

COMMONS ACT 2006, Section 15

**CITY AND COUNTY OF SWANSEA
(Registration Authority)**

**RE: LAND AT TIRMYNYDD ROAD
THREE CROSSES, SWANSEA**

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

into

**AN APPLICATION TO REGISTER THE
ABOVE-NAMED AREA OF LAND**

as

TOWN OR VILLAGE GREEN

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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 dated 12th November 2015, and received by the Council on or very shortly after that date, for the registration of an area of open land to the east of Tirmynydd Road, and to the north of Chapel Road, Three Crosses, as a Town or Village Green under *Section 15* of the *Commons Act 2006*. The site, and the whole of Three Crosses, are within the administrative area for which the Council is responsible.
- 1.2. I was in particular appointed to hold a non-statutory Public Local Inquiry into the application, and to hear and consider evidence and submissions in support of it, and on behalf of those who had objected to the application (“the Objectors”). Hence I was provided with copies of the original application and the material which had been produced in support of it, the objections duly made to it, and such further correspondence and exchanges as had taken place in writing from the parties. Save to the extent that any aspects of that early material may have been modified by the relevant parties in the context of the Public Inquiry, I have had regard to all of it in compiling my Report and recommendations.

2. THE APPLICANT AND APPLICATION

- 2.1. The Application, accompanied by various documents, including letters, statements and completed evidence questionnaires in support, etc. was, as already noted, dated 12th November 2015; it was made on behalf of the Three Crosses Community Council (“the Community Council”). The Community Council is therefore “the Applicant” for the purposes of this Report. I will therefore generally refer to it as ‘the Applicant’ or ‘the Community Council’ in the Report, according to which seems the more appropriate for the context. The application form indicated that the application was based on *subsection (2)* of *Section 15* of the *Commons Act 2006*.
- 2.2. The application form put forward the area covered by the Three Crosses Community as the ‘locality’ relevant to the application, and the village of Three Crosses (whose boundaries were shown on a map accompanying the application) was proposed as the relevant ‘neighbourhood’ within that locality. By the time of the Inquiry which I was appointed to hold, it had become apparent that the Community and Community Council of Three Crosses had only come into formal existence pursuant to a Statutory Instrument made in December 2011. However evidence was given, and not challenged, to the effect that the area now covered by the Community of Three Crosses is the same as that which had been covered for several previous decades by an officially defined Polling District for the purpose of local elections. In the event no party pursued an argument that the area covered by the present Community Council was incapable of being a legally recognised ‘locality’. Nor was any material issue raised as to the acceptability, in a legal sense, of the suggested ‘neighbourhood’

- 2.3. As far as the application site itself was concerned, reasonably clear boundaries were shown on a plan which accompanied the application. However it became apparent during the Inquiry, and was confirmed visually at the formal site visit, that within the boundaries of the site as shown there exists a short, curving length of publicly adopted all-purpose highway (i.e. a vehicular carriageway with pavements/footways either side of it). This forms part of the residential street or cul-de-sac known as Orchard Drive, and runs from Chapel Road at the southern end of the application site, around to serve the residential part of Orchard Drive, which is outside the application site, to the east (or more accurately north-east) of it.
- 2.4. The Council, as well as being the Registration Authority for *Commons Act* purposes, is also the highway authority for the area including Three Crosses, and as such is in possession of plans showing the extent of publicly adopted highway in the vicinity. With the agreement of the parties who participated in the Inquiry, such a plan covering the relevant area was obtained from the highway authority, and I will refer to it later in this Report, in the context of considering the precise extent and definition of any land here which could properly be registered as a town or village green in consequence of this application.
- 2.5. As for the application site itself (apart from the small part of Orchard Drive which I have just referred to), it is an approximately triangular piece of open, generally unfenced land. Its short southern side fronts the edge of Chapel Road. Its long western side similarly fronts onto the edge of the carriageway of Tirmynydd Road. Only its long eastern (or north-eastern) side generally abuts the enclosed curtilages of residential properties. A small number of those properties in fact gain vehicular (and no doubt also pedestrian) access via generally unmade-up tracks from Tirmynydd Road, across the northern part of the application site. The more northerly of these tracks is in effect a single track, whereas the more southerly has a fork in it a little to the east of Tirmynydd Road, and appears thus to serve a number of properties off the application site to the east. There is also a duly registered public footpath running up from Chapel Road at the south-eastern corner of the site to Tirmynydd Road close to the northern extremity of the site. This footpath is close to, but not for the most part directly adjacent to, the eastern boundary of the site as a whole. This public footpath also (inevitably) crosses the line of the publicly adopted Orchard Drive, which I have referred to above.
- 2.6. It is appropriate that I should note here that the entirety of the application site is (and long has been) also already registered under the *Commons Act*, and its predecessor legislation, as ‘common land’, a circumstance which I shall address further, later in this Report.
- 2.7. At the time(s) when I saw the site, much of it was (apart from the public footpath I have referred to, and a few other noticeable paths) fairly heavily covered with vegetation. Some of this consisted of established (but mostly fairly small to medium-sized) trees and bushes, but the rest of it contained substantial amounts of bracken, brambles, and other assorted but generally low vegetation, typical of an area which has undergone a period without much maintenance or management having taken place.

3. **THE OBJECTOR(S)**

- 3.1. When the Council publicised the application, two letters of objection were received (as well as one representation in support). The first objection was submitted jointly on behalf of the Somerset Trust, understood to be the freehold owners of the application site, and Edenstone Homes Limited. The other objection (which was extremely brief) was made on behalf of the Gower Commoners' Association.
- 3.2. By the time the Registration Authority proposed that an Inquiry should be held into this application, and in response to the Directions which are referred to below, it had appeared that the Somerset Trust had intended to play no further part in the proceedings (but to rely on the [joint] written objection which had been submitted on its behalf); whereas Edenstone Homes Limited, represented by solicitors, did intend to participate in the Inquiry, albeit calling no evidence, but relying on the original [joint] objection, and further written material, both evidential and by way of submissions/argument, which had been submitted on behalf of the company. In the event however, Edenstone Homes Limited were not in fact represented at the Inquiry which I held, whereas the Somerset Trust were represented by Counsel (and instructing solicitors), who participated for the purpose of cross-examining the witnesses called for the Applicant, and the making of submissions on the case generally.
- 3.3. Apart from making their original (brief) objection, the Gower Commoners' Association played no further part in the proceedings.
- 3.4. In explaining later in this Report what I understand to be the cases advanced on behalf of the Objectors, I shall, in the light of the somewhat unusual procedural circumstances outlined above, endeavour to summarise and consider the significant points eventually taken on behalf of all of the objectors, whether in their written submissions or material, or orally at the Inquiry.

4. **DIRECTIONS**

- 4.1. Once the Council as Registration Authority had decided that a local Inquiry should be held into the application [and the objection(s) to it], it issued Directions to the parties, drafted by me, as to procedural matters in July 2016. Matters raised included the exchange before the Inquiry of additional written and documentary material, such as any further statements of evidence, case summaries, legal authorities, etc. The Applicant did indeed produce material in all these categories, in broad accordance with the Directions.
- 4.2. As noted above, one of the Objectors (Edenstone Homes Limited) produced reasonably extensive further written material in response to the Directions, albeit without intending to call any oral evidence. The other main Objector (the Somerset Trust) did not produce any new or expanded material in response to the Directions, but was in the event represented and participated substantially at the Inquiry. These circumstances did not however cause any significant problems in terms of the smooth running of the Inquiry, or the obtaining of a proper

understanding of all of the parties' respective positions; in particular they did not in my view cause material unfairness to any of the parties, e.g. by making it difficult for them to understand the opposing case(s) which they were expected to meet.

5. SITE VISITS

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

5.2. After the close of the Inquiry, on 26th October 2016, I made a formal site visit to the site, accompanied by representatives of both the Applicant and the Somerset Trust (the Objector represented at the Inquiry). In the course of doing so, I was able to observe the site more fully than I had previously been able to, and also once again to note parts of the surrounding area more generally. The Inquiry venue was quite close to the application site, so I was also able to familiarise myself in a general way with the area on other occasions during the inquiry period.

6. THE INQUIRY

6.1. The Inquiry was held at the Crwys Primary School, Three Crosses, on 25th and 26th October 2016.

6.2. At the Inquiry submissions were made on behalf of both the Applicant and the Somerset Trust; oral evidence was heard from witnesses on behalf of the Applicant, 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 (as noted above) the material submitted in the earlier stages of the process by people or organisations who did not in the event appear at the Inquiry itself. I report on the evidence, and the submissions of the parties, in the following sections of this Report, before setting out my conclusions and recommendation.

7. THE CASE FOR THE APPLICANT – EVIDENCE **Approach to the Evidence**

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

7.2. Other written or documentary material was submitted on behalf of the Applicant [and also some of the Objectors], both in the early stages of the process, and in the run-up to the Inquiry. Some of this consisted of written statements from witnesses

for the Applicant who would in due course give evidence at the Inquiry itself. Additionally, the Applicant had provided a large number of further completed evidence questionnaires, in much greater number than those originally filed with the application.

- 7.3. I have read all of the 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, on some aspects of a case of this kind, more weight is likely to 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 necessarily 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 personal evidence as was contained in statements, letters, completed evidence questionnaires, etc., by individuals who gave no oral evidence. In general terms it was broadly consistent with the tenor of the evidence given by the oral witnesses, and nothing stands out as particularly needing to have special, individual attention drawn to it by me.
- 7.6. In any event all of the written and documentary material I have referred to is available to the Registration Authority as supplementary background material to this Report, and may be referred to as necessary.

The oral evidence for the Applicant

- 7.7. *Ms Vanessa Cashmore* lives at 22 Chapel Road, Three Crosses. She had completed one of the later batch of evidence questionnaires which had been supplied in support of the Application.
- 7.8. She has lived in Three Crosses since August 2001, and has enjoyed using the green space at the bottom of Chapel Road and Tirmynydd Road (the application site) since that time. Her four children, her husband and she herself enjoy walking through that area with their dog nearly every day. As the site is free from traffic her children are safe to play on the land, and enjoy the wild flowers that grow there. The site is also of historic significance to Three Crosses, as it is the site of one of the two wells that used to serve the village.
- 7.9. She and her family also use the paths on the site as a safe route to walk to the village shop, and she knows that many others do too. As part of the Parent/Teachers Association for the local school, and as organiser of the annual village treasure hunt and barbecue, she has used the application site land to send

children and their parents safely through the area following clues, for many years. Many other people use the application site land in the ways she has mentioned.

- 7.10. She started working with the Parent/Teachers Association in 2003, when her children attended nursery. There is an annual treasure hunt and barbecue event, part of which takes place on this land. However the barbecue itself is held at the school or the community centre, not on the application site.
- 7.11. She and her family walk their dogs regularly on the land. They walk off the footpaths, and use the area to wander round. Their children go off the path, for example chasing the dog, or playing hide and seek and so forth. She herself is a geography teacher by occupation.
- 7.12. *In cross-examination* Ms Cashmore said that the paths on the application site are a safe route. She herself lives 100 metres down Chapel Road from the site, on the south side. The village shop is further to the north than the application site, up Tirmynydd Road.
- 7.13. Her family like to use the path that was cut through the vegetation on the site. They sometimes go on the area that has been cut near the edge of the road, but usually on the grassy area. They are probably more likely to walk on the area of cut grass near the public right of way that crosses the land. Or they might walk on a newly cut path on the land, which has been there since about 2013.
- 7.14. The application site is quite beautiful at some times of the year, she said. She thought that the vegetation on the land had been cut before 2013 as well. It was mowed before 2013, for example when she had her baby Esther in 2008, she thought. However she had no photos of the land. She thought that the Council had used to cut the land.
- 7.15. The local treasure hunt she was involved with had taken place for at least five years and has continued to exist since then. It had re-started in 2003/4 she thought. It was brought back then in association with the village fete. The treasure hunt would follow a route around the village. It generally follows footpaths rather than roads, for the safety of the children.
- 7.16. The application site would generally be regarded as the centre of Three Crosses. There had also been scavenger hunts held which made use of the land. In these children would be asked to collect items, for example cones.
- 7.17. The grassy part of the application near Tirmynydd Road is quite a wide area. Children play particularly on the grassy areas of the application site, near the western and southern boundaries. They would play all sorts of games jumping or leaping about. Children also play in the area near the well at the northern end of the site, and by the tracks across the land, opposite Cilonnen Road.

- 7.18. *In re-examination* Ms Cashmore said that they had not usually placed ‘treasures’ for the treasure hunt in amongst the vegetation on the land, but the children might have to go off the paths to scavenge things, for example to obtain blackberries or perhaps a feather.
- 7.19. **Mr Wynne Griffiths** lives at 17 Joiners Road, Three Crosses. He had completed one of the original group of evidence questionnaires lodged in support of the application. He had lived in Three Crosses since November 1955, the time of his birth.
- 7.20. Having been a resident of Three Crosses since his birth, he grew up and spent all his formative years in and around the village, and attended the village school. His mother and father had both been born within the village, as were both of his grandfathers; indeed his great grandfather had founded the Chapel in the village in the 19th century.
- 7.21. The application site, which is sometimes as referred to as Tirmynydd Green, has been used regularly by residents of the village throughout all his lifetime. The area has always had open access, and no attempt has ever been made to prevent its use. No-one has ever to his knowledge had to seek permission to use the land.
- 7.22. In his youth the land was regularly grazed by, at various times, sheep, cattle, horses and geese. He could even remember some tethered goats on there. Large parts of the site were in those days clear enough and dry enough for all sorts of games, rugby and football being the most common. There were some bramble and gorse patches which lent themselves to hide and seek, cowboys and Indians or war games. It was also a good area for flying kites. He had friends at that end of the village, and played there most days when in primary school. His friends had lived near the application site.
- 7.23. At various times village carnival floats were set up there on the land, as the community came together for fun. For a number of years large bonfires would be built there, sometimes weeks in advance, ready for communal celebrations on November 5th. As children they collected anything they could find that would burn, and added it to the pyre. No-one ever complained or tried to prevent this, and indeed the village police constable often attended the event.
- 7.24. Since the enclosure of the area of the village from the rest of the wider area of common, with the associated installation of a cattle grid, grazing on the application site more or less ceased, except for a few tethered goats for a while. Some thickets prospered on the land, but most of the area was still cut. At the end of the summer it was a great place for blackberries. The Girl Guides and Brownies used the area for woodcraft skills and for practising outdoor cooking. He himself used to help with that.

- 7.25. The remains of the old well and pump always had a pool of water, which was excellent for frogspawn and tadpoles. Having been brought up in a cottage adjoining that area before the First World War, his mother and her family had fetched all of their water from the pump on this land. There was free access to the pump, and no-one paid for the water. That pump had fallen into disuse in about 1924 because of a colliery flooding, which had polluted the water.
- 7.26. He used to take his dog to the site to run around sniffing for rabbits and chasing thrown sticks. His own three children have all played there in a similar fashion, as they grew up within the village. By their time the land was less open, but there was still plenty of access via cut or worn paths, making it ideal for hide and seek or racing around on a mountain bike. The land was regularly used by most of their friends in the same way. The land was also used as part of a regular route home from school by the children. His own children were born in 1989, 1991 and 1996.
- 7.27. When in the past the area had been generally cut with some regularity, not every single part of it was cut every time. Similarly when the general cutting of the land stopped quite a few of the local residents still used to cut it. This would happen especially on the eastern side of the site, to the east of the public footpath. This cutting by residents also happened on the west side of Tirmynydd Road, off the present application site. People also used to cut vegetation near the path in the northern part of the site by the village pump. The goats he had referred to used to graze in the central part of the site, a little to the south of the access tracks leading to various properties across the site. The goats were on a chain.
- 7.28. He does not have any photographs of his children or others using the land. People did not use to carry cameras around regularly or photograph ordinary playing activities. Going around taking photographs might well have disturbed the neighbours.
- 7.29. *In cross-examination* Mr Griffiths was asked to look at some photographs of the land included in a report by Geraint John Planning in January 2016 (part of the objection for the principal objectors). He (Mr Griffiths) said that the northern or top end of the triangular site is one of the parts that used to be cut. He confirmed that the part grazed by the goats had been near to the access tracks leading to some houses across the site.
- 7.30. He agreed that many of the activities he had referred to in his evidence questionnaire as having been seen on the land related back to his own childhood in the 1960s. There used to be a small pond near the pump. That was not a pond that he had gone fishing in, however; there had been another pond off the site where he did that.

