative, the public were from time to time prevented from freely accessing parts or the whole of the recreation ground by reason of events being held there, and that amounted to implied permission to use the Rec for recreation at other times, or alternatively an interruption in continuous prescriptive use. The Objector's third point was an argument that the Electoral Ward of Uplands is not capable of being a locality or a 'neighbourhood within a locality'. [The Council abandoned this point at the Inquiry].

10.12. ***Section 164*** of the ***Public Health Act*** enabled urban authorities to purchase or lease or lay out public walks and pleasure grounds. It is clear that Swansea Corporation was an urban authority in the sense of the legislation. Accordingly Swansea Corporation had the powers conferred by ***Section 164*** of the ***1875 Act***. It had not purchased or taken the recreation ground on lease, because it had already acquired the land under the 1762 Act. However, ***Section 164*** authorises a local authority to lay out and maintain land which it already owns for the purpose of public walks and pleasure grounds.

10.13. It is clear from judicial authority such as ***Hall v Beckenham Corporation*** [1949] 1KB 716 that if a local authority acquires land under ***Section 164*** and uses it as a public walk or pleasure ground, the public have a *right* to enter the land, subject to compliance with any Byelaws. The public use such land *'by right'* and not *'as of right'*. There are a number of judicial authorities to support this point. Although the present case is not completely on all fours with ***Hall v Beckenham Corporation***, the same principles apply.

10.14. It is true that no document has been found which records that the laying out of the recreation ground was carried out pursuant to the statutory power under the ***1875 Act***, but that is not necessary because it is a reasonable inference from the circumstances that on the balance of probabilities it was. The case of ***R (Malpass) v Durham County Council*** [2012] EWHC 1934 (Admin) supports this view.

10.15. When the land was laid out as a recreation ground in the 1880s there was no general statutory power for a local authority to acquire land for one purpose and then appropriate it for another purpose. Normally if the land was no longer required for the statutory purpose for which it was acquired it had to be sold. Under the ***Public Health Act 1875, Section 175*** there was limited power, with the consent of the Local Government Board, to retain land purchased for the purposes of the ***1875 Act*** if no longer required for its original purpose, but it was held in an early case that the section did not authorise the Board to consent to the retention of land for a different statutory purpose. The general power of appropriation was a later introduction, by legislation in 1907. That was then re-enacted in 1933 and eventually became ***Section 122*** of the ***Local Government Act 1972***. The requirement for consent to such appropriations was subsequently dropped.

10.16. Swansea Corporation acquired the land under the 1762 Act for its general purposes, without having any specific purpose attached to it. There was therefore nothing unlawful in deciding in the 1880s to use the land for the purposes of ***Section 164*** of the ***Public Health Act 1875***. Equally there would have been no need for any appropriation in those circumstances. Thus recreational use of the recreation ground since the 1880s has been *'by right'* and not '*as of right'*, and the application must fail on that ground.

10.17. If that point is rejected, then the decision of the High Court in ***R (Mann) v Somerset County Council*** [2012] EWHC B14 (Admin) must be considered. There

is was held that where land had been generally used by local people for informal recreation for more than 20 years, but where the landowner occasionally erected a beer tent on his land and charged for admission, there was an inference that the landowner had granted permission to local people to use his land for recreation, so that such use was not 'as of right' for the purposes of the ***Commons Act***. That case had been mentioned with approval in at least one subsequent case.

10.18. ***Section 15(7)(b)*** only applies to permission to use land granted after 6th April 2007, the date when the ***Commons Act 2006*** came into effect. It follows that since Swansea Council authorised third parties to close off parts of the recreation ground and charge for admission before April 2007, other recreational use was permissive and not as of right before that date. The application must therefore fail on that basis. Further or alternatively, the events amounted to such interruptions of recreational use of the recreation ground as to prevent such use being continuous for the purposes of the Act.

10.19. In further submissions made at the opening of the Inquiry, it was indicated that the Council as Objector does not dispute that the recreation ground (the application site) has been generally used by the public for lawful sports and pastimes since the 1880s, and that such use has continued ever since. It was also not disputed that such use had been without force and without secrecy.

10.20. It was reiterated however that at all material times since the 1880s the recreation ground had been held by the Council pursuant to ***Section 164*** of the ***Public Health Act 1875***.

10.21. In the alternative it was argued that the use had been expressly permissive since the signs were erected on approximately about 15th April 2012.

10.22. A further alternative way of putting the argument about 'permission' was to the effect that the Council had authorised uses of the recreation ground which had had the effect of excluding the public from parts of it. This leads to the view that there was an implied permissive use, or alternatively, interruptions to any 'as of right' use.

10.23. Evidence would show clearly that the Council had authorised use of the recreation ground for many events. Although it was accepted that some of those events took place on the hardstanding area, it was clear that others took place wholly or partly on the application land. That was supported by some of the observations made in material which had been put in by the Applicant's side.

10.24. It was accepted that the presence of parking or fairgrounds on the land would not necessarily exclude local members of the public, but the presence of the circus and its Big Top would inevitably exclude the public from the relevant part of the land.

10.25. In reliance of the case of ***Mann***, referred to in previous submissions, the fact that the landowner had authorised third parties to enclose part of the application side and charge for admission gives rise to an implication that general recreational user of the land was permissive.

10.26. In final submissions at the end of the Inquiry, the essential points taken in the earlier submissions for the Council as Objector were reiterated, save for the acceptance of the Uplands Electoral Ward or the (identical) Uplands Community Area as an appropriate locality for the purposes of the Commons Act. Thus the Council as Objector accepted that the recreation ground (the application site) has been used by a significant number of the inhabitants of the locality for lawful sports and pastimes since the 1880s, and that such use has continued ever since. It is accepted that such use has been without force or secrecy.

10.27. However the Objector takes two main points, either of which is sufficient to defeat the application. As indicated previously, the first of these points is that use of the recreation ground was not as of right because it was held under the ***Section 164*** of the ***Public Health Act 1875***. The second point, which is in the alternative to the first one, is that the public were from time to time prevented from freely accessing parts or the whole of the recreation ground, by reason of of events and parking, and this amounted to implied permission otherwise to use the recreation ground for recreation; or alternatively it represented an interruption to continuous prescriptive use.

10.28. In relation to the history of the land, it was clear that the basis of the title of the Council was the 1762 Local Act of Parliament. The common land in the area had previously been owned by the Duke of Beaufort. There is no real dispute that this Act is the root of the Council's Title, and in reality the Council's position is consistent on this point with the legal advice which the Applicant had received from Mr Edward Harris, solicitor. The Objector agrees with Mr Harris that any reference to there being Title Deeds to the land is mistaken. The land vested in the Council's predecessor by the 1762 Act of Parliament itself. Further, any reference to an enclosure award is itself otiose. The Act itself allocated the land to the Burgesses of the Borough of Swansea (the Council's predecessor). There were no commissioners involved.

10.29. It was also agreed on behalf of the Council as Objector that the advice the Applicant had received from Mr Edward Harris to the effect that between 1877 and 1920 the old Swansea Corporation had held the land of the recreation ground by an underlease from the Morgan interest, in spite of itself (the Corporation) being the freeholder, was correct (rather than there having been a surrender of the lease back to the Corporation in the late 1870s or early 1880s). So strictly speaking it was accepted there was not a surrender, but a sub-lease. However this had the same practical effect. There was a leasehold in possession from 1877, vested in the Corporation. It seems clear from the evidence produced by the Applicant herself that in August 1878 the Corporation proposed to create a number of recreation grounds. Therefore there is no doubt at present that the land was earmarked in the 1870s for a recreation ground.

10.30. It can be noted that the 1879 Ordnance Survey extract which had been produced showed the relevant ground as sand dunes or rough grass. It is not known what the survey date for the 1879 map would be; however it would seem that the recreation ground was laid out in the 1880s as a public recreation ground, and was thereafter used as such ever since. This is supported by the various minutes referring to the Swansea Bay Recreation Ground. Therefore the land was laid out and used as a recreation ground, after the interest in possession had been acquired by the Corporation; the Ordnance Survey map extract of 1899 shows it as a recreation ground, and as open land with some trees.

10.31. In any event it is quite clear that the 1918 Byelaws, copies of which had been produced, included the Swansea Bay Recreation Ground, and therefore the application site, as one of the grounds covered. It does appear that those were the first Byelaws in relation to this particular recreation ground, and there is no evidence that those Byelaws have ever been repealed.

10.32. As for the arrangement represented by the 1928 internal lease document, that appears to be part of the common local authority concept of land being owned by a particular committee, even though legally that is not the case. What it was intended to represent is that the land was owned by the Council, but its management vested in the Parks Committee. Therefore it appears clear that the recreation ground has, since the 1880s, at all times been maintained as a public recreation ground, subject only to the use which has been made of it as a car park, and the fact that it is clear that for a number of years at least the Council have authorised the holding of events on the Rec, such as fairs and circuses.

10.33. It appears from photographic evidence that for a number of years, at least from 2012, the circus has been held on the grassy part of the Council's overall landholding here. It is also clear that the RAF show events have been held on the grass, using the hardstanding for car parking. The evidence also showed that the Council has licensed use of the Rec by sports clubs, although that was done without the land ever having been formally laid out as sports pitches.

10.34. It was noted that Mr Harris, who advised the Applicant, accepted that the Council is properly registered as the owner of the recreation ground. There is no dispute that the land was properly registered as belonging to the Council, even if (as Mr Harris pointed out) some of the things that were said at the time of the registration were technically incorrect.

10.35. A further point which the Council as Objector wished to take was that in any event, by virtue of the 1918 Byelaws, use of the land of the recreation ground has been impliedly permissive, under the doctrine laid down by the Supreme Court in the ***Newhaven*** case. There is no general principle that the land has to be open for the whole time. There is no inconsistency in the Council's position. This was a public recreation ground. When the Council was not using it for some particular purpose

it was allotted to public recreation. It is extensively used for most of the time for public recreation. This is consistent with the view that when the public are using it, they are using it 'with permission'.

10.36. The evidence of Mr Deer said that the circuses were normally on the grass, albeit Mr Hughes recalled that historically the circus had been held on the hardstanding area, and only in more recent years had been held on the grassy part. What is clear is that the Moscow circus in 2012 or earlier had begun to be held on the grass. The presence of the circus Big Top is the aspect of the situation which is most directly analogous to what happened in the ***Mann*** case.

10.37. In relation to car parking, Mr Hughes's evidence showed regular use of the application site several times a year for overflow car parking, albeit that this was mostly confined to the western one-third of the grassy area. But at least three times a year the whole grassy area was used. It was also clear from the evidence that the Council controlled the car parking. Normally the grassy area is securely gated and locked. It does seem that car parking on the grass is not a matter of trespassers, it is an organised allocation.

10.38. That volume of car parking taking place falls within the ***Mann*** analysis. It does not in fact matter when it was that this car parking use started, but taking up half or a third of the ground for car parking is a direct analogy with the ***Mann*** case.

10.39. It was established in the Supreme Court in the ***Newhaven*** case that Byelaws can be construed as impliedly giving permission to use the land concerned. Here at the recreation ground there have been Byelaws since 1918, which have never been repealed. Those Byelaws prohibit a number of specific activities. The Supreme Court said that where there are Byelaws forbidding a number of activities, they must impliedly permit the activities not prohibited.

10.40. So if in 1918 the Council promulgated Byelaws prohibiting specifically various activities, they impliedly permitted the public to use the recreation ground for recreation which did not infringe the list of prohibited acts. Therefore there was implied permission under the Byelaws to use the land. The ***Newhaven*** case did appear to suggest that statutory Byelaws are not dependent on whether they are displayed or not.

10.41. Even if part of the land was used for car parking, circuses etc., people were still impliedly permitted to use the land when it was not used for those other purposes. Therefore even if the use of the land was not by right, it was still by permission.