- 7.31. The last bonfire that he could remember having taken place on the application site would have been in the 1970s, and his recollection of fetes being held on the land would probably have been from before the 1980s.
- 7.32. As for bicycle riding on the land, that took place on the cut and worn paths on the land. In his view, in the 1999 aerial photograph one could see little footpaths or tracks through the brambles. These tracks would typically be a couple of feet wide. His own son used to race around through all of those paths.
- 7.33. He was not surprised at the lack of photographs of the land, because people used not to do the sort of activities which took place here, accompanied by a camera. Photography was kept for special occasions in those days.
- 7.34. The bicycle riding he had seen on the land was generally on small mountain bikes or BMX-type bikes. The small tracks through the land were more popular than the main official footpath, both with his own children and other children.
- 7.35. The activities of the Girl Guides and Brownies that he had referred to were not from before the 1980s. He thought they happened around 1999, the time of the earliest of the photographs in the Geraint John Report. The children used to collect sticks, perhaps light a fire and do a bit of cooking of things held on a stick. However he had not taken photographs of the activity. He had simply been one of the small number of helpers.
- 7.36. There had been no local name which was specific for this green (the application site). He had only seen names used for it in connection with this current application. He had not known about any permission being given for cutting the vegetation on the land. He himself had not been on the Community Council.
- 7.37. *In re-examination* Mr Griffiths said that on the rougher parts of the application site, activities such as blackberrying would take place. People out with dogs, especially small dogs like Terriers, would let those dogs go in and out through the brambles. His own son had had an action man doll with a parachute, which always seemed to end up in the brambles. There were always people about on the land.
- 7.38. As for the questions about the lack of photographs, he recalled that some time ago paranoia set in about taking pictures of other people's children. In his view there had been regular 'non-organised' use of this land. There had never been any signs, and no-one ever thought of asking permission to use the land. People just used it. This towards the latter part of the period had been mainly with dogs, or children playing, or people blackberrying. When he himself had been a youngster the land was more usable as a sort of playing field. The other playing field in the village had not existed then.

- 7.39. *In further cross-examination* Mr Griffiths said that organised sports had moved south to the new playing field when that had been provided. However that field is more out of the way. The application site is more ‘on the way’ to places where people want to go. Children would sometimes play there for a few hours, and perhaps go in and out of their houses and come out to play again. This site is much nearer to houses than the formal playing field. The very fact that there were organised games on the playing field would mean that children would play informally on the application site.
- 7.40. *In further re-examination* Mr Griffiths said that children would play regularly on the land, most days, weather permitting, especially on their way to or from school. The land would also be used more informally on summer evenings, or during the school holidays.
- 7.41. **Mr David Phillips** lives at Woodside View, 43 Tirmynydd Road, Three Crosses. He has been a resident of Three Crosses since 1960. He had completed one of the original group of evidence questionnaires lodged with the application.
- 7.42. The land in question is not fenced off in any way, and has been used by himself, family members and neighbours as long as he can remember. He had been born and bred in the village, from 1960. The land has been accessed freely without the need to seek permission at any time. He has also witnessed other people enjoying the use of the land from the 1960s through to the present day.
- 7.43. As a child he recalled the land being mainly well kept, with very little growth on it, aided by it being regularly grazed by horses and cattle. The land was regularly used as a play area for local children including himself, where they regularly participated in games such as football and cricket, as well as cycling and general play. The area was also regularly used for walking to school by himself and others. Families would use the area for local organised events such as annual bonfire night celebrations. He had witnessed other people regularly using the land for dog walking and horse riding.
- 7.44. As an adult he has witnessed his own children enjoying free unhindered access to the land as a play area with their friends, participating in team games, and also in general play and cycling. School treasure hunts have also made use of the area, for the benefit of family and children’s entertainment.
- 7.45. Since the installation of a cattle grid at the entrance to the village on Tirmynydd Road the use of the land for grazing has ceased. That has allowed growth to develop on the land. However the land is still regularly used by himself for dog walking, running and cycling. He regularly sees others enjoying use of the land for horse riding, children playing and dog walking. More recently it has been used by cycling clubs as a meeting point which can be regularly seen there, more so in the summer months.

- 7.46. In summary, he has both used and witnessed the regular use of this land for many varied activities for over 50 years, through until the present day. While the vegetation growth on the land has changed over the years, along with its use by himself and others, regular access to it has not. It would be a great loss to the community if the continued free access to the land for the benefit were to be lost.
- 7.47. As for people cutting the vegetation on the land, up until about 1999 it had been cut a number of times; he was not sure who had cut it but it certainly happened on a number of occasions. The area in the middle part of the site near to the access tracks across it was regularly cut by neighbours through the 1990s and on into the 2000s. He personally lives on the west side of Tirmynydd Road. Therefore it is a natural shortcut to go across the application land from his house.
- 7.48. His own children were born in 1984 and 1988, and they regularly used the land on the application site as a shortcut to the village school. They also used the land as a play area. Even though it has been more overgrown in recent years, it still has been used as a play area, for the making of dens etc. His own daughter fell out of a tree there either in the late 1990s or early 2000s. There is also regular use of the land for dog walking.
- 7.49. *In cross-examination* Mr Phillips said that while growing up he had lived next door to where he now lives. Children crossing the site often go straight across from opposite Cilonnen Road to the south east corner of the land. They go through the bracken, not down the public footpath. His own children and other children he has seen do regularly go on such routes through the middle of the site. The running on the site which he had mentioned is running to keep fit. As part of this running he would cut across the application site. More recently he has followed a cut track which has been made on the land. Prior to that he would either run down the public footpath on the land or down the small paths within the site that the children also tended to use. It would depend on how wet everything was. He engages in cross-country running rather than road running.
- 7.50. The land on the application site has been cut on a number of times over the years. When he goes on the site he does not go through the middle of clumps of gorse bushes, but there are always routes around brambles and gorse on the land. Cycling on the land would be more on the tracks which have existed on it. His children on their BMX bikes cycled in and around the land generally. Children tend to play within the land in question, i.e. all over it, whereas he when using the land nowadays would tend to look for a longer, more comfortable route.
- 7.51. He has seen road cycling clubs meeting on the land, in the area near the tracks crossing the land to the houses on the east. As for children playing team games on the land, or kicking a ball around, that too had typically been in the area just to the south of the access tracks across the land. That area to the south of those access tracks was generally kept rather clearer than some other parts of the land. Other areas generally kept clearer of vegetation have been the areas near the public

footpath, to the west of it, as well as the area to the south of the cross track; that had been an area quite well used by children for playing ball games. Children would build dens or climb trees and so forth, generally in among the growth on the site.

- 7.52. The cycling clubs that he had seen on the site he thought were probably not local people from Three Crosses. He had also seen horse riders on the land who he did not recognise, so they also might not be local people.
- 7.53. *In re-examination* Mr Phillips said that the vegetation on the land is not the same the whole year through. It is easier to access the land more widely in the winter than during the summer months.
- 7.54. **Mr (Henry) John Hobbs** lives at 41 Tirmynydd Road, Three Crosses. He had completed one of the original evidence questionnaires lodged with the application.
- 7.55. He had been resident in Three Crosses since 1967. Before the cattle grid was installed children, including his three boys, had used the application site to play football, and as a general play area. Since the vegetation had grown up on the land, he and others have used the tracks on the site to walk. He had observed people horse riding, using the pathways, and dog walkers exercising their animals. In season he uses the land to pick blackberries, and he has seen many other people doing the same. The land has also proved useful for children to ride their bikes around, avoiding the busy road.
- 7.56. His boys had been born in 1966, 1968 and 1970. Nowadays his grandchildren when they visit use the area of the application site quite regularly to cycle about on.
- 7.57. As for picking blackberries, the whole area is in fact quite easily accessible. He had used it a lot during the last summer, and saw other people doing the same. He lives on the west side of Tirmynydd Road; the area in front of his house (not within the application site) is regularly cut by himself and three others. They had never asked permission to do that.
- 7.58. *In cross-examination* Mr Hobbs said that he had used the land openly, in a manner which could be seen by any owner, or anyone else on the owner's behalf, if they cared to look. His grandchildren are now aged 13, 12 and 9. The 12 and 13 year olds live in the village and use the site on most days. This is associated with their catching a bus to go to Bishopston School.
- 7.59. He himself regularly uses the application land for walking on, for exercise. He also carries on to other land, or around the village. When using the land he mostly follows the tracks on it. He would use the public footpath, but in conjunction with

the other areas of the land. There have always been small paths through the area of the site which are accessible.

- 7.60. One picks blackberries where the brambles are on the site, and they are all over the place there. As for children playing, the site is next to quite a busy road, so the ability to be off the road is an advantage. The fact of being near a busy road might be a problem for 4 or 5 year olds, but not for 10-13 year olds, say. In his experience a lot of children do not go onto the formal football field (to the south) in order to play.
- 7.61. When in his evidence questionnaire he had referred to wildlife on the land as one of his uses of it, he had been essentially referring to bird watching there. However he has no photographs of this activity.
- 7.62. Bonfire parties on the land had taken place, but quite some time ago. Village fetes are now held over on the playing field. He was not sure if they had been held on the application land in the past.
- 7.63. *In re-examination* Mr Hobbs said that from where he lives he can see the application land clearly. He probably sees horse riders on the land about once a month, but children playing there and dog walking happening on the land, he probably sees daily.
- 7.64. *To me* Mr Hobbs said that generally where he sees children playing would be on the cut paths or tracks through the middle of the land, and not the official public footpath. He believes that the paths which have been cut recently have followed old tracks which were already on the land. They may have been widened by recent cutting to make them of a more accessible width. They were there beforehand anyway. Nowadays there are not many other obvious paths than the cut paths. The previous paths, which were rather like animal tracks, had either been cut wider or have tended to overgrow in recent times.
- 7.65. ***Ms Joanne Rees-Thomas*** lives at 46 Dunvant Road, Three Crosses. She had been resident in Three Crosses from 1967 to 1989, and then from 1998 to date. She had completed one of the second block of evidence questionnaires lodged on behalf of the Applicant, after the original application had been submitted.
- 7.66. She has lived in the village for over 40 years, initially with her family, farming at Crwys Farm, and subsequently while living on Dunvant Road. Her recollections of the application site are of it being utilised for a variety of reasons, primarily by residents of the village. She recalled participating in group activities such as treasure hunts, hide and seek and general recreational activities, and also recalled bonfires being lit there as part of village celebrations.

- 7.67. Her late father, having lived in the village from 1930 to 2011, had also spoken of his use of the land, and his memories of playing a variety of sports there, such as football. The family also owned a farm in Cilonnen, and as such they always have to drive on the roads around the application site to access their other farm. She could vividly recall, both during her own childhood and then later on with her son, other friends playing on the land when she would be driving past to help on the other farm.
- 7.68. Prior to the cattle grids being installed in the late 1970s or early 1980s, this land was grazed by farm animals, including her own family's. However, since that time the land has at times become overgrown, but that has enabled her and her family to pick blackberries there, which she has done over many years.
- 7.69. After her childhood at Crwys Farm, she had got married in 1989 and moved away for a while, but was still a very frequent visitor. There was the family farm business in which she was involved. She had to pass this land daily even at that time, and indeed she used to have to visit this land daily, or every other day. Then she returned later on, from 1998 onwards, to Dunvant Road. Her son was aged 5 when she came back to Three Crosses in 1998.
- 7.70. Her parents farmed in the village until 2003, when they moved into a bungalow in the village. Then her father died in 2011.
- 7.71. The village has been and is a focal point in her life. Her sister for example lives in the village. She and her family continue to use this land on a daily basis.
- 7.72. *In cross-examination* Ms Rees-Thomas said that when she had moved away in 1989 that had been 5 miles away, but she remained a very frequent visitor. Her father had developed Parkinson's disease, and she was very frequently back in Three Crosses during that time.
- 7.73. The activities she had referred to in her evidence questionnaire were in her childhood. However she does use the application land now most days for dog walks. Her son and his friend in particular used to gravitate there, to that land.
- 7.74. Her own dog walking is usually on a route which may go through this land. When there she does not tend to follow the official footpath, but uses the tracks through the ground more widely.
- 7.75. She remembered her father leaving agricultural equipment on this land in the past. For example he had left an 8ft roller on the land. This would have happened in the time before 2002. She also recalled him parking a tractor on this site at some time in the past. However she could not swear as to whether he had used the tractor on this land. She believed that he had had commoner's rights on the land. They as a

family did have commoner's rights on the common more widely, and grazed cattle there. The cattle grids which were installed on the edge of the village would in fact have kept their own cattle *in* rather than out of the village.

- 7.76. On reflection she was sure her father had in fact kept the growth down on the application site. She did recall the area being periodically cleared. This was not necessarily the whole area at once, but the purpose was to make the land more accessible.
- 7.77. She did not have any photographs of use of this land. In fact they as a family did not use to own a camera. The farm was their upbringing, and they did not tend to have days out or holidays, typically.
- 7.78. *In re-examination* Ms Rees-Thomas said that her son had gone to a Welsh speaking school out of the village. He and his friend would gravitate to the application site to play. They used the land there for hide and seek, riding their BMX bikes etc. As for herself, she picked blackberries there. She was aware that garlic grows there, and it has always been a pleasant area to be on. She would see plants on the land and would be interested in knowing what they were. Their other farm outside Three Crosses is in an area of scientific importance, and she is interested in such things. She used to have a net for frogspawn. She did recall paths on the land, not only being tarmac or official paths.
- 7.79. **Mrs Mary Hobbs** lives at 41 Tirmynydd Road, Three Crosses. She has lived in Three Crosses since 1967. She had completed one of the original evidence questionnaires lodged with the application. She had moved into the last house in Pant y Dwr Road in 1967, and moved to her present address in 1982. Cows, horses and donkeys used to roam freely around the village, and kept the vegetation on the application land short, making it into an open safe play area.
- 7.80. Crossing the land was the school route for her three boys, before the top of Pant y Dwr was developed. The village pump created a pond area, much to the delight of the inquisitive minds of children, who would find all sorts of pond life, and plenty of mud to bring home. The village pump has recently been restored and looks wonderful.
- 7.81. She remembered the area of the application land being used by the Cubs and Scouts for their activities. One of their leaders lived in the village. Football was a favourite game on the land, and children cycled around the area. They used to have bonfire nights there which were enjoyed by all. Her grandchildren now cycle the cut paths on the land, and walk the family dog. Walking for exercise, horse riding and generally enjoying the wildlife there are activities which continue.

- 7.82. She could recall that it must have been Joanne Rees-Thomas's father who had cut the ground on the application site occasionally. Additionally, vegetation on the land was occasionally burned off in the past.
- 7.83. Children play on this land a great deal, and she can see them from her house. Twice a day one would see dog walkers on the land, or horse riders. Children can be seen on bikes there, and children going to and from school. People pick blackberries there, and children generally can be seen messing around on the land.
- 7.84. *In cross-examination* Mrs Hobbs said that as for the bikes and horses she sees on the land (from her house), she does not know if they are on the paths. She just sees the horses, for example. She thought that cyclists and dog walkers do generally use paths on the land.
- 7.85. She acknowledged that some of the things she had referred to in her questionnaire related to earlier periods, rather than more recently. As for walking on the land and observing wildlife, it is quite common to see bats in the evening. She goes across to the land and sees them, depending on the weather. She often sees them also from outside her house.
- 7.86. It would also be quite normal for her to cross the land to meet friends who live on the other side of it.
- 7.87. When walking on the land nowadays she would generally use the cut paths. This would be for exercise as part of a recreational walk, which might continue through the woods, for example. As for the change in the vegetation on the land, the vegetation was low at the time the cows had been grazing there, until they stopped. It then took a few years for the vegetation to grow up. The land was not always as it is today. Since the cattle grids went in at the edge of the village, the vegetation on the land has been cut down quite a few times. The burning of vegetation on the land also happened on occasions between the 1980s and 2013. She has no photographs of these things occurring on the land.
- 7.88. *In re-examination* Mrs Hobbs said that the land has been used more again since the paths had been cut in relatively recent times. More people use the land again, now that it is better cut. People do use bikes on the land. They tend to use BMX or mountain bike types of bicycle.
- 7.89. **Mr Daniel Pugh Jones** lives at 17 Pant y Dwr, Three Crosses. He had lived there between 1976 and 1979, and then again from 1982 to the present. He had completed one of the original group of evidence questionnaires lodged with the application.

- 7.90. He could remember as a child playing with friends, games such as hide and seek and making dens or forts to play in, all of this on the application land. Also they used the area to pick blackberries with his grandparents, so that his grandmother could make a pie. To this day he uses the land to walk his dogs on, and his children have also used the land up to the present time, with other children from the village. They have used the land for various activities like cycling, playing games etc.
- 7.91. The village school use the land to take their pupils there for field trips. The area of land is a big asset to the village, as a village green.
- 7.92. He remembered playing on the land as a child; and that, as well as blackberry picking, people would pick daffodils on the land. He used as a child to ride a bicycle there. His own children had been born in 1995, 1996 and 2002. They also used to go down there, and would play there similarly to how he had. They do still walk the family's two dogs on the land.
- 7.93. He could recall that as school children they had been down to the land to the south of the application site in order to plant trees, but nevertheless the school used the application land for field trips.
- 7.94. *In cross-examination* Mr Pugh Jones said that in his experience the land is well used now. It has in fact seen more use since the cut paths had been made. It was always used before, but now it is used more than when it was more overgrown. As a family they walk dogs on this land daily. He personally walks there a couple of times a week.
- 7.95. When on the land one goes past children playing there all the time, or perhaps every other time one is on the land. Children would play both on the tracks and in the middle of the land. It really depends on whether the children are in school or not. He has seen children playing on the land there (off the path), when their parents might be walking on the path. He has seen children making or playing in dens on the land quite often while walking on the land. He had seen that both since 2013 and before that.
- 7.96. Sometimes when visiting the land he would see children playing off the paths, over in the bracken, and sometimes not.
- 7.97. He can remember seeing tractors there, cutting back the growth on the land in the 1990s, though not in more recent times. He had seen that happening while driving past, so that would have been in the 1990s. It was not as long ago as the 1980s that he would have seen that, because in the 1990s he had worked in Swansea and went past the site to go to work.

- 7.98. As far as his own use is concerned, he uses the cut paths as they are now. There were paths on the land that existed previously, which he used to walk on as well.
- 7.99. *In re-examination* Mr Pugh Jones said that in the last few years he had seen children playing hide and seek on the land, or using their bikes there. He walks on the land at different times of the day, and in different weathers. When the children are not in school, and the weather is fine, he would almost invariably expect to see children playing on the land.
- 7.100. The cutting of paths on the land in relatively recent times had not increased or decreased the extent of children playing there, but it has probably increased the extent of other people walking on the land. The children who are down there with their bikes might typically be on the grassy areas, or in among the undergrowth; they might be making dens or playing other games there. He did not know if any dens were currently visible on the land.
- 7.101. ***Ms Sally McGregor*** (Mrs Sally Hailey) lives at 40 Joiners Road, Three Crosses. She has lived in Three Crosses since 1998. She had completed, with her husband, one of the second block of evidence questionnaires which were lodged after the application itself had been made.
- 7.102. She and her husband had moved into the village of Three Crosses in 1998, when they bought their first house. They felt very settled and happy in the village and they had their first child in 2000. Their second child was born in 2005. The village community became increasingly important as they became a family with young children. They made friends, attended the local mother and toddler group, started exploring the local environment, and the children became pupils at Crwys Primary School.
- 7.103. They have always been an active family. They like to run, walk and cycle around the village. They love the opportunity this provides, as they often bump into other residents and friends. The application site is an important aspect of the village environment. Their children have picked blackberries, watched the butterflies and birds and practised their cycling skills on this green area. In the past they have participated in school activities such as a treasure hunt that has taken place on and around the site.
- 7.104. During the last couple of years the green has become increasingly overgrown, and therefore less accessible. However the paths which are now regularly mowed provide good access points to the Trim Trail and the public footpath to the west of the village. Now her children are older, and she has an active dog, she uses the green area of the application site differently. She walks across it through the mowed areas, something between 8 and 12 times a week.

- 7.105. *In cross-examination* Ms McGregor said that although she had used the term “the village green” to describe the site, it is not generally referred to as that by local people. She personally lives on Joiners Road, which is on the other side of the village.
- 7.106. She acknowledged that there are other open areas around the village, for example the playing field and the area of community woodland. The latter had been created more recently than when her children were using open land to play on.
- 7.107. Nowadays she walks with her child to school and back home via the application land. In fact she accesses most green spaces around the village. The Trim Trail she had referred to is mainly part of the woodland area. Thus she uses the application site as part of her wider walking route around the village. This site is part of her dog walk. She has an active dog, an English Pointer. She does cover quite a distance. The site is part of her enjoyment of the open areas around the village.
- 7.108. She has found that as her children have got older the world gets bigger for them. She now meets elderly people on the site, and around the village. As for blackberry picking, there is quite a lot of that to be done on the application site; it is an excellent site. One is more likely to see diverse wildlife on this land now that it is somewhat overgrown. When she is on the site, she is sometimes on the mown paths and sometimes on the public footpath. The mown paths she had referred to are the paths which had been mown during the last couple of years. Before that however she did not remember the generality of the site being as overgrown as it is now.
- 7.109. *In re-examination* Ms McGregor said that when her children were little they would come as a family onto this site, and generally watch what was going on. They would look at the well, they would pick blackberries, look at wildlife, and the children would get muddy. The children could practise there on their bicycles because it was quite a safe area. They would just play and investigate on this land.
- 7.110. *To me* Ms McGregor said that the brambles had grown up on the land, and had made access more difficult than it used to be. She remembered the land being more open than it is now. When her son was in the infant school about 3 or 4 years ago, they would hide clues in that area for him and other children to find. They used to go around the village with the children more widely than they do now. The local Brownies used to go on this land, and the parent/teachers association would use it for events. She could not say on oath whether she had seen other people doing all the things that she and her family did on the land.
- 7.111. She does see elderly people on the footpath on the edge of the site, and occasionally on some of the main areas of it. Care is needed to walk on the land if people are unsteady on their feet. However it is away from the traffic, and on the main open areas of the land it is quite level.

- 7.112. *Mr Warren Smart* lives at 28 Llwyn Derw, Three Crosses. He had been brought up in the general area between 1966 and 1985, in Blue Anchor. From 1979 to 1985 he used to come up to Three Crosses to play with friends. They used the area of the application site for childhood pastimes, such as building dens, playing generally, riding bikes, looking for snakes etc.
- 7.113. He then left the area in 1986, and returned in 2001 to where he now lives and has been here since. When he moved into the village in 2001 he had one child aged 3, and another child was born in 2001.
- 7.114. As a family they used to go around the village depending on what they wanted to do. They went to various open areas in the village, the one called the Banc, the area known as the Duke Field (the playing field), and to the application site. The use made of these various pieces of land depended on the age of the family at the relevant time.
- 7.115. On the application site they would stop in the area and exercise their dog, and their older boy would run around and play. The children would typically use the main area near the footpath. He would throw a ball for their dog in the area of undergrowth. They would always stop in that area (rather than just walking through).
- 7.116. They would also go blackberry picking in the area, because it is the best area for blackberries around the village. One has to walk into the centre of the site to pick blackberries.
- 7.117. He does and did see other people on the land, perhaps not every time but quite often. It depends on the time of day, and what day it is, etc.
- 7.118. As for community activities on the land, he could remember one occasion of a treasure hunt being partly on this land, and an occasion when there had been a community bat walk which was partly on this land.
- 7.119. The undergrowth on the site has varied over the years. He believed that the Gower Commoners had cut it back from time to time; he thought this had been to prevent fire.
- 7.120. People use the site to walk on because the road is busy. He had seen children there on their bicycles, and people walking on the land. Most times one is there one sees people walking on the land. They might be blackberry picking, or just crossing the land. He had seen people cutting the grass, and he had seen horses going past, although he did not know who was riding them. However if he goes to the land in the evenings it might just be him who is there. When he was there with his young

children they would generally see older children playing there. That would mainly be in the years 2001 to 2007 for him.

- 7.121. *In cross-examination* Mr Smart said that he had seen local residents cutting the grass on the application site. People who were on the land with their dogs tend to keep their dogs away from any horses that might be there. There are some stables in the village, but he did not know where the people come from who ride the horses from those stables.
- 7.122. His own family would go to different areas around the village for different activities. This depended on the age of the children at the time. When they were older, the area known as the Banc was perhaps more a draw for the children, when they were by themselves. The application site was more of a draw when they were walking dogs, because one could let the dogs off the lead there. So they went there when the children were younger. The Duke Field was more for formal games.
- 7.123. They as a family would typically be on the site as part of a walk around the village. They would stop on the various open areas around the village with the children. There are no footpaths on some of the busy roads through the village. The fact that the road is busy does encourage people onto the land.
- 7.124. The community bat walk he had referred to was a one-off event. In fact it was a great event, and it took in the area of the application site.
- 7.125. In his recollection the cutting back of vegetation on the land had not been regular, but nevertheless it happened fairly frequently. When everything is not growing vigorously the land becomes more accessible, as the growth tends to die back. It is quite commonly used in the winter season on weekends, for example.

Other Evidence

- 7.126. In addition to the oral evidence which I have summarised above, I have already noted in passing that a considerable number of evidence questionnaires in support of the application had been lodged by the Applicant. Eleven such questionnaires were lodged with the original application, many of them made by people who subsequently came as witnesses to the Inquiry. In addition some 101 further completed evidence questionnaires were lodged in support of the application at a later date. A small number of them were also from people who subsequently came to give oral evidence to the Inquiry. I do not here need to set out or summarise the specific contents of all of those numerous evidence questionnaires, but I have looked at all of them.
- 7.127. In addition to material of that character, the Applicant produced some photographic material in support of the application (dating from between summer 2014 and February 2016 (the latter date post-dating the application), and a considerable

volume of further material in support of the proposition that the Community area of Three Crosses is an appropriate area to be regarded as a “*locality*” for the purposes of the *Commons Act*. However, this last issue subsequently proved to be non-controversial as between the parties, so it is unnecessary for me to say any more about this material.

8. **The Submissions For The Applicant**

- 8.1. Submissions or arguments were in fact advanced on behalf of the Applicant on a number of separate occasions, and in view of the way that this particular application proceeded, including the fact that not all of the Objectors to the application participated in the Inquiry, it is appropriate here to set out some record of the main points made in the earlier submissions lodged on behalf of the Applicant.
- 8.2. In the justification for the application included within the application itself it was said that the application site is land which had been used for recreation by the village residents for decades. It was pointed out that up until cattle grids were installed around the village in the late 1980s, the land had been grazed by the livestock of the Gower Commoners. Prior to the cattle grids the vegetation was kept short, as it still is along the western and eastern edges, being cut regularly by local residents. The grazing and cutting enabled villagers to use the area for play, events and other recreational activities.
- 8.3. When the cattle grids were put in, the land became somewhat overgrown, but children continued to play there. The Community Council, formed in May 2012, see this land as a community asset, and requested a licence from the Somerset Trust to cut and maintain the area. That was granted in September 2013, and the area has been regularly cut, taking into account seasonal and varied biodiversity. Grass paths meandering through it have been created for all to enjoy.
- 8.4. In a further statement lodged at that time on behalf of the Applicant, the general location of Three Crosses was pointed out, as was the point that the Gower Way, a long distance footpath route, passes through the village. The village was essentially a farming community originally, with a number of working farms around it. Around the village there are a number of small parcels of land still owned by the Somerset Trust. Those are generally kept tidy and maintained by local residents. There are two areas around the village however which had been bought from the Somerset Trust (or the Duke of Beaufort’s Estate) already, for the good of the community. One of those is an area known locally as the Banc, across the road from the village school. That is now regularly cut by the Community Council, and contains a small recreation area for children. There is another piece of land to the south of the present application site, which was purchased from the Beaufort Estate in the 1970s. This is immediately to the south of the present application site, on the other side of Chapel Road. It now contains a sports field and an area of community woodland.

- 8.5. The Applicant wishes to register the application site, to the north of Chapel Road. The land here is of a different character to the Banc. This area is dotted with trees, brambles and so forth. Many local residents recall this area well, and have memories of regularly playing on it, going back many decades.
- 8.6. Many different types of games used to be played on this land, as well as things like kite flying and blackberry picking. Before the grazing ended and the vegetation grew back, the area was a focal point for bonfire night celebrations, and barbecues were held on it. Since the late 1980s the land has continued to be used regularly and frequently by residents.
- 8.7. In response to the objections which had been lodged to the application, the Applicants made some further written submissions. It was noted that the Gower Commoners Association had objected to the application. It was said that local residents are grateful that the Commoners Association had agreed many years ago that the playing field site to the south of the present application site should be used for the benefit of the village. However there seems to be little substantive reason for the Commoners Association's present objection. That objection in fact refers to use which has been made of the application land, which tends to confirm the fact that the land has continued to be used, up to the time of the village green application.
- 8.8. The Association also states that its members have cut back the growth on the land for a number of years. In fact that work was done by an organisation who applied to the Gower AONB Sustainable Development Fund for a grant for a project called "*East Gower Fire Breaks*". As a result of being successful in the grant application that organisation implemented the project, and part of the work was cutting back the growth on this piece of land. Therefore (it was argued) in reality the Commoners Association's objection had in fact supported the arguments of the present Applicant.
- 8.9. The Applicant made more lengthy submissions in response to the objection submitted jointly on behalf of Edenstone Homes Limited and the Somerset Trust. It was suggested that this objection had relied heavily on the proposed future use of the land, and that this was because the Objectors had weak grounds to object in relation to the history of the land. It was argued that it was patently clear from the evidence questionnaires that the land has been used for recreational purposes for a considerable period of time, in some cases as far back as residents' memories go, and that such usage has continued to this day. While it can be argued that the frequency of use will have lessened as a result of the land not being grazed, no evidence of non-continuous use had been presented by the Objectors. The witness statements tend to indicate that this land has continued to be used.
- 8.10. It was acknowledged that since the cattle grids were installed the land has tended to return back to long grass and scrub, which makes it more difficult but by no means

impossible for residents to gain access to all the land. Nevertheless there would be considerable parts of the land that remained easily accessed, and also growth would die back in late autumn and winter making access easier. Moreover in the current century the land has been cut at least once per annum on at least seven occasions. Indeed in 2003 the Somerset Trust arranged for the cutting to take place.