10.42. Thus the argument can be put in a number of ways. First it can be said that use of the land by the public was *by right*. Secondly it can be said that there was implied permission, as per the ***Mann*** case. Thirdly there was implied permission arising

from the existence of the Byelaws. Any of those interpretations of the position would lead to the town or village green claim being rejected.

10.43. The letter from Ms Dodds' solicitor, Mr Edward Harris, is not quarrelled with by the Objector in substance. It does not affect any of the arguments advanced on behalf of the Council.

10.44. An alternative legal analysis is that there had been interruptions in recreational use of the application land, so that 20 years continuous use has not been proved. Swansea Council authorised third parties to close off parts of the recreation ground and charge for admission, and regularly used the land for car parking. On that basis recreational use was permissive and not as of right, and the application must fail.

10.45. It is also necessary to consider the recreation ground as a whole. For many years the whole of the recreation ground was used for recreation. At some unknown date half of it was turned into a car park. That in itself was evidence of implied permission to use the remaining parts of the ground for recreational purposes. Permission does not expire the moment it is granted, but has continuing effect.

10.46. On the question as to which sub-section the application should have been made under, if the Council's argument was correct that the application should have been made under ***subsection 15(2)***, then the relevant 20 years would be up to 2014, which makes the position even more difficult for the Applicant.

10.47. Any submission on the part of the Applicant that the land of the application site has not been *maintained* by the Council is not supported by any evidence before the inquiry or the Registration Authority.

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 subsection 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, and received by the Registration Authority, on 25th March 2014. That is therefore the 'time of the application'. The application suggests that use of the claimed land 'as of right' ceased on 30th March 2012, which was less than two years before the time of the application. On that basis 30th March 2012 would be the date from which the relevant 20 year period needs to be measured (backwards).

11.2. I shall consider later in this section of my Report the argument advanced for the Principal Objector that the application was made under the wrong subsection, and should have been made under ***subsection 15(2)*** of the ***2006 Act***. This is a point I discuss below, under the sub-heading *"for a period of at least 20 years"*.

The Facts

11.3. In this case, as things turned out, there were at the Inquiry only relatively minor areas of factual dispute as to the history of the use of this site over the relevant years, and to some extent over the earlier history of the site before those years. However the Principal Objector correctly noted the point that the law in this field initially puts the onus on an applicant to prove and therefore justify his/her case that the various aspects of the statutory criteria set out in ***Section 15(3)*** have in reality been met on the land of an application site.

11.4. 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.

11.5. 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.

11.6. 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 setting out my overall conclusion, 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 evidence in reaching my conclusions under all the headings, and (of course) in reaching my overall conclusions as well.

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

11.7. The original application put forward the 'Uplands Electoral Ward' as being the relevant area to meet one or other of these criteria. From the submissions exchanged between the parties prior to the Inquiry, it had appeared that it would be a matter or major dispute whether that area was capable of constituting a 'locality' or a 'neighbourhood' for these purposes, and/or whether it had been in existence for the whole relevant period of 20 years.

11.8. However from research carried out, and information provided most helpfully on behalf of the Applicant, it was established clearly that the Uplands Electoral Ward is in fact co-terminous with the Community area of Uplands, which had been defined under a Statutory Instrument of 1983, and had been in existence for a period well in excess of the relevant 20 year period.

11.9. Such Community areas, and their equivalent civil parishes in England, are almost the 'classic' examples of areas which are clearly capable of constituting 'localities', in the way in which the courts have said that term should be interpreted for the purposes of the ***Commons Act*** (and its predecessor the ***Commons Registration Act 1965***).

11.10. In the light of that information, it was expressly conceded on behalf of the Principal Objector (and the other objector had taken no point in this regard) that the Uplands Electoral Ward (being identical to the Uplands Community area) constitutes a valid locality (or neighbourhood within a locality) for the purposes of these proceedings. I may say that in my opinion this concession was entirely correct. The application therefore meets this aspect of the statutory criteria.

"A significant number of the inhabitants"
"Lawful sports and pastimes on the land"

11.11. It was also expressly conceded at the Inquiry on behalf of the Principal Objector (the Council as landowner) that the evidence showed that the Recreation Ground (the application site) had been used by a significant number of the inhabitants of the Uplands Community or electoral ward for lawful sports and pastimes since the 1880s, and that such use has continued ever since (subject to the issue about interruptions/implied permission which I discuss below).

11.12. It therefore follows that in my judgment the application also meets these two aspects of the statutory criteria.

"for a period of at least 20 years"

11.13. It follows also from what I have recorded above that it is clear, and not in dispute, that regular and significant 'lawful sports and pastimes' use of the application land by local inhabitants has taken place (subject to points about interruption/implied permission – discussed under the 'as of right' sub-heading, below) over any relevant period of 20 years, and more.

11.14. The only issue which I therefore need to consider under this present sub-heading is the point taken on behalf of the Principal Objector, arguing that the Applicant has made her application under the wrong subsection, it being suggested that she should have made it under ***subsection 15(2)***, based on the claimed use still continuing as at the time of the application. It was pointed out that she had made no application to amend her application, so as to be considered under that subsection.

11.15. The logic of this argument was based on the wording of ***Section 15(7)(b)*** of the ***2006 Act*** which provides:

> *"For the purposes of subsection (2)(b) in a case where the condition in subsection (2)(a) is satisfied:-*
>
> *...*
>
> *(b) where permission is granted in respect of use of the land for the purposes of lawful sports and pastimes, the permission is to be disregarded in determining whether persons continue to indulge in lawful sports and pastimes on the land 'as of right'."*

Subsection 2(a) is the provision requiring at least 20 years use to be established, and ***2(b)*** requires that the 'as of right' use (in a subsection (2) case) is continuing *"at the time of the application"*.

11.16. This argument arises from what appears to be the undisputed fact that during the first few days of April 2012 the Council as landowner erected at the site a number of signs purporting to grant to the public a revocable permission to use the application land for recreation. [However I note in passing that the Principal Objector's main case at the Inquiry argued that the public had already in fact enjoyed 'permission', or even a statutorily based 'right', to use the land for recreation, since as long ago as the 1880s].