- 8.11. In 2013 the newly formed Village of Three Crosses Common Good Trust applied to the Somerset Trust for a licence to cut the vegetation, and was grateful when it was granted. It had been a long held ambition of the village's Community Council for this to happen. It was clear that was also the desire of a large number of residents.
- 8.12. The Community Council had had discussions with the local agent for the Somerset Trust on many occasions, about the possibility of the Community Council leasing or indeed purchasing this land. Those discussions were effectively in abeyance, pending the outcome of the Swansea Local Development Plan process.
- 8.13. Since the licence to cut was granted in September 2013, pathways have been cut and maintained throughout the land.
- 8.14. The Applicant noted that the Objectors had stated that a development proposal on the subject land would provide much needed local housing to meet the acute demand. It had also been suggested that suitable replacement land (for the application land in terms of its status as common land) had been identified on the edge of Three Crosses. The Applicant noted that as a matter of fact no application to deregister the present application site as common land and replace it with another area had in fact been submitted, in spite of the Objectors saying that such an application had been prepared.
- 8.15. It was noted that at various places in the objection document it had been stated that the land had been used for agricultural purposes. In reality the land had not been used as agricultural land since the cattle grids were put in on Tirmynydd Road in the late 1980s, and the grazing ceased. The photographs which the Objectors had submitted show no signs of livestock, nor any arable farming. One photograph from 2011 did show a tractor cutting scrub on the land. In 2003, following a request, the Somerset Trust agreed to arrange for the scrub to be cut back, and that was done. There were subsequent occasions in the following years to 2014 when this process was repeated. The March 2011 photograph shows a contractor undertaking that work, which of course facilitated further access to the area for residents.
- 8.16. It is understood also that there were occasions when the scrub was cut back to control and reduce the risk of fire, due to the close proximity of people's houses, and the power utility lines that border or cross the land. There is a strong argument therefore that the Somerset Trust can be said to have been doing this work regularly.

- 8.17. It was noted that all of the aerial photographs produced by the Objectors had been taken in December, at a time of year when usage is lower than normal, due to weather conditions and the often marshy nature of some of the tracks. Reference was made to the pump which had been reinstalled at the northern corner of the application land, with the agreement and consent of the Somerset Trust.
- 8.18. It was noted that in spring 2014 the Three Crosses Common Good Trust commissioned a Biodiversity Audit around the village, to survey the existing biodiversity and produce an ecological baseline, as part of a report with recommendations. The survey was undertaken by the Wildlife Trust of South and West Wales. In respect of the application land the report which was produced recommended a rotational cutting system, where only sections of grassland are cut each year. That would leave refuges for various species which had been identified on the land. That is one of the main reasons why Three Crosses Community Council has never had the scrub cut right back, and instead cut grassy paths into the area to enhance access.
- 8.19. A number of points were made about the potential planning status of the application land, but I shall not record them as they are not relevant to the present proceedings under the *Commons Act*.
- 8.20. The Applicants noted that the Objectors had commented on the fact that only 11 evidence questionnaires had been lodged in support of the original application. It was acknowledged that that was correct, but a further 101 evidence questionnaires were submitted later. That would represent approximately 20% of the households in Three Crosses. These additional evidence questionnaires patently demonstrate that this land has been well used by residents for the whole of living memory. They also demonstrate that people have continued to use the land for recreational purposes after the cattle grids were installed.
- 8.21. It is obvious that the nature of the land has changed since the grazing of it ceased, and about 80% - 85% of it became scrub. However while that made accessing that part of the land more difficult, it has never precluded it. Moreover the 15% - 20% of mown area on the land can be used by anyone. There is a public footpath on the land, but that is used by people to access the remainder of the land. Indeed there are a number of other paths and tracks on the land.
- 8.22. *Section 15(2)* of the *Commons Act 2006* makes no mention of constant or regular use of land, but of continuous use. Continuous means without interruption, and there never has been a period when it has been impossible to access the site for recreational purposes. Consequently it has been continuously available for access. No-one has ever stopped people using the land at any time. In that sense access has been continuous. While the change in the vegetation of the land will have moved usage towards the lower end of the range of possible use, that has plainly not been sufficiently so to mean that usage has not been continuous.

- 8.23. The fact that there are other areas of open recreational land in Three Crosses is not relevant to the argument about whether this land should be registered as a town or village green.
- 8.24. On the question of whether the land has been used “*as of right*”, there is no argument that a licence was sought and granted that allowed for the cutting and mowing of the land. However the licence was not obtained for any recreational purpose. The licence was obtained to enable work to be carried out to facilitate and enhance the residents’ ability to enjoy their recreational activities on the land, which they exercise as of right. The licence granted by the Somerset Trust for cutting and mowing does not change residents’ recreational use as of right to being a ‘by right’ use. It is equivalent to a contractor being allowed onto the land to carry out work there. That does not have any effect on the as of right nature of local residents’ use of the land for recreational purposes.
- 8.25. The evidence questionnaires show a good range of recreational activities having taken place on the land. They are also consistent with use having continued in spite of the accessibility of the land becoming somewhat restricted as a result of it not being grazed.
- 8.26. The evidence from the questionnaires is clear that use of the land has carried on for a period well in excess of 20 years. In fact the evidence questionnaires show continuous use over 80 years or so.
- 8.27. In further submissions presented in writing in the run-up to the Inquiry, the Applicant argued that the evidence was clear that the usage of the land here has met the ‘as of right’ tests as established by the case-law. The Objectors appear to accept that the land has been used without force or secrecy, but to assert that the land was used by deemed permission, rather than without permission.
- 8.28. Argument was advanced that this cannot be a piece of land to which the public had access rights by virtue of **Section 193(1)** of the **Law of Property Act 1925**. That only applied to common land within areas which were boroughs or urban districts prior to 1974, and it is clear that common land that was in a rural district prior to that date was specifically excluded. Three Crosses lay within the Rural District of Gower before 1974. Considerable documentary evidence was attached to establish that point.
- 8.29. It was accepted that under the original scheme of registration for both commons and town or village greens, under the **Commons Registration Act 1965**, it was initially provided that it was not possible for the same piece of land to be registered as both common land and a town or village green. However since the **Commons Act 2006** had been in force, common land can be registered also as a village green.

- 8.30. As had been argued before, the licence granted by the Somerset Trust to the Common Good Trust of Three Crosses, and the permission given to Three Crosses Community Council to install a replica village pump do not change the position.
- 8.31. Argument was advanced, supported by documentary evidence, to show that Three Crosses Community Council had come into existence in 2012, pursuant to a statutory instrument made in late 2011. However the area covered by the new Community Council was contiguous with a previously existing polling district, which had been established from at least 1974.
- 8.32. In opening at the Inquiry itself it was acknowledged on behalf of the Applicant that the land here is already registered common land, in the ownership of the Somerset Trust. It was also acknowledged that it is crossed by a publicly adopted highway called Orchard Drive, and also a public right of way in the nature of a footpath, designated LH56. It is accepted that under current legislation residents have deemed permission to use both the public right of way and the highway, and therefore their use of those two features on the land is ‘by right’.
- 8.33. Various local residents also have rights of access to their residences across the application site, to houses on the east boundary of the land. Such access use is not ‘as of right’ use for lawful sports and pastimes.
- 8.34. It was repeated that prior to the installation of cattle grids around Three Crosses this land was regularly grazed by farm animals, which kept the land comparatively clear and easy of access. Since then only rarely has the land had any maintenance work carried out on it. Consequently the land to the west of the footpath has tended to revert to scrubland, and ease of access has diminished. The land to the east of the footpath has in fact been regularly maintained by the residents whose land it borders, and is fully accessible to residents.
- 8.35. The application has to satisfy what are essentially two criteria. The first is that the land has been used by a significant number of inhabitants for recreational purposes as of right for at least 20 years. The second criterion is that the use should have been continuous up to the time of the application.
- 8.36. From the objections, it had appeared that the only substantive objection was the argument that residents use of the land was ‘by right’ and not ‘as of right’. There had not appeared to be any argument to the effect that residents had not actually been using the land sufficiently. The Objectors had referred to the case-law about what constituted as of right use.
- 8.37. It was striking also that the written submissions provided for the purpose of the Inquiry came only from Edenstone Homes Limited, and neither the landowners nor the Gower Commoners contributed to the submission. None of the Objectors, it appeared, were going to present any evidence to the Inquiry.

- 8.38. The formal status of Three Crosses as an appropriate locality was reiterated, as were the points about *Section 193* of the *Law of Property Act 1925* not being applicable here.
- 8.39. The application land at Three Crosses is privately owned; the owners have done absolutely nothing to provide facilities for residents on the land, or to encourage their use of the land. Consequently cases such as the notable *Barkas* decision do not have any relevance in this case.
- 8.40. The argument was reiterated that the licences or permissions given by the Somerset Trust, either for the installation of a replica village pump on the land, or for the carrying out of some minimal maintenance on the area, did not constitute permissions to local residents to use the land for air and exercise. To carry out the works on the land the Community Council have obviously employed contractors. In doing that they did much the same as the Somerset Trust itself has employed contractors from time to time to carry out maintenance on the land. It is not appropriate for the Objectors to contend that by carrying out maintenance work on the land that somehow amounts to a permission to local residents to use it. It was obviously right and proper and courteous to ask permission to go onto the land to carry out maintenance. The Community Council however has not been the only organisation which has used contractors to carry out work on the land. The Applicant submits that there has been nothing by way of legislation or anything else that has deemed permission for local residents to use the land; consequently their use has always been, and remains 'as of right'.
- 8.41. There appears to be no disagreement that residents have used the land for air and recreation, or lawful sports and pastimes, for more than 80 years, and within the last 20 years. The Applicant argues that the pattern of usage has remained fairly constant over the years, with the exception of activities such as team games which require relatively large areas of clear land. The installation of the cattle grids, which meant that this land was no longer grazed, tended to preclude those team games, but there has never been any questioning of residents' usage of this land. It is obvious for example that the Gower Commoners Association had acknowledged that there had been use of the land by local residents.
- 8.42. In closing at the Inquiry, the Applicant addressed the point that the public road known as Orchard Drive had been included within the application site, where it crosses the relevant land. It was pointed out that in the case of *Alfred McAlpine Homes Limited v Staffordshire County Council*, decided in May 2001, the judge had concluded that provided a site boundary is not altered in such a way as to defeat the purpose of defining the land in the application form, there can be no sensible objection to the Registration Authority cutting down the extent of the land to be registered. It would therefore appear that the Registration Authority have the authority to make the appropriate decision about removing the relevant part of

Orchard Drive from the application site, and the Applicant will happily abide by any decision to do so.

- 8.43. The general criteria for the registration of land as a town or village green were again discussed. It was noted that there are now a number of points of agreement. One is that *Section 193* of the *Law of Property Act 1925* has no relevance, given that Three Crosses was in the Gower Rural District until 1974. Additionally there had been no argument at the Inquiry over locality or neighbourhood considerations.
- 8.44. The argument was also restated that there is no statutory bar on land which is already registered as common land being also registered as town or village green.
- 8.45. It was noted that from all the material provided by Objectors up to the time of the Inquiry, it had appeared that there was no argument over sufficiency of the usage which local residents had made of the land, from the point of view of satisfying the statutory criteria. However the Objector represented at the Inquiry (the Somerset Trust) had at the Inquiry sought to argue that the usage had been insufficient. As a result of that the residents who had submitted further written evidence were required to present their evidence orally, and were subjected to cross-examination. They all confirmed that they had used the land, and seen it being used by residents on a regular basis. It was true that there was no personal photographic evidence of usage, but witnesses who were cross-examined on the subject had explained the probable reasons for that.
- 8.46. Most of the witnesses had referred to the fact that they had definite knowledge of the land being used by children and young people, notably for BMX cycling, and children's ad-hoc games. These are purposes for which some relatively accessible land, together with undergrowth, provides the ideal environment. The witnesses also confirmed that the land was used by themselves and other adults for recreational purposes. It was clear from the evidence that the land could be crossed by working one's way around larger scrub obstacles, even when parts of the land looked as if they might not be particularly passable.
- 8.47. It was also apparent that increasing the width of paths on the land had increased usage. However witnesses who live in the vicinity had confirmed that those paths had originally been narrower worn paths which had always been passable by people. In general the oral evidence complemented and supported the general and detailed written submissions, and confirmed that the land continued to be used after the grazing had stopped.
- 8.48. It should be noted that the Applicant's analysis of the questionnaires provided by people who had arrived in the village after 1986 indicated that the pattern of activities which they had observed very closely aligned with that which had been seen by the whole sample, including people who had lived here longer. This tended to show that the land had continued to be used, albeit with a slightly different patterns of activities.

- 8.49. In fact it was the recommendation of the Wildlife Trust not to cut the whole area back once a year which led to the decision only to widen the old tracks on the land. It has always been recognised that the use of the land had decreased since the cattle grids were installed, and indeed the Applicants acknowledged that their analysis of usage showed that there had been a reduction in those activities which required a relatively large open space.
- 8.50. Nevertheless there were a number of occasions from 2003 on when the land had been cut. The Somerset Trust itself paid for that work in 2003, and the land was also cut on a number of occasions by the East Gower Fire Breaks project. Indeed the photographs provided in the Geraint John document include one showing land which had obviously been recently cut, and another with a contractor cutting the undergrowth. Therefore it is clear that the land was cut relatively frequently.
- 8.51. It was not surprising that the aerial photographs produced on behalf of the Objectors had failed to show the old narrow paths on the land, when they also failed to show the widened paths which everybody acknowledged were present in December 2015. Consequently there was no way in which those small photographs would have identified narrower trails. Those photographs simply do not show clearly land which was either accessible or inaccessible. The witnesses on the other hand were able to identify land which was readily accessible, from their own knowledge of the land.
- 8.52. Moreover it is clear that the amount of vegetation on the land varies from season to season. Obviously it peaks during the summer months, and then dies back through the autumn and winter before starting to grow again in the late spring. Winter weather might make use less easy, but does not stop it. Bad weather would merely reduce frequency of use. Indeed frequency of use is very variable depending on the conditions. The Gower Commoners Association had in fact confirmed that the land is used. Therefore the Applicants believe that they have clearly demonstrated that the land has been used by a significant number of the inhabitants for recreational purposes for at least 20 years, and that such use was continuing at the time of the application.
- 8.53. The case of *McAlpine Homes v Staffordshire County Council* was referred to again, in the context of what is required to constitute a significant number of people. It is clear that it does not equate to a considerable or substantial number of people. A neighbourhood may contain only a limited number of inhabitants. It is a matter of impression and judgment. There needs to have been general use by the local community, rather than use by individuals acting as trespassers. In the present case there had been 9 oral witnesses backing up significantly over 100 written statements.
- 8.54. The question of the permission that had been given from the Somerset Trust to install a replica village water pump, and the licence that was received to carry out

some minimal maintenance on the land, were further discussed. The employing of contractors on the land to carry out works cannot possibly constitute a permission to local residents to use it. If there was any permission granted, it was only permission to carry out that work on the land, as opposed to any permission being given to residents to use the land.

8.55. It was noted that in his opening submissions Counsel for the represented Objector (the Somerset Trust) had accepted that if the granting of those licences or permissions to do things on the land had amounted to permissions to local people to use the land generally, that would only have the result of pushing back the period of 20 years which needed to be established until the 20 years before those permissions were given. This was because of *Section 15(7)(b)* of the *Commons Act 2006*. In this case the evidence showed that the use of the land had gone back well over 20 years before the date of the application. The dates of the permissions or licences granted in 2013 had been referred to, and if it was necessary to establish 20 years going back from a 2013 date, then the evidence most clearly did establish that, which would provide the Applicants with two arguments in favour of registration.

8.56. It is thus argued that the Applicants have most clearly established their case that this area of land ought to be registered as a town or village green under *Section 15(2)* of the *Commons Act 2006*. All the statutory criteria which are relevant have been met in this case.

9. **THE CASE FOR THE OBJECTOR(S) – Evidence**

9.1. None of Objectors called any oral evidence at the Inquiry which I held, and no new documentary material of an evidential nature was produced on behalf of any of them at the Inquiry either.

9.2. The original objections to the application consisted of a reasonably lengthy joint objection made on behalf of the Somerset Trust and Edenstone Homes Limited, and a short objection statement made on behalf of the Gower Commoners Association. Each of those objections undoubtedly contained some elements of evidential material as well as submission, but the two elements were so inextricably mixed that I will discuss them within the next section of this report, when I consider the submissions made on behalf of the Objectors.

9.3. In addition to the original joint objection statement which I have just referred to, solicitors acting for the Objector Edenstone Homes Limited lodged a further set of documents in answer to the Applicant's response to the original objection. These further documents were provided under cover of a letter to the Registration Authority dated 27th April 2016. Most of the contents of that letter consisted of further representations or submissions, which I will note in the next section of this report.

- 9.4. However accompanying that letter there was provided some bulky documentation which consisted largely of the Report following from another ‘village green’ inquiry in another part of Swansea, and other documentation following on from that inquiry. It is not necessary for me to make any further summary of that material.
- 9.5. In addition, the solicitors then acting for Edenstone Homes Limited lodged a further bundle of documents in the period running up to the Inquiry itself. Some of this repeated material which had previously been provided on behalf of the Objectors. It also included documentation relating to what was described as a completed application form aimed at deregistering as common land the area of land subject to the present application, and offering in substitution for it another area of land just outside the village of Three Crosses. I should note at this point that I was given to understand at the Inquiry that by that time no such application had in fact been submitted to the Welsh Ministers. Nevertheless documents were produced showing the intended replacement land, and certain other information in relation to that intended replacement land. There was also produced a letter dated 12th August 2015 from the Gower Commoners Association, apparently expressing support for the notion of the replacement of the relevant area of common land (the present application site) by another piece of land.
- 9.6. The only other evidential material produced on behalf of the Objectors which I should note specifically as such was a copy of a licence dated 23rd September 2013 which had been granted by the Somerset Trust as owners, to the Common Good Trust of Three Crosses. This related to what is the present application land, which was stated to extend to approximately 3.5 acres. The licence was to run for two years, and granted to the Common Good Trust the right to cut/mow the land concerned during the licence period, and to take away the grass trimmings. It also contained a covenant by the licensee to use the land for the exercise of the rights granted and for no other purpose whatsoever.

10. **The Submissions for the Objectors**

- 10.1. I shall note first the brief submission of the Gower Commoners Association in its Letter of Objection in response to the application. Apart from stating that the Association objected to the application, it pointed out that the application site is in close proximity to the playing field which that Association had agreed should be used for the benefit of the village. The objection stated that there had been little use made of the land on the application site, and that it was that Association which had cut back the growth on the land for a number of years.
- 10.2. I have already noted that a joint objection was originally lodged on behalf of both the Somerset Trust as landowners, and Edenstone Homes Limited. That objection pointed out that the land to which the application related is currently the subject of an impending planning application by Edenstone Homes Limited for residential

development. It was suggested that that development would provide much needed local housing.

- 10.3. It was noted that the land is currently common land, and that an application was in preparation to deregister that land and offer some exchange land in its place; the Gower Commoners Association had confirmed their support to that proposal. It was said that the Highway Authority had also confirmed support to the application. It was acknowledged that all of this was purely in relation to the impending planning application to develop the land.
- 10.4. The objection statement noted the point that the land had been used for grazing by livestock of the Gower Commoners, up until the cattle grids were installed in the late 1980s; that prior to the installation of the cattle grids the vegetation was kept short, as it still is along the western and eastern edges, being cut regularly by local residents; that it had been asserted that this grazing and cutting enabled the villagers to use the area for play/events and other recreation or activities. Other aspects of the material lodged in support of the application were noted.
- 10.5. The legal tests which need to be satisfied in a case such as this were summarised. The site was described, and it was noted that it is currently common land, comprising overgrown grassland, marshland and shrubbery. It was also noted that the site is traversed by the adopted highway of Orchard Drive, towards the south-eastern boundary. In addition three unmade tracks cross the site from Tirmynydd Road and provide access to a number of existing dwellings adjacent to the eastern boundary of the site. It was further noted that there is a public right of way within the site, running parallel to the eastern boundary. The site is also identified as an accessible natural green space within Swansea Council's Open Space Assessment.
- 10.6. The site is common land owned by the Somerset Trust. It has been used in the past for agricultural purposes, and the Register of Commoners confirms that the land was used for grazing by livestock since 1968. It was suggested in this objection that the public do not have a right of access under *Section 193* of the *Law of Property Act*.
- 10.7. The topography of the application site is relatively level, and it is covered by grassland, marshland and shrubbery. There are no boundary features to the west or south of the site, simply the edge of the highway. Images taken from Google Earth or Google Maps confirm that the site has historically been used for agricultural purposes only. Some of these photographs were produced as part of the objection. There is no evidence to suggest that the site has been used on a regular basis by local inhabitants. For example there are no grass tracks over the site other than the public right of way, no evidence to suggest deterioration in the quality of the grass as a result of human activity, and no loss of shrubbery or trees. Thus there are no physical signs or characteristics to show that the land has been used on a regular basis by inhabitants for recreational purposes for in excess of 20 years, or at all.

- 10.8. It is acknowledged that the legal definition of ‘lawful sports and pastimes’ includes walking. However the site is overgrown, and any signs of regular walking or use by the public in excess of 20 years would have resulted in salient changes, such as the formation of natural tracks or the deterioration of the quality of the land. There is no evidence of such changes or characteristics. It is appreciated that walking would occur on the public right of way on the land; however that would not satisfy the legal test, as the use of the public right of way by local inhabitants cannot be “*as of right*”. The same would also apply to the adopted road and the three access tracks, as the use of these routes would be with permission of the landowner and therefore ‘by right’ rather than as of right.
- 10.9. The planning case for developing the application land was also dealt with at some length. It was considered that the application to register the land as a village green is opportunistic, and made as a direct result of the impending planning application to develop it for dwellings. Consequently the village green application is merely an attempt to thwart the proposed development.
- 10.10. The various aspects of the statutory criteria under the *Commons Act* were referred to. It was not considered that sufficient evidence had been produced to prove that the land had been in general use by the local community for informal recreation for a period of 20 years, or that the use had been sufficient in terms of frequency or regularity. The application had been supported by only 11 evidence questionnaires, and therefore represented a very small proportion of the village’s population. If there had been use by a significant proportion of the inhabitants there would have been noticeable changes to the appearance and character of the land.
- 10.11. The application made it clear that up until the 1980s the land was used for grazing by livestock. And that use is further supported by the Register of Commoners. Indeed the landowners confirm that the land was used for grazing livestock up until the late 1980s. It is noted that many of the residents claimed to have memories of regularly playing on the land which extend back to 1938 in one case, but most are from the 1950s and 1960s. It is further noted that many residents recall numerous activities, on an almost daily basis over many years. That implies that those activities took place many years ago, and suggest that those activities have not carried on to the present day, perhaps apart from the blackberry picking. Furthermore some of the activities referred to would have been inconsistent with the use of the land for the grazing of livestock, which everybody appeared to have accepted took place in those earlier years.
- 10.12. The application itself had noted that when the cattle grids were installed in the late 1980s the land then became overgrown. The information provided with the application indicates that the land remained overgrown from the late 1980s up until September 2013, when a licence to maintain the area was granted by the Somerset Trust. The Trust have confirmed that the 2013 licence was granted for the purpose of clearing the undergrowth (bracken, hawthorn etc) which remained largely overgrown until that date. While it is claimed by the Applicants that the area has

been regularly cut, the photographs provided, and the current appearance and character of the land, confirm that the site has largely remained overgrown since the late 1980s. This overgrown nature of the land does not lend itself to such activities as are claimed to have taken place on a regular basis. It is accepted that the public right of way towards the eastern side of the land provides access to key areas such as the village shop to the north of the site, and the school and community facility to the east of the site, and the playing fields to the south of it. There would therefore be no reason to walk across the overgrown grassland, marshland or shrubbery on a regular basis. Furthermore the site does not lend itself as an area for use by children for play on a regular basis, being so overgrown and with no play facilities, and no defensible boundaries. It is open to the road.

- 10.13. There is a community facility or play area with safe defensible boundaries in another part of the village. As such any regular and frequent play and public events would occur on that area, as opposed to the application site. It would not be possible to cycle over the application land, given its overgrown state, and jogging over the land would also be difficult for the same reason.
- 10.14. The application claims that the site was used by the village school parent/teacher association for treasure hunts and the like. However no evidence questionnaires were completed from the village school or the local scout group in support of such statements. In any event any such activity would only take place once a year and would fail to satisfy the 20 year test, which should be both continued and uninterrupted. Any community activities would in reality have taken place on the community facility known locally as the Banc, which lies opposite the primary school and away from the site in question.
- 10.15. The Applicants had acknowledged that there are two areas of land which had been bought by the village for the good of the community, including the area known as the Banc, and the area which now constitutes the playing field and community woodland. It was felt that community activities and usage would take place on those pieces of land, not the application land.
- 10.16. No issue was taken on the technical question of whether there could be a valid locality or neighbourhood in relation to this application. It was merely commented that the number of people who had by then completed evidence questionnaires was a very small percentage of the overall population of the village.
- 10.17. On the question of whether use had been “*as of right*”, it was noted that in September 2013 a licence had been granted by the landowner in order for the land to be maintained by members of the community. That licence was for the purpose of clearing the undergrowth, which remained largely overgrown until that date. The land had not been usable prior to that clearing of the undergrowth, and after that licence had been granted the Applicant failed to satisfy the requirement for use having been without permission. The landowner had consented to the use of the land so the question of ‘as of right’ use does not arise.

- 10.18. It was accepted that the use of land for lawful sports and pastimes has been broadly interpreted by the courts, and that many of the activities claimed within the application fell within that definition. However it was not accepted that the land had been so used on a regular basis. Nor did the evidence signify that there had been general use by the local community. Nor is it accepted that there has been regular or general use by the local community for activities for a period in excess of 20 years.
- 10.19. In summary therefore the land became overgrown following the installation of the cattle grids in the late 1980s. It is not accepted that thereafter the land was used on a regular basis for the purposes claimed. In 2013 a licence was granted to maintain the land, thereby giving third parties permission to undertake works to the land. From 1980 to 2013 therefore the area was not being maintained and remained overgrown. While it is claimed that the area has been regularly cut since the granting of the licence, the aerial and street photographs confirm that the site has in fact remained largely overgrown.
- 10.20. The physical characteristics of the land, comprising overgrown grassland, marshland and shrubbery with no defensible boundaries, do not lend themselves to general use by local residents on a regular basis. Any such activities would likely occur along the designated public right of way, and within the formal play area and playing fields on other sites within close proximity. The sheer nature of this unmaintained land would constrain the frequent use of it for recreational purposes. While it is claimed that the land has been maintained since the granting of the licence in 2013, the current appearance of the land would suggest otherwise, and in any event the use of the land since 2013 would not have been for an excess of 20 years. The granting of the licence in 2013 would anyway prevent subsequent use of the land from meeting the legal test.
- 10.21. On 27th April 2016, solicitors acting for the Objector Edenstone Homes Limited submitted some further representations on behalf of that Objector. It was noted that the response by the Applicant to the original objections had focused largely on local people's use of the land being "*as of right*". That view was disagreed with as a matter of law; the Applicant had failed successfully to demonstrate that use of the land had always been "*as of right*".
- 10.22. The Objectors' position is that the use of the land of the application site had been "*by right*", and that as a consequence the application should fail. "*As of right*" was defined in the case of ***R v Oxfordshire County Council, ex parte Sunningwell Parish Council*** [1999]. The test is a three part one. An applicant must show that use of the land has been (a) without force, (b) without secrecy and (c) without permission. It also needed to be considered whether the activities which had been included within the submitted evidence questionnaires fall within the description of "*lawful sports and pastimes*".

- 10.23. It was clear that permission had been granted to the Applicant Community Council by the Somerset Trust to install and recreate a pump feature and associated pond on part of the land. The Applicant had therefore carried out such works with the permission of the Somerset Trust. On that basis the Community Council's application should fail, as the third part of the *Sunningwell* test has not been satisfied.
- 10.24. The Objector disagreed with the Applicant's assertion that the case of *R (Barkas) v North Yorkshire County Council* [2014] UKSC 31 is irrelevant to the facts of the application. It is not disputed that that was a decision made in relation to publicly owned land. However the Objector does rely on the Supreme Court's decision in that case. That case established that a statutory right to use a field for recreational purposes meant that the public's use of the land was lawful. Consequently it is irrelevant whether the land was publicly owned or privately owned. The reason for this is the same as had been given in the original objection.
- 10.25. As noted elsewhere, various documents were produced in relation to an inquiry and the consequent decision by this Registration Authority in relation to an earlier application on a site known as *Picket Mead* in the village of Newton. It was pointed out that in the Report in that case the Inspector had found that the land had at all material times been subject to an express statutory right given to members of the public to use certain areas of common land for air and exercise, a right granted by *Section 193(1)* of the *Law of Property Act 1925*. The reason why the present Objector relies so heavily on the Supreme Court decision in the *Barkas* case is encapsulated in that earlier Inspector's Report. The point is that where the public have an actual right or permission to use a piece of land recreationally, there cannot be "as of right" use for such a purpose, so as to satisfy the *Commons Act* test. The Inspector concluded in that Report that the application to register the land concerned should fail, as the applicants there had failed to satisfy the "without permission" limb of the relevant test. The Registration Authority had accepted that recommendation in that case.
- 10.26. It was argued on behalf of the Objector that the statutory right under *Section 193* of the *Law of Property Act 1925* assists the site owners and the Objectors in this present case as well.
- 10.27. As had been noted in the original objection, a licence to maintain the application land was granted by the Somerset Trust to the Community Council on 28th September 2013. That licence was granted for the purpose of clearing the undergrowth (bracken, hawthorn etc) which remained overgrown until that date due to lack of use. As the Somerset Trust gave its permission to the Community Council to cut and mow the land, the Applicant Council has yet again failed to satisfy the 'without permission' requirement of the *Sunningwell* test.
- 10.28. The application land also includes a public right of way known as Llanrhidian Higher Path No.56, towards the eastern boundary of the site. In consequence the

use of the public right of way by the local inhabitants is also with permission, and cannot therefore satisfy the 'as of right' test.

- 10.29. It was noted that the evidence questionnaires put forward by the Applicant referred to a variety of different activities on the land as being lawful sports and pastimes. The following had been referred to: walking and access, children playing, dog walking, team games, cricket, kite flying, rounders, bicycle riding, blackberry picking, fetes, football, birdwatching, carol singing, and picnicking. As had been stated previously, the *Law of Property Act 1925* provides the public with a right of access for the purpose of air and exercise over land which is common land. It was argued at that stage that the listed lawful sports and pastimes on the land were all included within the remit of *Section 193* of the *Law Property Act 1925*. Consequently any use of the land for those purposes would have been by right rather than as of right.
- 10.30. The evidence questionnaires also made reference to the occasional lighting of bonfires on the land, which it was acknowledged would not of itself be included within the right of access pursuant to *Section 193* of the *1925 Act*. The lighting of fires is specifically excluded from the rights granted by that section. On the other hand that section also in *subsection (4)* makes it a criminal offence to camp or light fires on common land. Consequently a pastime such as that would have been carried out illegally, and cannot be relied upon by the Applicant. For all these reasons the application should fail.
- 10.31. The Objector Edenstone Homes Limited provided a further substantial paginated bundle of documentary material in the run-up to the Inquiry which I held. However in terms of the submissions contained in that bundle, reliance was placed on what had already been submitted in the joint letter of 28th January 2016, and the subsequent letter of 27th April 2016 which I have summarised above.
- 10.32. In the event the Objector Edenstone Homes Limited was not represented and did not appear at the Inquiry which I held. On the other hand the other principal Objector, the Somerset Trust, was represented by counsel at the Inquiry, albeit instructed by the same firm of solicitors who had previously acted for Edenstone Homes Limited. I have noted elsewhere that no new evidence was produced or called on behalf of the Somerset Trust, but submissions were made as to the conclusions which the Registration Authority should reach on the evidence which had been provided by all the relevant parties.
- 10.33. In opening, the legal framework relevant to the application was set out. It was pointed out by counsel that the application land is in the freehold ownership of the Somerset Trust, but is registered as common land with commoners having rights to pasture and estovers. The original joint objection of January 2016 was noted, as indeed was the supplementary statement of objection lodged on behalf of the other Objector.