11.17. The argument on this point was that if local people were correctly to be regarded as having used the land 'as of right' before the 'permissive' signs were put up in

2012, then ***subsection 15(7)(b)*** has the effect that that the permission given by those signs should be disregarded for the purposes of ***subsection 2(b)*** [about use continuing at the time of the application]. Therefore, it is argued, the application should have been made under ***subsection (2)***, not ***subsection (3)***.

11.18. One general point which I feel it is appropriate for the Registration Authority to take cognisance of is that the amendments made by Parliament to the law of town and village greens, when the ***Commons Registration Act*** was replaced by the ***Commons Act 2006***, were manifestly designed to make things easier and more straightforward for applicants. They were clearly not introduced in order to create legal 'traps' for the unwary, or lay applicants. Of course they may have achieved such a result inadvertently, but considerable care would be needed (in my view) before coming to a decision that they had done so.

11.19. The Applicant makes the fair point that the whole question of whether there had been 'as of right' use of the application site in the first place, even before the 2012 signs were put up, is an unresolved one until the dispute about the application as a whole is decided. It is reasonable in that context (she argues), for the purposes of making an application, to take an express (purported) 'permission' conveyed by new signs erected in April 2012 as bringing to an end 'as of right' use, bearing in mind that one of the legally clear criteria for such use is that it is 'without permission'.

11.20. I understand the logic behind the point advanced by Mr Chapman QC for the Principal Objector. However it is clear from its wording that ***subsection 15(7)(b)*** has relevance *only* in relation to the interpretation of ***subsection 2(b)*** [and therefore only in relation to a 'subsection (2)' case]. There is nothing in ***subsection (7)(b)*** which affects or in any way disapplies the actual statutory words of ***subsection 15(3)***.

11.21. ***Section 15(1)*** says, with no qualification that town or village greens may be registered where (as one of three options) ***subsection (3)*** applies. In my judgment it is clear that when a landowner purports to give permission to use land, that action takes away one of the key ingredients of 'as of right' use, so that a use of land which really was 'as of right' prior to that permission would cease to be so upon its grant. The wording of ***Subsection (3)*** therefore would clearly apply to the situation, provided the application is made within the relevant period thereafter.

11.22. I can see that there is a somewhat curious interrelationship between ***s.15(7)(b)*** and ***s.15(3)***, in a case where both might be seen to apply. However I am not aware of any judicial authority (and nor did I have any drawn to my attention) to the effect that ***Section 15(3)*** is disapplied, for cases falling within its express wording, because ***subsection 15(7)(b)*** arguably produces a situation where ***subsection 15(2)*** could be relied on by an applicant as well, or alternatively.

11.23. The written notes which Mr Chapman QC provided to back up his oral submissions made a somewhat oblique and passing reference to the judgment of Lewison LJ in the Court of Appeal in ***R(Newhaven Port & Properties Ltd) v East Sussex CC (No. 2)*** [2014] QB 282, at paras. 28-37. I have considered those paragraphs, but they do not seem to me to deal with the particular issue which I am considering.

11.24. Therefore, in the absence of any apparent judicial authority to a different effect, it seems to me that the Applicant is correct in arguing that her application can appropriately be determined under ***subsection 15(3)***. Even if what I have said above were wrong on this procedural point, in my opinion the Applicant would have an overwhelmingly strong case, in the interests of fairness and justice, for having her case considered by the Registration Authority under ***Section 15(2)***, as affected in its interpretation by ***s.15(7)(b)***. Any other approach would, in my judgment, produce a most uncalled-for 'trap for the unwary' for applicants, seriously at odds with the manifest intentions of Parliament in enacting ***Section 15*** of the ***2006 Act***.

"As of right"

11.25. As was the subject of discussion at the Inquiry, without there being any dissent on the point, the expression *"as of right"* in the law of England and Wales is correctly understood as meaning 'without force, without secrecy and without permission' – or in Latin *"nec vi, nec clam, nec precario"*. In this case it was expressly conceded on behalf of the Council as Principal Objector that the use which has been made by the local inhabitants of the Recreation Ground over the years has been without force, and without secrecy. So it is only the *"without permission"* or *"nec precario"* aspect of the above definition which has been in issue in the present case.

11.26. From a number of relatively recent judicial discussions of this topic it had seemed that there might perhaps be a fourth category of situation where *"as of right"* use could not be established (beyond absence of force, secrecy or permission), namely where the use was 'by right', in the sense of there existing an actual *right* (as opposed to mere permission) for the relevant people, or the public generally, to do what they had been doing on the land concerned. However the Supreme Court in the important recent case of ***R (Barkas) v North Yorkshire County Council*** [2014] UKSC 31 made it clear that it regards a 'by right' situation as effectively no more than a sub-species of the category *"with permission"* or *"precario"*.

11.27. What is clear is that 'as of right' use cannot be established in circumstances where the persons concerned already have a right to do what they are doing on the land, either because they have been given permission (or licence), express or implied, or because they have an actual statutory or legal right to do so. And it is still legally correct to take the view that 'as of right' really means 'as ***if*** of right', in the sense that the people concerned behave as if they had the right to do what they were doing (on the land concerned), when in fact they had no right or permission to do

so. Or, to put it another way, there is a trespassory element which is essential to establishing an 'as of right' use, as opposed to a use which was by right or with permission.

11.28. None of what I have set out in the preceding paragraphs was really in dispute between the parties in the present case. I have only sought to set out my understanding of the correct legal position because it is absolutely critical to the two main surviving strands of objection to the present application taken by the Principal Objector.

11.29. The first of these strands is the argument that local people's use of the Recreation Ground was not 'as of right', because the land has been held for very many years by the Council and its predecessors under ***Section 164*** of the ***Public Health Act 1875***, i.e. as a 'public walk or pleasure ground'. Its use by the public would have been 'by right' or 'with permission' (*precario*), because there is long-standing (and recently approved) case-law establishing that in such circumstances the public has an actual right to use the land, subject only to any byelaw restrictions which might be in force.