- 10.34. The Objectors plan to develop the application land, and with that in mind had prepared an application to deregister the land and exchange it with an area of replacement land which had been agreed to be satisfactory by the Gower Commoners Association. An application for planning permission had also been prepared. However neither application had yet been made.
- 10.35. The burden of proving that the land has become a town or village green within the relevant period lies on the Applicant, on the balance of probabilities. The case-law pointing out that it is no trivial matter for a landowner to have land registered as a town or village green was referred to. It is necessary that all ingredients of the statutory definition must clearly be met before land can be registered.
- 10.36. The relevant period for establishing 20 years of appropriate use runs backwards from the application. Any earlier use is effectively irrelevant, if not continued through into the relevant period. The only modification to that is that where 20 years use as of right has accrued, a landowner who then gives permission for the use will not thereby prevent the use being as of right. That proposition is provided for by **Section 15(7)(b)** of the **Commons Act 2006**.
- 10.37. The original application was supported by 11 evidence questionnaires. Set against the claimed size of the locality, that number of questionnaires appears to be insignificant. It was noted however that the Applicant had provided a further 101 additional evidence questionnaires, which would need to be considered.
- 10.38. The modern understanding of “*lawful sports and pastimes*” was considered. It can include relatively informal activities and recreation. However there are limits to that principle. If use is referable to formal or informal paths, it may not be sufficient to found a right to register the land. The question is one of fact, with the critical factor being how the use would appear to a reasonable landlord. It was noted also that there may be cases where the use is so trivial or sporadic as not to carry the outward appearance of use as of right.
- 10.39. The distinction between “*as of right*” and “*of right*”, or “*by right*”, was considered. Where a use is by permission of the landowner it will not be use “*as of right*”. Any period of use by right or with permission will not give rise to a right to register land as a town or village green. However where the grant of permission occurs after the accrual of 20 years of use, then the right to have the land registered will not in such circumstances be lost.
- 10.40. In the light of those principles, attention was drawn to various aspects of the Applicant’s evidence. The application statement suggested that most of the recreational activities appeared to have taken place in a period before the late 1980s, when it was said that cattle grids were installed and the grazing of the land ceased. That period is irrelevant for the purposes of the application, as it fell long before the relevant date. Even if sufficient use had existed in that period it would

subsequently have ceased. On the Applicant's own case, after the late 1980s it is said that vegetation grew back, and activities were limited to children playing hide and seek, blackberry picking, dog walkers, horses, joggers, cyclists and birdwatchers, and an annual treasure hunt. That does not appear to have been sufficient to demonstrate the use of the whole site. Also there were aspects of that list of activities which were much more likely to have been on the footpath on the site.

- 10.41. In any event the account of events given by the Applicant is not fully supported by the questionnaires which the Objector had seen. They were in general imprecise as to geographical extent and chronology (in the sense of when the relevant use was claimed to have taken place), and to some extent contradictory as to the quantum of user. Further it appeared that a substantial portion of the use which they described must refer to the use of the public footpath on the land, as the other land was overgrown and inaccessible from the late 1980s through to 2013. Use of the public footpath must be discounted.
- 10.42. Despite the apparent desire to bolster the evidence produced in support of the application, it was striking that there is no corroborative evidence such as pre-2013 photographs. There was really no evidence of use prior to the grant of the licence given in 2013. That must call into question the Applicant's ability to demonstrate the requisite use for the full 20 year period.
- 10.43. At that initial stage of the Inquiry it was suggested that there is an incompatibility between the land already being registered as common land, and the possibility of it being additionally registered as town or village green under the *Commons Act 2006* (however see below).
- 10.44. It was accepted that before April 1974 the site and the village of Three Crosses were in the area of the Gower Rural District.
- 10.45. It is not argued that the public have enjoyed any statutory right to use the land for recreational purposes. It is accepted that there is no right under *Section 193* of the *Law of Property Act 1925*. Although the land might potentially qualify as access land under the *Countryside and Rights of Way Act 2000*, it was accepted that the whole of the land is likely to be within 20 metres of a dwelling, and therefore would be excepted land under that provision. However at least since 2013 the members of the local community of Three Crosses have enjoyed an express permission to use the land for recreational purposes.
- 10.46. It was not suggested that *Section 53* of the *Planning (Wales) Act 2015* has any relevance to the present case. Nor is any planning permission in force in relation to this land.

- 10.47. As the Applicant itself accepts, there was the grant of a licence to cut the vegetation on this land in September 2013, which followed discussions about leasing the land for use by the community. That licence was intended to allow the local residents to access the land for recreational purposes. That was strong evidence not only that the use of the land after September 2013 was “*by right*”, but also that the local residents did not consider that they had a right to use the land prior to 2013.
- 10.48. Permission to install the replica well pump at the northern corner of the land was sought by the Applicant in 2014. Following on from the grant of a licence to cut the grass on the land, this is a further evidence of deference by the inhabitants of the locality to the ownership of the Somerset Trust, and further undermines the Applicant’s contention that the use of the land was ‘as of right’ before 2013.
- 10.49. It was reiterated that much of the user evidence given in the questionnaires related to use of the public footpath, use of which should be discounted from consideration of the wider use (if any) of the land. Such land is accessed by right, and cannot bring about registration under the *Commons Act*. The same applies to the adopted highway of Orchard Drive.
- 10.50. No issue was raised as to the identification of the relevant locality for this application.
- 10.51. The Objector accepted that there had been significant use of the land since 2013, and there was much photographic evidence for it. The critical point however was that there was a permission to cut or mow the grass from that year. The September 2013 licence amounted to a licence to use the wider land. It was accepted however that *Section 15(7)(b)* did not remove the claim, but moved the 20 years back to before 2013.
- 10.52. In closing submissions, it was said that the Objector, the Somerset Trust, relied on all of the earlier representations which had been made both on their behalf and on behalf of Edenstone Homes Limited.
- 10.53. The principal outstanding points between the Objector and the Applicant could be summarised as follows: Whether the Applicant has established the requisite user of the land throughout the relevant period; the level of the footpath/rights of way use on the land; whether the various permits granted by the Objector gave rise to a *right* to use the land for recreational purposes, so that any use for lawful sports and pastimes was ‘by right’ rather than as of right.
- 10.54. It was expressly acknowledged that the argument that it is not possible to register a piece of land as a town or village green when that piece of land is already registered as common land, is no longer being pursued.

- 10.55. The Objector wished to stress that in its view the application to register the land as a village green had been made in response to plans to develop the land. The application therefore was designed to frustrate that development. While that is perhaps not uncommon, it does give rise to a need for proper scrutiny when considering the evidence provided by local residents. Furthermore the oral and written evidence needs to be considered in the light of the physical layout of the land.
- 10.56. With regard to the various permissions granted by the Objector in relation to the land, a licence to cut/mow the land was granted by the Objector to the Common Good Trust of Three Crosses on 23rd September 2013, for a period of two years. As is common between the parties, this licence was granted to the Trust following talks between the Community Council, as representative of the village inhabitants, and Knight Frank, the Objector's agents, about improving the land so that more residents could enjoy it. The connection between the Trust and the Community Council is unknown to the Objector. It is accepted by the Objector that there had been previous informal agreements for the land to be cut, including in 2003.
- 10.57. Further, in 2014 a licence was granted for the installation of a replica well and other associated items on a site at the north-western tip of the land. That had now been installed by the Community Council. Both of those documented licences need to be understood as part and parcel of a broader agreement between the Objector and the various groups representing the local community to allow access to the land.
- 10.58. These permissions demonstrate clearly that the use of the land in the period after 2013 was by permission of the Objector. That is the view one has to take in the light of the discussions which had taken place, rather perhaps than the actual words of the licence. This gives rise to a strong inference that the user of the land in general had not in fact been as of right, in that the inhabitants of the locality in practice deferred to the rights of the Objector, who from time to time signalled an implied permission to use the land.
- 10.59. The relevant period for establishing 20 years of appropriate use runs backwards from the application date. Any earlier use is effectively irrelevant if not continued through into the relevant period. As had been stated previously, the only modification to that is that where 20 years use as of right has occurred, a landowner who then gives permission for the use will not thereby prevent the use being as of right. This is significant here because if it is accepted that there was a permission for the inhabitants to use the land from 2013, then the relevant period should be shifted back so as to cover the years 1993 to 2013. It was accepted that use for lawful sports and pastimes is a single composite class of activity, and is capable of including things like dog walking and playing with children. However there are limits to that. If use is referable to formal or informal paths, it may in some instances not found a right to register. That had been discussed by Lightman J at first instance in the case of *Oxfordshire County Council v Oxford City Council* [2004] Ch. 253 (approved in the House of Lords in the same case). So,

whereas recreational walking on a defined track may appear to be referable to the exercise of a right of way, other uses such as flying kites or leisurely meandering are more likely to indicate an assertion of a right to lawful sports and pastimes. The question is one of fact and degree, with the critical factor being how the use would appear to a reasonable landlord.

- 10.60. Use also must not have been so trivial or sporadic as not to carry the outward appearance of use as of right.
- 10.61. As had been noted before, the application was initially supported by only 11 questionnaires, and an issue was raised as to whether that was capable of showing that the land was used by a significant number of inhabitants. It is now accepted that the level of evidence provided is capable of establishing a significant number of users, in the context of the locality and neighbourhood of Three Crosses. However the Registration Authority will have to come to its own view of whether the threshold has been reached, in the light of the contents of the questionnaires, and particularly having regard to the need to deduct from the total any use referable to lawful use of the public footpath and access ways.
- 10.62. As for the evidence which the oral witnesses had given, that was consistent with the concessions given by the Applicant that the pattern of use of the land had changed over time, and that the greatest use had been for access. The oral witnesses confirmed that their access to the land is normally part of a longer journey, and can be to get to other parts of the village. Although some of the witnesses suggested that the paths do not restrict where they walk on the land, or that this is only at some times of the year, most of them indicated that they do primarily use the paths, whether the ones cut since 2013 or the public footpath. This is unsurprising, given the overgrown nature of the bulk of the land since the late 1980s. This more limited view of the use of the land is consistent with much of the evidence contained in the questionnaires. They tend to show that the focus is on using the paths.
- 10.63. In line with the case-law that had been cited, real care must be taken to separate out that portion of the use which amounted to use for lawful sports and pastimes, and that portion of use which amounted to exercise of a right of way. The Registration Authority must consider how the actions of the inhabitants of the locality would have appeared to a reasonable landowner. Were they of such a character as to indicate that the inhabitants were asserting a right to use the land for lawful sports and pastimes? Use attributable to the exercise of a right of way must be discounted. As will be clear from the evidence which had been referred to, that would mean that a great deal of the land's use since about 1993 would need to be discounted.
- 10.64. Additionally, evidence of use before the late 1980s should not be taken into account. Again that amounts to a substantial portion of the evidence that had been given. Much of the evidence given by each of the witnesses related to the historic use of the land, before the installation of the cattle grid at the entrance to the village

stopped the commoners (with the possible exception of Ms Rees-Thomas's father) from accessing the land and grazing on it. For example, it was generally accepted that the use of the land for bonfires, fetes, cub and scout events, football, rugby and cricket, and the use of the pond for fishing/exploring wildlife, while it had once taken place, was confined to the period before the cattle grid was installed and the land became more overgrown.

- 10.65. Although Ms Rees-Thomas's evidence was to some extent inconsistent with the general account, in that she suggested that a cultivation use had continued on the land in the 1990s, the general picture has been of a clear contrast between the use in and before the 1980s, and the use then from about 1990 to 2013, and further again the use from 2013 to the present day. In terms of the period since 1993, it is argued that the non-access uses reported were too sporadic or trivial to give rise to a right to registration of this land.
- 10.66. Ms Cashmore and other witnesses had referred to a treasure hunt run by the school or the parent/teachers association, which would use the paths across the land as part of its overall circuit of the village. However she was clear that the barbecue and fete elements of this annual use (which would in any event be too infrequent to establish continuous use on its own) took place elsewhere in the village. The same difficulties of infrequency would apply to blackberry picking.
- 10.67. In terms of the remainder of the uses described by the witnesses, such as informal, unorganised children's play, dog walking, etc, there are issues both of quantum and of geography. In terms of quantum the witnesses were in general clear that there was less use of the land prior to 2013, but there was little clarity as to the extent of that change. That appears to have been primarily because the land, or most of it, was inaccessible. Although there was some disagreement from some witnesses as to how overgrown the area had become, this needs to be assessed in the light of the only contemporaneous corroborative evidence relating to the period before 2013 provided by any of the parties to the Inquiry. This was a reference to the aerial photographs submitted by Geraint John Planning with its objection material. Those photographs appear to show that a substantial portion of the site was covered by bracken and long grass, much as appears to be the case, minus the cut paths, today.
- 10.68. Many of the witnesses had struggled to quantify their impression of the level of use. Mr Jones agreed there had been a substantial increase from pre-2013 to post-2013, but suggested that the change was primarily in relation to dog walking and recreational walking, rather than children's play. Some witnesses accepted that the land was used as part of a wider circuit of the village on areas of open space, which suggests that the land itself was not a destination for recreation. Use of this land was more for access.
- 10.69. The evidence of the aerial photographs potentially explains the evidence from a number of witnesses that the use of the land for play was focused on particular

areas within it. Mr Phillips had identified that an area had been used just to the south of the more southerly access way across the site, and that another area between the public footpath and the overgrown area to the south and west had been used. Likewise Mr Griffiths had referred to the areas to the east of the footpath, and to the west of Tirmynydd Road (and hence outside the application site) being kept short by local residents for amenity purposes. That evidence suggests that they were specific areas of the land which were used, but not that the whole of the land was in use as a village green within the period 1993 to 2013.

- 10.70. In relation to the overgrown area, it is notable that there was considerable variation in the accounts given of the history of the footpaths on the land prior to 2013. There was an inconsistency in the accounts as to whether this area has been cut back. Further, although Mr Hobbs indicated that the current cut paths in the otherwise overgrown area to the south of the land followed previously existing animal tracks, other witnesses suggested that there were other little tracks which had been lost. Those points all go to the weight that can be given to the evidence produced in support of the Applicant.
- 10.71. Overall, evidence of a continuous and regular amenity use of the land, beyond walking the footpaths, had been insufficient to establish it across the land for the period since 1993. In this regard it was specifically argued that the evidence showed that any use of the so-called overgrown area prior to 2013 was trivial and sporadic. While it is right that a common sense approach is to be adopted in considering whether the whole of the site is used for town or village green purposes, it is important to note that the overgrown area represents the bulk of the land in this case. It is however accepted that the approach indicated in the House of Lords in the *Oxfordshire County Council v Oxford City Council* case was a valid one. Nevertheless it is argued that the Applicant has failed to establish a town or village green use for the relevant period for the land here as a whole.
- 10.72. It was confirmed that no issue was pursued by the Objector in relation to matters of locality or neighbourhood.
- 10.73. The Objector has argued that much of the use evidenced by the questionnaires related to use of the public footpath access, which should be discounted from consideration of the wider use, if any, of the land. While it is right that there is no express bar on such areas being included within a town or village green, it is the Objector's view that areas of that character (i.e. public footpaths and highways) should be excluded from any registered area, even if the application succeeds in principle. The use of the public right of way over the footpath, and indeed of the highway of Orchard Drive, cannot on the evidence be a town or village green use.
- 10.74. Furthermore it was argued that the small patch of land to the south east of Orchard Drive, and somewhat enclosed by it, should be excluded from the site as there was no real evidence to show that that area had been used for lawful sports and

pastimes. Therefore, applying a common sense approach, that particular area should be excluded from the land to be registered.