11.30. The second strand of the Principal Objector's argument, which is in the alternative to the first, is that because of the evidence about various things which have taken place on the Recreation Ground during the more recent decades, it is clear that the public were from time to time prevented from freely accessing the whole or parts of the recreation ground for recreation, so that it should be assumed, relying on recent case-law [***R (Mann) v Somerset County Council*** [2012] EWHC B14 (Admin)], that for the remainder of the time there was an impliedly revocable *permission* to use the land, or the parts of it not in use for events etc. As a further sub-alternative within this strand, it was also argued that the various events, uses for parking (usually commercially paid for) etc., during the relevant period of 20 years, represented material interruptions to any 'as of right' use.

11.31. I feel I ought to observe that in relation to the first strand of argument, the one concerning the basis on which the Council and its predecessors have held the land at the Recreation Ground, there had initially been a certain amount of confusion on both sides (by which I mean both the Applicant's side, and the Council as Principal Objector) as to some of the historical facts, and their legal consequences. Fortunately, through the medium of holding a public local inquiry into the matter, it has I believe proved possible to achieve some clarity on most of the matters which actually are important to the decision needing to be made.

11.32. It is appropriate that I now set out some conclusions which it has been possible to reach on relevant factual aspects of the history. It is clear that land including the application site first came into possession of the Council's predecessor directly by virtue of the ***Townhill and Burroughs Inclosure Act 1762***. It was not allotted or granted to the Burgesses of Swansea for any particular statutory or other purpose, but for what might be described as general purposes. It seems clear that the land

including the application site was in fact later leased by the Borough to someone else for 99 years in September 1821. However in 1877 the Corporation took a (sub) lease back of the remainder of the term, to September 1920, in respect of the Recreation Ground (including the land west of the application site) and the Esplanade.

11.33. I accept, as did Mr Chapman for the Principal Objector at the Inquiry, that this was a sub-lease arrangement (even though the Corporation was already the freeholder of the land), and not a surrender of the 1821 lease. This is what the Applicant, assisted by the advice of Mr Edward Harris, Solicitor, had argued, contrary to the view originally being assisted on behalf of the Council; I believe, and conclude, that the Applicant and Mr Harris were right in this respect. It was therefore only in 1920 that Swansea Corporation (re)acquired the unencumbered freehold of the land.

11.34. What seems clear however, from the interesting historical information provided by both sides, is that Swansea Corporation re-acquired *possession* of the relevant land (albeit under a sub-lease arrangement) in the late 1870s with a view to its being laid out as a public recreation ground or pleasure ground. It is further clear that by 1882/3 it had been so laid out, and that in late 1882 it was recommended that henceforth it should be called the Swansea Bay Recreation Ground, a recommendation which had clearly been acted upon by the time of several surviving Minutes referring to it by that name, dating from 1883. The Applicant herself produced a copy map dating from 1878 showing the application site as part of one of a number of proposed recreation grounds.

11.35. It is the case, as the Principal Objector acknowledged, that no formal document has been discovered which sets out the statutory powers under which Swansea Corporation laid out this recreation ground. However it is reasonable to take note of the point that the then fairly recent ***Public Health Act 1875*** provided by ***Section 164*** for authorities such as Swansea Corporation to lay out, plant and maintain lands which it either owned or leased for the purposes of being used as public walks or pleasure grounds.

11.36. By 1899 Ordnance Survey large-scale mapping was clearly showing the present application site, with other land extending to the west, as the Swansea Bay Recreation Ground.

11.37. No evidence has been found of any Byelaws relating to this ground of an earlier date, but the 'Swansea Bay Recreation Ground' was clearly included in the County Borough of Swansea's *"Byelaws in respect of Pleasure Grounds"*, of November 1918. I was told, and this was not disputed, that there is no evidence that these Byelaws have been subsequently repealed or replaced in respect of this land.

11.38. It is true that these Byelaws were enacted at a time when Swansea Corporation was still only in possession of the land under the somewhat curious 'sub-lease'

arrangement described above (albeit also being the freeholder), which situation lasted until a little later, in 1920. However it does not seem to me that this fact makes any difference, in terms of what inferences can be drawn as to the basis on which the Corporation was holding and managing the land, both before and after 1920.

11.39. The Byelaws of 1918 do not state which statutory power they were made under. However everything about them, including their title, makes it highly likely in my judgment, and on the balance of probabilities, that they were and remain Byelaws made under ***Section 164*** of the ***Public Health Act 1875***.

11.40. All the facts and justifiable inferences of fact to which I have referred so far lead me to the view that from the early 1880s onwards (and indeed from the regaining of possession under the sub-lease of 1877) Swansea Corporation's intention had been to lay out, and then provide and maintain this land as a 'public walk or pleasure ground' under the ***Public Health Act 1875***, ***Section 164***. It is clear, not least from the important recent Supreme Court case of ***Barkas***, to which I have referred above, that in these circumstances use of the Recreation Ground by the public would have been 'by right', not 'as of right'. The public, including the local inhabitants, would manifestly not have been trespassers in using this land for lawful recreations.

11.41. The fact that full freehold ownership in possession was only restored to the Council's predecessor in late 1920, after the date the Byelaws were made, does not in my view have any bearing on this. The Recreation Ground continued thereafter to be provided for the public's benefit under the 1875 legislation.

11.42. The record showing that in 1928 the view was apparently taken that the Recreation Ground (including the application site) and Promenade should be regarded as notionally let by the Corporation's Estates Committee to its Parks Department at £50 per annum similarly does not seem to me to affect the situation in any meaningful way. I agree with Mr Chapman's submission that this seems to have been a manifestation of the commonly encountered local authority concept of land being *owned* by a particular committee or department of a council, when in legal reality that is not the case. And in any event, under that arrangement, the Council's Parks Department continued in fact to provide the land as a recreation ground for public use.

11.43. It seems to me that some of the Council's actions in more recent decades have shown a distinct element of administrative confusion as to the basis on which the Council was holding the land including the application site. It is striking, as the Applicant pointed out, that in March 2014 the Council advertised formally an intention to appropriate the land of the Recreation Ground as 'Public Open Space', only for it later to be stated in writing by an officer of the Council that this action had not been pursued because the land was *already* held by the Council as Public Open Space, so that no appropriation was required.