- 10.75. The overall submission is that the Applicant has not done enough to establish sufficient use of the land for the relevant period of 20 years, which it was accepted may need to be the period 1993 to 2013, when permission was granted. As such the application should be refused.
- 10.76. There should be a concept of continuity in the test under **Section 15** of the **Commons Act**. In other words, there had to be continuity of use for at least 20 years. Thus, if there was a period when a reasonable landlord could not discern any use, that represents abandonment of the use. The Objector here says there has clearly been a period of some years with only trivial or sporadic use. Even if there had been use in an earlier period, the use would not be resurrected, as it were, by being resumed later after a period of abandonment. It would be rare, and not relevant in this present case, for the extent of use in an earlier period than the relevant 20 year period to be relevant to the determination whether the statutory test had been met. It did not assist the Applicant's case here that there might be evidence of a greater extent of use of the land at a time considerably more than 20 years before the application.

11. DISCUSSION AND RECOMMENDATION

- 11.1. The application in this case was made under **Subsection (2)** of **Section 15** of the **Commons Act 2006**. That section applies where:

"(a) a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years."

and

"(b) they continue to do so at the time of the application."

The application in this case was dated 12th November 2015, and received by the Council as Registration Authority on or about that date, so that date represents the 'time of the application', from which the relevant 20 year period needs to be measured (backwards) – subject only to the consideration (see below) whether **Section 15(7)(b)** of the **2006 Act** [permission given after 20 years use already established] has any application to the present case.

Assessing the Facts

- 11.2. In this case, although the only oral evidence given was that called on behalf of the Applicant, there was nevertheless some dispute in relation to aspects of the

underlying factual background as to the history and extent of the use of this site over the relevant years. The law in this field puts the onus on an applicant to prove and therefore justify his/its case that all of the various aspects of the statutory criteria set out in *Section 15(2)* have in reality been met on the piece of land concerned.

- 11.3. To the extent that any of the facts were in dispute, 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 the statutory criteria for registration have been met or not.
- 11.4. Where there were any material differences, or questions over points of fact, the legal position is quite clear that they must be resolved by myself and the Registration Authority on the balance of probabilities from the totality of the evidence available. In doing this one must also bear in mind the point canvassed briefly at the Inquiry itself (and mentioned by me earlier in this Report) that more weight will (in principle) generally be accorded to evidence given in person by witnesses who have been subjected to cross-examination, and questioning by me, than would necessarily be the case for written statements, completed 'evidence questionnaire' forms and the like, which have not been subjected to any such opportunity for challenge.
- 11.5. I do not think that the nature of the evidence given to me in this case necessitates my setting out in my Report, in a formal, preliminary way, a series of 'findings of fact'. Rather, what I propose to do, before expressing my overall conclusions, is to consider in turn the various particular aspects of the statutory test under *Section 15(2)* of the *2006 Act*, and to comment on how my conclusions (on the balance of probabilities) on the facts of this case relate to those aspects. It should not however be assumed that any facts I mention under one heading are only relevant to that heading. I have taken into account the totality of the underlying facts in reaching my conclusions under all the headings, and (of course) in reaching my overall conclusions as well.
- 11.6. I will mention at this point that the question whether it is legally possible for a piece of land already registered as 'Common Land' in the registers now maintained under the *Commons Act 2006*, also to be registered as a 'town or village green' under *Section 15* of that Act, was at one point disputed by the Objector (the Somerset Trust) which was in the event represented at the Inquiry. However that argument was later withdrawn by counsel for the Trust, and it had not been pursued by either of the other objectors. I myself am satisfied that it is within the scope of the current legislation that the same piece of land might properly appear in both registers under the Act. I do not therefore need to say anything further on this point, save that I will (briefly) consider later whether a new registration as 'town or village green' should have any effect on that which is noted in respect of the same land in the formal Register of Common Land.

“A significant number of the inhabitants”

- 11.7. Although this issue appeared originally to be in dispute, it was accepted at the Inquiry, on behalf of the one Objector represented there (the Somerset Trust) that a level of evidence had eventually been produced on behalf of the Applicant to show that a significant number of the inhabitants of Three Crosses have claimed to have used the land here recreationally at some period within their living memory.
- 11.8. Disputed questions clearly remained about when such use had taken place (in the context of the relevant 20 year period), whether it had truly been ‘as of right’ (as opposed to with permission) at least for some of the time, whether the use was really referable to footpath use, and so forth. All of these issues I shall consider later.
- 11.9. But in my judgment on the evidence, the Applicant clearly did produce ample evidence that significant, as opposed to ‘isolated’ or ‘sporadic’, numbers of the people of Three Crosses do claim either to have used or seen others using the application land recreationally over considerable periods.
- 11.10. The concession on behalf of the Somerset Trust in this regard was therefore correct, in my opinion. The other two objectors (Edenstone Homes Ltd and the Gower Commoners Association), given their absence from the Inquiry, did not formally make such a concession. However in my judgment it would not on the overall evidence eventually produced have been feasible or plausible for them to take a different view. Clearly, in my opinion, the Applicant did not fail on the basis of there not having been a ‘significant number’ of claimed users.

“Locality” or “neighbourhood within a locality”

- 11.11. There was not in the event any argument from any objector, to the effect that what is now the Community Area of Three Crosses is incapable of being a legally valid “locality” for the purposes of the ***Commons Act***. Similarly no argument was raised that the actual village of Three Crosses, which sits in the middle of the Community area of the same name, is incapable of being a recognisable “neighbourhood” within that locality.
- 11.12. The Applicant had, on a plan accompanying the application, sought to define the boundaries of the suggested neighbourhood of Three Crosses village, in what seems to me to have been an entirely sensible way. There can be no doubt, in my judgment, that a valid neighbourhood and locality have been demonstrated in this case.

“Lawful sports and pastimes on the land”

- 11.13. A number of the major topics which were in dispute come under this sub-heading, by itself or in common with my later sub-heading about the relevant period of ‘at least 20 years’.
- 11.14. I note in passing that, perhaps unlike some other sites in respect of which ‘village green’ applications are made from time to time, this particular application site does in a number of respects have some of the conventional features typically associated with a village green. It is entirely unfenced open land, save where it abuts residential curtilages on its eastern side; at any other position it can be accessed at any point off the public highway, subject only to the limitations brought about by the vegetation on the site. It is also in a reasonably central position within the village of Three Crosses, albeit somewhat to the south-west of what might be literally regarded as the geographical centre of the village.
- 11.15. On the other hand, much of the land, at the time I saw it in late October 2016, was fairly overgrown, apart from on (and to some extent around) the several paths or tracks which cross it, to the extent of making human access to quite large parts of it clearly somewhat awkward, even if not impossible.
- 11.16. However, as I noted much earlier in this Report, much of the vegetation on the site is not obviously of particularly long standing (apart from various clearly more established trees and bushes), so that it gives the visual impression of having grown to be in its present state over a relatively small number of years of non (or limited) maintenance.
- 11.17. I make these points to note the appearance of the site, by way of background, not to suggest that either the present appearance or the location of the site should be in any way determinative of the application. It is quite clear that determination of the application depends not on those matters of appearance, but on whether all of the relevant statutory criteria under *Section 15(2)* of the *2006 Act* have been established in respect of the land, at least on the balance of probability.
- 11.18. The only other visual evidence which was provided by the parties were a relatively small number of photographs. Those produced on behalf of the Applicant (as part of its ‘response to objections’ documentation) were eight reasonably clear photographs of parts of the application site, six of them said to have been taken in the summers of 2014 and 2014, but the last two taken in February 2016 (and therefore somewhat after the date of the application).
- 11.19. The photographs produced from the Objectors’ ‘side’ were a number of (themselves quite small) aerial and surface based photographs of the application land, included within the original ‘Geraint John’ objection statement of January 2016, on behalf of the Somerset Trust and Edenstone Homes Limited, and said to have been taken from the internet (Google Earth or Google Maps). There were six small aerial photographs, said to have been taken (all in the month of December)

between the years 1999 and 2015. As no oral evidence was given by anyone responsible for these photographs, there was no opportunity to explore such questions as the extent to which the appearance of the vegetation visible on them was consistent with the December dates given for all of them. The other four small photographs were said to have been taken (in various months) between October 2009 and June 2011. On one of them (March 2011) there is seen a tractor on the land, which *might* have been engaged in cutting back some of the vegetation. Certainly the vegetation visible on the land in that photograph is predominantly very much shorter than that visible on my site visits in October 2016.

- 11.20. All that can be said (in my judgment) of the various photographs presented is that they show considerable variations in the overall extent and ‘depth’ of vegetation on the site, from one time to another, and they all tend to show some substantial parts of the overall site with rather more vegetation, while other parts look more cut back and ‘grassy’ in appearance.
- 11.21. The photographs by themselves do not therefore (in my judgment) provide any very clear guidance as to how this application should be decided.
- 11.22. It follows from all this that I and the Registration Authority must form a view as to whether a significant number of the local inhabitants have regularly used this land for lawful sports and pastimes, based on the collective impression given by all of the evidence which has been given by individuals, as to their own use, and the use of the land which they have seen being made by others. I am here referring not just to the evidence of the witnesses who attended the Inquiry to give oral evidence, but also that contained in the numerous completed evidence questionnaires provided in support of the application (albeit untested by any opportunity of challenge or cross-examination).
- 11.23. As I have indicated, there does not appear to be any clear ‘external’ corroborative evidence one way or the other, e.g. the photographic material I have referred to. However I must note the point that, apart from the very small amount of internet-sourced photographic material produced on behalf of the two main Objectors, which I have already characterised as inconclusive, there was effectively no substantive evidence at all produced by any of the Objectors to this application (including the landowner-objector represented at the Inquiry), with the limited exception of some documentary material going to the question of whether a ‘permission’ (in the form of the September 2013 cutting/mowing licence) to use the land might have been granted during at least the last few years of the 20 year period prior to the application. This latter point is one I consider under my later sub-heading covering the criteria “*As of right?*” and “*for a period of at least 20 years*”.
- 11.24. The judgment which I have formed on the evidence which I did receive is that there was abundant evidence of significant use of the application land by residents of Three Crosses for “*lawful sports and pastimes*”, over several decades, going back much further than 20 years from the application. It is undoubtedly clear from

the evidence that use of this kind was considerably more extensive in the earlier years of the recollections of many witnesses, during periods when the vegetation on the land was kept down much more regularly and/or frequently, whether by grazing or cutting. Indeed the evidence was entirely convincing that in those earlier years there was regular use of this land which fully fitted the ‘classic’ expectations of the sort of thing one might expect to find going on on a town or village green in Wales or England.

- 11.25. What is equally clear however is that such use has undoubtedly become less intensive over the more recent decades, as vegetation has tended to grow up after the installation of the cattle grids on the outer edge of the village brought to an end the regular grazing of this land by most free-roaming animals. The evidence was less than wholly clear as to exactly how many times, or when, the vegetation on the land had been cut back in the period since the cattle grids were installed, but what was clear, and not really disputed, was that this had in fact been done on a number of occasions, a view which tends to be supported by the photographic evidence I was shown. Indeed, as noted above, one of the photographs provided on behalf of the Objectors appeared to show the land in March 2011, at a time when, or just after, much of the vegetation on it was being cut back.
- 11.26. Undoubtedly the changes over time (and in particular the general trend towards more overgrown-ness) in the vegetation on the land did cause a change in the pattern of usage of the land by local people. That such change in usage had occurred was specifically acknowledged on behalf of the Applicant. As land becomes progressively more overgrown usage naturally tends to become more restricted to parts which remain more accessible, whether they be paths or animal tracks, or areas near them, or other areas which happen for whatever reason to carry less vegetation. This is exactly what appears on the evidence to have happened here, with the extensiveness of use having become gradually more restricted during periods of greater overgrown-ness. There was also evidence of some of the narrower ‘animal’ (type) tracks on the land becoming easier to use again after the local ‘Common Good Trust’ began to widen them into ‘cut paths’ by mowing or cutting (pursuant to ‘licence’ to do so), from late 2013 onwards.
- 11.27. I am fully aware of the discussions around the topic of how ‘village green’ claims should be considered where the land concerned is somewhat overgrown, which have taken place within some of the case-law within this area of jurisprudence, and indeed this issue was raised in discussion with the parties represented at the Inquiry in this case. It is clear that a ‘common sense’ approach is required; that it is not necessary (for example) for a claimant to show that every square inch of an application site had been actively used by local people for the relevant period. It is important to consider how the matter would have appeared to a reasonably observant landowner who (as it were) ‘kept an eye’ on the land concerned. It is specifically clear that a ‘village green’ claim can succeed on land which is quite overgrown and difficult of access over much of its surface, provided the activities of local people on the rest of it were sufficient to show that they were using the land generally (for lawful sports and pastimes), as far as practicable in the

circumstances, rather than (say) just using or diverging slightly from fixed paths or routes across the land.

- 11.28. The question of the significance of fixed routes across the land is of particular relevance in this case, and I shall revert to it shortly. Before doing so however I would express the view that, in a case like the present one, previous heavier use by local people for recreation (when the land was generally and consistently less vegetated) must still be of some relevance, even if that heavier degree of use was more than 20 years before the relevant date of the application, as long as that use has in fact continued (albeit at a lower level) right through to the date of the application. The statutory requirement is that use must be shown for a period of “*at least 20 years*”, so that activity more than 20 years before an application date is not statutorily irrelevant.
- 11.29. It seems to me, as a matter of judgment, that ‘older’ imputed knowledge (on the part of an ‘observant landowner’) of more extensive ‘lawful sports and pastimes’ use, when an area was less overgrown, must still be of at least some relevance to how it ought to have appeared to an observant landowner in circumstances where, in spite of land becoming progressively more overgrown during latter years, local people have still persisted in using the land recreationally, as far as practicable, for recreational purposes, in spite of the overgrowth. This must be so, it seems to me, even if the overall level of use during the overgrown period(s) was less than it might have been in the earlier, more user-friendly times.
- 11.30. To take a different view would, it seems to me, carry a risk of unfairness and injustice to genuine ‘village green’ claimants, on a piece of land which had always seemed to be openly available for ‘local public’ use, if such a claim could be thwarted by (say) allowing the land to become gradually more overgrown and difficult to use during the period before an application for registration comes to be made. I entirely accept that if land had over a prolonged period been so overgrown that it had been practically impossible or extremely difficult to use it at all (for lawful sports and pastimes) during the 20 years before an application it would be hard to see how registration could lawfully be justified under **Section 15** just because evidence showed there had been extensive use in the distant past.
- 11.31. But here, in my judgement on the evidence, there is a case where there was more extensive use in the past (with lesser vegetation), which has gradually transformed into lesser but still significant levels of recreational use, as far as has continued to be practicable with the overgrowing vegetation. In these circumstances it seems to me that a ‘village green’ claim can be validly made out, even if current and recent levels of use are noticeably less than they had been at some earlier period about which evidence had been given.
- 11.32. All of this is of course subject to the very important point that use of the land must be discounted (in a **Commons Act** context) to the extent that it was use of fixed routes across the land to get from one point to another (and activities incidental to such crossing), rather than recreational use of the land more extensively.