11.44. The action of the Council in erecting signs at the Recreation Ground in April 2012, giving the public 'permission' to enter the land on foot, but saying *"this permission may be withdrawn at any time"* also makes no sense in relation to the land being either 'Public Open Space' or (as I believe was the case) land provided for public use under ***Section 164*** of the ***Public Health Act 1875***. In either case no further 'permission' was necessary to use the land; the public has a *right* to use it. That right may not 'be withdrawn at any time'. It could only be withdrawn after following a statutory procedure allowing for public objection, and requiring consideration of any such objections.

11.45. Back in 2007 the Applicant herself had been told in writing by a legal officer of the Council that the land of the Recreation Ground formed part of the 'Ancient Corporate Estate' of the Council, with *"no restrictive covenants affecting its use"*, having been held by the former Borough Council 'under the power of the Townhill and Burroughs Enclosure Act 1762'. While literally true, that was plainly an inadequate and incomplete reply to say the least, in the light of the further researches which have been carried out into the history of this land, both by the Applicant and by the Council itself.

11.46. It is perhaps fortunate therefore that the making by the Applicant of her application, and the holding of this Inquiry into it, have caused those further researches to be carried out, so that the correct position has been able to be clarified.

11.47. That position appears to be (and I so conclude and advise the Registration Authority on the evidence and submissions I have received) that the Recreation Ground, although part of the 'ancient corporate estate' of the Council's predecessors since 1762, has since the early 1880s been provided by those predecessors, and then the Council itself, as a 'public walk or pleasure ground' under ***Section 164*** of the ***Public Health Act 1875***. As such the public have a right to use the land for recreation, which cannot be removed or 'withdrawn' without following an appropriate statutory procedure, which allows for objections.

11.48. However the consequence of this as far as ***Section 15*** of the ***Commons Act*** is concerned is that the application site cannot have been used 'as of right' during the relevant 20 year period, so that the Applicant's application under this piece of legislation must inevitably fail.

11.49. My recommendation to the Registration Authority to that effect, and for the reasons I have discussed, accords with the principal submissions made at the Inquiry on behalf of the Council itself, as landowner and Principal Objector.

11.50. I emphasise that point because it is on the face of things less than easy to reconcile what appears to be the actual legal status of the land concerned with some of the

actions and activities which the Council and its predecessors have allowed to take place on the land concerned over the last several decades. This concern logically applies to the whole area of what was from the 1880s the 'Swansea Bay Recreation Ground' including the area to the west of the present application site, currently used for day to day car parking, as well as to the application site itself. I was given to understand at the Inquiry that there was no evidence that the formal status of any of this land had changed since the time of the records dating from the 1920s which were produced by the parties. However my appointment and role in advising the Registration Authority relate only to the application site itself, and I shall as far as practicable confine my further observations on this matter to that land alone.

11.51. It was acknowledged very clearly on behalf of the Council as Principal Objector that the Council's second main argument was *in the alternative* to its first one, and only really had any force if that first main argument were concluded to have been wrong. That view of the matter must be correct, it seems to me.

11.52. The second main strand of argument by the Principal Objector was based on the proposition that the public have in fact been prevented from freely accessing parts or the whole of the application site on numerous occasions during the relevant 20 year period, because the land was being used for the purpose of holding events, or for car parking. The legal consequence of these states of affairs was then put in two alternative ways: if the use of 'the Rec' by local people had otherwise seemed to be 'as of right', then these occasions of events or parking use either (i) showed that the regular use for recreation was really by an *impliedly revocable permission*, or (ii) represented significant *interruptions* to continuous prescriptive use.

11.53. As far as the relevant evidence was concerned, I was shown convincing evidence, in the shape of an aerial photograph which must have been from the 1960s or earlier, that even as far back as that the then Council was on occasion (at least on the occasion of the photograph) allowing the application site to be almost completely filled with parked cars. That was of course well before any relevant 20 year period, but most of the other evidence I received about such occurrences did relate to the relevant period, or to the time since the Applicant's claimed period ended (30th March 2012).

11.54. Mr O'Brien, a witness for the Principal Objector, put in photographic evidence, albeit taken from the internet, which with his explanation I found entirely convincing, that as early as September 2012 (but possibly before), a circus with a 'big top' had been licensed to set up on the grassy area of the application site (as opposed to the 'car parking' area to the west). The other evidence from a variety of witnesses as to when and whether a 'Big Top' had been set up on the 'grass' (i.e., the application site), as opposed to elsewhere, was somewhat inconsistent. On balance it appeared to me that the more convincing evidence was to the effect that Circus 'Big Tops' have been sited on the grassy application site on a number of occasions in the most recent years, but that in earlier years they tended to be on the hardstanding, further west, with the application site used for parking.

11.55. The evidence was persuasive (and accords with common sense) that when a circus Big Top is there, it is surrounded by a cordon, to pass beyond which members of the public are required to pay. The problem with this particular point, from the point of view of the Principal Objector's case, is there was no clear evidence that this particular state of affairs existed on the application site in the period prior to April 2012.

11.56. There was however a considerable amount of evidence about other events, or occasions of major car parking use, going back well before the end of March 2012. One example is that it was clear from documentary evidence produced that in May 2011 it was arranged (in terms of what was licensed by the Council) that up to 500 cars could be parked on the application site (as an overflow to the adjacent hardstanding area), in connection with an event ('Pink in the Park') which was itself being held in the nearby Singleton Park. I did not however have any clear evidence as to whether that overflow parking was actually needed and used on the day.

11.57. I found the evidence of Mr Hughes, the Council's Outdoor Leisure Manager, helpful and generally reliable. It was clear that his work had since 1996 involved actual direct personal knowledge of the car parking and special events which have been allowed to take place on the Recreation Ground, and on the application site specifically.

11.58. From him I understood (and accepted as convincing) that typically, over the period he has known the land, the grassy application site has been used between some 10 and 20 times a year for overflow parking, in connection with special days, e.g., ones involving the Universities. Generally that overflow parking takes place only on about the western third of the application site, but about three times a year the overflow parking capacity on the application site itself is fully used.

11.59. From a combination of Mr Hughes's evidence and other evidence I learned that a variety of other events have been allowed to take place regularly on the Recreation Ground as a whole. There appear to have been regular fairgrounds, every year, with the fairground stalls and rides themselves on the hardstanding, but with associated parking on the grassy application site. Similarly, even when circuses were (quite regularly) set up on the hardstanding in the period before 2012, associated parking took place on the application site.

11.60. Conversely the evidence from Mr Hughes and others was quite clear (and convincing) that when 'Air Shows' have been held, which has been approximately every two years, significant parts of the event itself, which has typically included funfair rides, flight simulators, toilets etc., have been set up on the application site, with associated car parking on the hardstanding area to the west.

11.61. Similarly an 'apostolic church' event appears to have been held a number of times prior to 2012 (Mr Hughes said approximately every 2 years), with the event itself

on the application site, and parking on the hardstanding. On the other hand the evidence was that *parking* for an annual fireworks event was always on the application site.

11.62. The BBC appear to have been reasonably regular users (under licence from the Council) of the Recreation Ground as a whole in connection with filming (e.g., of "Dr Who" programmes), using according to Mr Hughes) the grassy application site for placing their trailers and equipment, and the hardstanding for parking.

11.63. It was clear from the evidence that there have been a number of other special events of different kinds every year, with Mr Hughes estimating that about 7 or 8 of them in a typical year would have involved use of the application site in one way or another (as well as the occasions when it has been used to a greater or lesser extent for overflow parking).

11.64. Undoubtedly, of all the events or uses about which I heard evidence, the type which most resembled the situation addressed in ***R (Mann) v Somerset County Council*** was the visits of one or other circus, with the public having to pay to enter an enclosed compound. However the evidence was not clear as to whether such a specific situation had existed on the application site, as opposed to the adjacent hardstanding, prior to April 2012.

11.65. Nevertheless the evidence was clear, in my judgment, looking back earlier than April 2012, that in every year the Council would typically, in terms of what it licensed or permitted on the application site specifically, behave on a significant number of occasions as if it could allow whatever it liked to take place there, regardless of the effect that would have on local inhabitants (and others) wishing to indulge in lawful sports and pastimes on the land.

11.66. It is true that (apart from the circus 'enclosures', which I have discounted) there was no real evidence that during the other types of event the (local) public were actually prevented from entering the land. Clearly however people could not disport themselves or engage in pastimes on the actual spots where vehicles, trailers, etc., were parked, or where equipment, portable toilets, funfair rides, aircraft flight simulators or the like were situated. But, it would seem, people could and probably did still walk around these obstacles, on the pieces of grass where nothing was parked or positioned.

11.67. I am very much aware of the point that in the important case of ***R (Lewis) v Redcar and Cleveland Borough Council*** [2010] UKSC 11 the Supreme Court came to the clear view that 'as of right' use of a claimed town or village green could be recognised even where the owner of the land concerned (or its tenant/licensee) had been carrying on other activities at the same time as local people's 'lawful sports and pastimes'. This could be so even if the other activities (in that case those of a private golf club) were carrying on every day of the year, provided they were

compatible with the 'lawful sports and pastimes', with a degree of mutually respectful 'give and take' on both sides.

11.68. As regards ***R (Mann) v Somerset CC*** Mr Chapman for the Council correctly argued that this case must be taken as representing the law as it currently stands. It is not entirely clear however how far any principle it enunciates can go, or how consistent it is with another principle established by case law (at a higher level) that the area of land covered by a town or village green application can be reduced in size (to exclude an inappropriate part) during the process leading to its determination, where that can be done without injustice to the parties.

11.69. However those concerns do not seem to me to arise here – this is not a case where the Applicant is suggesting that the application site could reasonably be cut down in size to exclude parts where the owner has carried on or licensed incompatible activities during the prescription period.

11.70. On the ***Lewis v Redcar*** issue, I accept the Applicant's point that when 'events' were going on local people could (it seems) still walk among the parked cars – even though at times there were a great number of them – or around the pieces of equipment. A balance must be struck, in my view, in coming to a sensible and legally justifiable conclusion on issues of this kind. I can envisage, as a matter of law, that there might be situations where use from time to time of the same piece of land by a number of vehicles, parked or moving, might be compatible, on the ***Lewis v Redcar*** 'give and take' principle, with an 'as of right' use for lawful sports and pastimes becoming established by prescription under the ***Commons Act***.

11.71. However, as a matter of judgment, it appears to me on balance (and I so conclude) that some of the regular interferences with 'lawful sports and pastimes' uses here were so significant and substantial that they must be taken to have shown that the landowner was asserting a 'right' to exclude local people from their own regular use of substantial parts of this land.

11.72. It would follow, in the sense discussed and considered in ***R (Mann) v Somerset CC***, that local people who might seem to use the land as of right at other (unobstructed) times should be seen as having done so with implied permission, and therefore not in reality 'as of right'.

11.73. On the Principal Objector's 'sub-alternative' argument, it seems to me also that the amount of incompatible use over the relevant 20 year period has in this case been sufficient to amount to a considerable number of 'interruptions' to the establishment of a continuous period of 'as of right' use of the application site.

11.74. In my judgment therefore the Principal Objector's second main argument also succeeds, on both its 'sub-alternative' strands – implied licence and/or interruption to continuous use. I repeat however the point which I have explained before, that

in my view this second strand of alternative argument(s) is entirely inconsistent with what I believe is the correct position, as advanced in the Council's first argument, namely that throughout the relevant period the application site has properly been held and provided by the Council under ***Section 164*** of the ***Public Health Act 1875***, and local people have had a *right* to use it, subject only to not infringing the relevant Byelaws; they have not been using it 'as of right'. This is so, in my view, even though the actions of the Council in recent times have sometimes suggested that it had corporately 'forgotten' the actual basis on which it holds this land.

11.75. Thus my conclusions on the Council's second strand of argument are only of relevance if (which I do not believe to be the case) my conclusions the first strand were adjudged to be wrong. Those second conclusions however still lead to the view that the site here cannot be registered under ***Section 15*** of the ***Commons Act***.

11.76. A yet further sub-issue which arose within the arguments of the Council as Objector was the argument that because there were Byelaws in relation to use of this land by the public, those Byelaws themselves impliedly gave *permission* for the use of the land, even though they had not been displayed there (which it appears they had not). The argument was that this should follow from the similar conclusion the Supreme Court reached in relation to the existence of (undisplayed) harbour byelaws in ***R (Newhaven Port and Properties Ltd) v East Susses County Council*** [2015] UKSC 7.

11.77. It seems to me however that this argument goes beyond and outside anything that is required for the resolution of this case. In *this* case the Byelaws concerned are clearly (in my judgment) ***Public Health Act 1875*** byelaws, and relate to (indeed are part of the evidence for) the point that the land is held and made available to the public under ***Section 164*** of that Act. The public therefore already has the *right* (and therefore permission, '*precario'*) to be on the land, and does not need the existence of byelaws to give it a further 'implied permission'.

11.78. That in effect concludes my consideration of the issues in this case, and leads inexorably to the conclusion that the application here cannot succeed. Before setting out my final conclusion, however, I ought just to recall the point that the Council as landowner was not the only objector to the application. Mrs Henry, from West Cross, was also an objector. However nothing in her letter of objection raises any legal issues, or any matters of disputed fact which I need to resolve.

11.79. I further reiterate the point, which was made in the Directions issued before the Inquiry, that nothing in my conclusions and recommendation relates in any way to the question of what *ought* (as a matter of desirability) to happen to this land in the future, or to matters of town and country planning.

Final conclusion and recommendation

11.80. In the light of all the considerations which I have discussed above, my conclusion is that the Applicant has **not** succeeded in making out the case that the application site, or any part of it, should be registered pursuant to ***Section 15*** of the ***Commons Act 2006***. In particular she failed to establish that the land, or any part of it, had been used *"as of right"* during the relevant period, within the legal meaning of that expression.

11.81. Accordingly my recommendation to the Council as Registration Authority is that ***no part*** of the land of the application site should be added to the Register of Town or Village Greens maintained under ***Section 1, 3*** and ***15*** of the ***Commons Act 2006***, pursuant to the Applicant's application, for the reasons given in my Report.

ALUN ALESBURY
26th April 2016

Cornerstone Barristers
2-3 Gray's Inn Square
London WC1R 5JH
and
One Caspian Point, Cardiff Bay, CF10 4DQ

APPENDIX I

APPEARANCES AT THE INQUIRY

FOR THE APPLICANT – Ms Kathryn Dodd, the Applicant (for the *"We Love the Rec"* group)

She gave evidence herself, and called:

Mr David Roger Brown, of 31 Westfield Road, Waunarlwydd, Swansea
Mr Robin Wood, of 8 Lon Cwmgwyn, Sketty, Swansea
Mr Craig Lawton, of 22 Laburnum Place, Sketty, Swansea
Mr Philip Andrew, of 7 Hazel Road, Uplands, Swansea
Mr Peter May, of 41 Finsbury Terrace, Brynmill, Swansea
Mrs Irene Mann, of 7 Richmond Terrace, Uplands, Swansea
Mrs Elizabeth Byatt, of 4 Westfa Road, Uplands, Swansea
Mr Colin Williams, of 96 Bryn Road, Brynmill, Swansea
Dr Sandy Reid Johns, of 61 Glanbrydan Avenue, Uplands, Swansea

FOR THE PRINCIPAL OBJECTOR – The City and County of Swansea as landowner

Mr Vivian Chapman, Queen's Counsel
- Instructed by Mrs Frances Wilson, Solicitor

He called:

Mr David Deer, Special Events Team, City & County of Swansea, Guildhall, Swansea

Mr Alex O'Brien, Chartered Surveyor, Property Manager, Corporate Building & Property Services Dept, City & County of Swansea, Civic Centre, Oystermouth Road

Mr Thomas Brian Hughes, Outdoor Leisure Manager, City & County of Swansea, Guildhall, Swansea.

APPENDIX II

LIST OF NEW DOCUMENTS PRODUCED TO THE INQUIRY

NB 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, mainly paginated bundles of documents produced for the purpose of the Inquiry, on behalf of the Applicant and Principal Objector, all of which were provided to the Registration Authority (and me) as complete bundles. Included within this exclusion is a bundle produced by the Principal Objector concerning land at Cae Park, Brecon, which was admitted to the present proceedings, but to which in the event no substantive reference was made.

FOR THE APPLICANT:

Written note of Ms Dodd's Opening Statement

'Dot Map' of Addresses on Evidence Questionnaires

1878 Map (copy) of Proposed Recreation Grounds, St Helen's, Swansea.

Addition to Witness Statement of Dr Sandy Reid Johns

Email exchange (Oct 2015) concerning Ward boundaries

Swansea Local Development Plan Baseline Data Ward Profiles: Uplands, May 2013

Letter from Mr Edward Harris, Solicitor, 18.2.2016

FOR THE PRINCIPAL OBJECTOR

Written Opening Statement

Aerial Photograph (1960s) showing eastern part of application site

Aerial Photograph of site, 2005

Photographs taken from internet:

Swansea 10k runners, cars on application site
Funfair slide on application site during Air Show
Funfair ride, etc. on application site during Air Show
Classic Car Show on site (undated)

Photographs ("uploaded Sept 2012") showing Moscow State Circus and associated features on site

Swansea Pride *"Pink in the Park"* Event Management Plan, 2011

Transcript of 24/11/1882 Swansea Corporation Minute

Email exchange (July 2011) and photograph, re complaints concerning funfair lorry parking on application site

Correspondence and email (October 2012) re complaint concerning events held on application site (and Singleton Park)

Note of Closing Submissions for Principal Objector