- 11.33. This exception from relevance applies most clearly to use of the public footpath, and the short length of all-purpose public highway, which cross this land, and activities incidental to such use. However, it is clear also that use of other fixed footpaths across land, as routes to get from A to B, even if not formally registered as public footpaths, cannot 'count' towards establishment of 'lawful sports and pastimes' use of the land generally.
- 11.34. Use of the north-west to south-east public footpath across the land (which use was referred to in some of the evidence) must therefore be discounted from the claim here, along with any activities which were merely incidental to such path usage. Likewise there was no evidence at all that the public carriageway (with pavements) of part of Orchard Drive which crosses the south-eastern part of the site was ever used for any other purpose than that of public highway. Indeed all parties represented at the Inquiry were agreed that the public highway of Orchard Drive should be excluded from the application site, whatever happens in relation to the rest of the application.
- 11.35. There was some further evidence of use at times of other routes across this land as part(s) of journeys to get from A to B, or as part of (for example) circular walking routes around the village. Taking all of these matters into account, however, I was satisfied, on the 'balance of probabilities' test, that there was still sufficient other evidence to show the requisite 'lawful sports and pastimes' use of the land as a whole, as distinct from use of footpaths as crossing routes, even during the latter decades (including the 20 years before the application date) during which the land has for significant periods been more overgrown.
- 11.36. That leaves the question of what should be done (in a formal sense) about the specific parts of the site on which any paths or fixed routes were physically situated. I have already indicated that it was agreed among those present at the Inquiry that the part of Orchard Drive within the application site should be excluded from it. I agree with that.
- 11.37. Then there are the public footpath itself, and the visible trackways leading across the northern part of the site to individual properties from Tirmynydd Road. Although these parts of the site are clearly used for activities (i.e. for access to properties, and for 'normal' public footpath use) which are not 'lawful sports and pastimes', the evidence convinced me that they are also on parts of the site which are very much used for the 'lawful sports and pastimes' activities which take place on the land generally. Indeed the evidence suggested that the parts of the site near to and around these features have probably been among the more intensively used parts of the site for such activities.
- 11.38. It therefore does not seem to me to be appropriate to contemplate removing the land physically occupied by the public footpath or the access tracks from the application site. There was nothing at all to suggest that use of these small pieces

of the land for footpath or access purposes is in any way incompatible with registration or use as a ‘village green’, or that normal courteous ‘give and take’ would not apply as between ‘lawful sports and pastimes’ users and ‘route users’. The same applies with even more force to any other routes across the land (which were not in any event identified by the evidence) which may at times be used as paths or routes ‘from A to B’ around the village, as well as forming part of the larger whole used for ‘lawful sports and pastimes’.

- 11.39. The final point which I need to consider under this sub-heading is what view should be taken of the small part of the application site which lies to the east or south-east of Orchard Drive, and will be separate from the rest of the site once Orchard Drive itself has been excluded.
- 11.40. At the end of the Inquiry the represented Objector (the Somerset Trust) asked that this land should be excluded from registration, whatever might happen in relation to the rest of the application site. This was on the basis that (it was suggested) there had been no real evidence to show that this particular area within the site had been used for lawful sports and pastimes.
- 11.41. It is true that the evidence produced for the Applicant had not (as far as I could see) directed its focus specifically at that small area. Nevertheless the evidence for the Applicant, both written or oral, was in general given in relation to the entirety of the application site, and thus including this south-eastern area, which is of a generally similar character to much of the remainder of the site. No case was pursued (by cross-examination, for example) with the Applicant’s witnesses, suggesting that this particular area should be excluded or treated differently, and no evidence at all was produced by any of the objectors in relation to this particular point.
- 11.42. I entirely accept that the onus to prove its case (on the balance of probabilities) still lies upon the Applicant, not on the objectors. However the correct view to take, in my judgment, is that if the Applicant in this case is to be properly adjudged to have sufficiently proved its case in support of its application (which is what I conclude it has done), it has done so in respect of the whole site for which it applied (except for Orchard Drive itself, which the Applicant agrees should be excluded). There is no reason, on the evidence which I have received and found persuasive (on the balance of probabilities) in relation to the whole site, to exclude from that overall finding the small part to the east/south-east of Orchard Drive.

“As of Right”

“... for a period of at least 20 years”

“... continue to do so at the time of the application”

- 11.43. In the particular circumstances of this case it appears to me to be appropriate to consider all these aspects of the statutory criteria together under one sub-heading, because of the particular argument pursued by the Objectors (and in particular the

represented Objector, the Somerset Trust) in relation to the “*as of right*” test, to the effect that *permission* to use the land had been given, at least during the last two years (approximately) before the date of the application.

- 11.44. There was not in the event any effectively pursued argument by any objector that local people (or the public generally) enjoyed any kind of *statute-based right* to use the land here for recreation. The Somerset Trust (through its Counsel) expressly disclaimed at the Inquiry any argument that the pre-existing status of this land as registered *common land* gave to the public a statutory right to use this land for air and exercise. To the extent that the Objector Edenstone Homes Ltd (not represented at the Inquiry) might be said still technically to have been arguing that **Section 193(1)** of the **Law of Property Act 1925** gave such a right, the argument is untenable. It was established with complete clarity by the Applicant (and accepted by the Somerset Trust) that the condition in that particular section that the land affected must have been before 1974 within a Borough or Urban District is not met in this case. No objector argued that the public (or local inhabitants) have enjoyed any other relevant statutory right to use this land.
- 11.45. The only respect in which the “*as of right*” criterion within **Section 15** calls for specific consideration therefore is in relation to the licence granted on September 2013 by the Somerset Trust to the ‘Common Good Trust of Three Crosses’ in respect of this land. Reference was also made at the Inquiry (and in earlier exchanges) to another licence which was granted in the summer of 2014 by letter, to enable the re-installation at the extreme northern tip of the application land of replica fittings relating to an historic well which had been previously operational there. However it is impossible to see how on any basis that particular licence could have been argued expressly or implicitly to have given local people ‘permission’ to use the application land generally for recreation, or ‘lawful sports and pastimes’.
- 11.46. Thus it is only really the Licence granted on 28th September 2013 which needs to be addressed more fully. This clearly did relate to the land of the present application site, correctly and sensibly excluding the area of the public highway of Orchard Drive. It was granted by the Somerset Trust, as owners of the land to the ‘Common Good Trust of Three Crosses’ as licensee. I was not given any substantial information as to the precise status of the licensee trust. From its name it would appear to have the well-being of the village of Three Crosses as an objective, but I note in passing that it appears to be a legally distinct entity from the present Applicant, the Three Crosses Community Council.
- 11.47. The Licence was for a period of two years, but the only rights it granted were “*The right to cut/mow the Premises during the Licence Period and to take away the grass/trimmings*”. The evidence I received suggested that this licence had been acted on to a limited degree, and had led to the mowing of what several witnesses referred to as the current ‘cut paths’ on the land, where (I was told) some of the former ‘animal tracks’ (or tracks created by previous human use) had been widened to make them easier to walk on. I saw some of these ‘cut paths’/tracks on

my site visits, and indeed the series of photographs produced on behalf of the Applicant (as referred to above) show some of them quite clearly.

- 11.48. It may well be, as a matter of common sense, that the granting of this licence by the landowner in September 2013 reflected some sort of implicit recognition on the owner's part that local people were already using the application land recreationally (in what would have been an 'as of right' way), and that this Licence might make things easier for them. Or it might equally have reflected a recognition that local people might like to use the land, which was more what counsel for the Somerset Trust sought to suggest. There was no clear evidence either way on what must remain a matter of conjecture, and no clarifying evidence was produced for any of the Objectors.
- 11.49. Therefore, basing my conclusions on the facts and evidence which are available, I have to say that it seems to me impossible reasonably to construe a formal Licence given to a Common Good Trust merely to "*cut/mow the Premises*" as representing a sufficient 'permission' to local inhabitants as a whole to use the land recreationally, so as to transform the position from the previously occurring 'as of right' use (as I have found it to be) to use by permission, or 'by right'. In my judgment the cutting/mowing Licence of September 2013 was entirely insufficient and inadequate to amount to either an express or an implied 'permission' to Three Crosses inhabitants as a whole to use this land for lawful sports and pastimes.
- 11.50. Furthermore it was expressly conceded on behalf of the Somerset Trust at the Inquiry that, even if the 28th September 2013 Licence had amounted to a permission to local people to use the land from that date onwards (for two years), the legal consequence would simply have been to bring into effect **Subsection (7)(b) of Section 15 of the 2006 Act**. That subsection provides in substance that where a permission to use land is granted *after* 20 years 'as of right' use has already taken place, the permission is to be disregarded in determining whether the 'as of right' use continued. This clearly only applies (in my understanding) to permissions granted since the **2006 Act** has been in effect, but this proviso is of no concern in relation to a 'permission' said to have been given in late 2013, several years after the Act came into force in Wales.
- 11.51. Thus, as Counsel for the Somerset Trust acknowledged, even if the licence granted in September 2013 *had* granted local people implied (or express) permission thereafter to use this land, the only practical consequence for the present dispute would be to 'move' the 20 year period of primary evidential concern 'back' from November 1995 – November 2015 to September 1993 – September 2013.
- 11.52. The view which I have very clearly reached on the balance of the evidence is that 'as of right' recreational use of this land by the local people of Three Crosses has taken place continuously for a period going back much further than 1993, right through to September 2013 and beyond.

- 11.53. Thus even if the September 2013 Licence were correctly to be regarded as a ‘permission’ to local people to use this land, the Applicant has still in my judgment made out and proved its case for registration of this land as a town or village green, by virtue of **Section 15(7)(b)**.
- 11.54. My preferred view and judgment is that there was *not* an effective ‘permission’ of a relevant kind granted in September 2013, so that the question is properly looked at on the basis of the “*period of at least 20 years*” ending at the time of the application in November 2015. However, as just explained, even if the September 2013 licence did render use thereafter ‘by right’, the evidence still requires that the application should succeed.

Other matters

- 11.55. At the Inquiry it was acknowledged on behalf of the represented Objector, the Somerset Trust, that **Section 53** of the ***Planning (Wales) Act 2015*** has no bearing on the present case. However the suggestion that it might have some bearing was first raised in the objection made jointly on behalf of the Somerset Trust and Edenstone Homes Ltd. The latter objector has not (as far as I am aware) explicitly withdrawn this point, so I should just note that I have considered it, and am clearly of the view that the Somerset Trust’s concession was correct. This particular provision (under the 2015 Welsh Act) does not in my understanding have any relevance to the present case.
- 11.56. Inevitably when there are a number of initial objectors, and only one of them is formally represented at the eventual oral hearing (in this case the Inquiry), the case ‘evolves’ to some extent, and not every point made at an early stage is necessarily pursued with vigour later by the represented party. I should therefore note in passing that I have had regard to all of the points of objection made at all stages on behalf of the two eventually non-participating (at the Inquiry) Objectors, Edenstone Homes Ltd and the Gower Commoners Association. To the extent that they (whether as part of joint or individual objection statements) went beyond the case eventually pursued for the Somerset Trust, they do not in my judgment contain any points or arguments of substance which would tend to lead to different conclusions or recommendations from those I make in this Report.
- 11.57. The short objection made on behalf of the Gower Commoners’ Association did not really make any points of objection which are actually relevant to **Section 15** of the ***Commons Act 2006***. Indeed, as was noted by the Applicant, the Association appeared to acknowledge at least that some use had been made of the application land [by people of the village], and stated that it (the Association) had cut back growth on the land for a number of years. If anything those comments were slightly supportive of the Applicant’s case, but I do not rely on them in reaching the conclusions on the evidence which I have formed.

- 11.58. The apparent fact (learned from other evidence) that the Gower Commoners Association had expressed support for a putative (but not yet made) application to de-register the present application site as Common Land, and ‘replace’ it by adding other ‘exchange’ land to the common, does not in my view have any relevance to the present proceedings.
- 11.59. I also note again in passing that a representation in support of the application (but not formally forming part of the Applicant’s case) was received at an early stage from Dr Marion Howells of Fairwood Cottage, 1 Chapel Road, Three Crosses. I have borne it in mind, but it is not essential to any of the conclusions I have reached.
- 11.60. Finally in this regard I note that parties on both sides of this present dispute made some reference (in written material, and very briefly at the Inquiry) to the point that this site had been considered in a town and country planning context as a potential site for future residential development. As I had indicated in the Directions issued before the Inquiry, and repeated (again very briefly) at the Inquiry, this point has no relevance at all to the statutory criteria under *Section 15* of the *Commons Act 2006*. I am however aware of observations which have been made in various judicial decisions in the ‘town or village green’ context, about the need to scrutinise village green applications, and the evidence in support of them, with considerable care when there is any suggestion that the prevention of unwarranted development might be part of the motivation for an application. I have borne that in mind, but my clear conclusion on the evidence is that use of this land by local people for lawful sports and pastimes is something which has taken place over many decades (going back long before any suggestion of ‘planning’ proposals on this land), in a way which fully meets the criteria of *Section 15(2)* of the *2006 Act*.

Final Conclusion and Recommendations

- 11.61. As I have just indicated, my clear conclusion on the evidence and submissions in this case is that the Applicant has succeeded in showing, on the balance of probabilities, that the criteria requisite for *Registration* under *Section 15(2)* of the Act are met in this case. As explained above, this is so regardless of the view taken of the Licence granted in September 2013 for the cutting/mowing of the land.
- 11.62. The only exception to this relates to the part of the original application site consisting of a length of the public highway (carriageway plus footways either side) known as Orchard Drive. It was a matter of agreement between the parties represented at the Inquiry that this portion of land should be excluded from the application site, and that is plainly correct in my view. It also clearly causes no prejudice to any actual or potential party.
- 11.63. It was also agreed by the represented parties that the Registration Authority, which is also (in another of its statutory functions) the local Highway Authority for the area, could provide an accurate plan showing the extent of the public highway to be excluded in this regard.

- 11.64. The Council as Registration Authority/Highway Authority has indeed provided such a plan, and I attach it as Appendix III to this Report. When I refer in my concluding paragraph (below) to “*the amended application site*”, I mean the original application site, minus the part of it which is included in the public highway of Orchard Drive (carriageway and footways), as shown on the plan at Appendix 3.
- 11.65. In the light of all that I have set out above, my recommendation to the Council as Registration Authority is that the ‘amended application site’ (as defined in the previous paragraph) *should* be added to the statutory Register of Town or Village Greens, pursuant to the Applicant’s application under *Section 15(2)* of the *Commons Act 2006*, for the reasons given in my Report.
- 11.66. I note that in this particular case the land of the amended application site is included within land already registered as common land within the statutory Register of Common Land as currently maintained under the same Act. It is my understanding that there is no reason why the same piece of land should not be included in both of these registers, and in the event no party to these proceedings ultimately argued otherwise. There is (as far as I am aware) no formal requirement that it must be noted in either one of these registers that the same land is also registered in the other one. However it is clearly of potential benefit to users of these registers that this circumstance should be so noted. Accordingly I make the further recommendation to the Registration Authority that (once this has occurred) a note should be included in the Register of Common Land that the land of the amended application site is also included in the Register of Town and Village Greens, and that the corresponding equivalent note (about the pre-existing common land registration) should be included with the new entry to be inserted in the Register of Town or Village Greens.

ALUN ALESBURY
21st December 2016

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

APPENDIX I

APPEARANCES AT THE INQUIRY

FOR THE APPLICANT (Three Crosses Community Council)

Mr Paxton Hood-Williams (Chairman of the Applicant)

He called:

Ms Vanessa Cashmore, of 22 Chapel Road, Three Crosses

Mr Wynne Griffiths, of 17 Joiners Road, Three Crosses

Mr David Phillips, of 43 Tirmynydd Road, Three Crosses

Mr (Henry) John Hobbs, of 41 Tirmynydd Road, Three Crosses

Ms Joanne Rees-Thomas, of 46 Dunvant Road, Three Crosses

Mrs Mary Hobbs, of 31 Tirmynydd Road, Three Crosses

Mr Daniel Pugh Jones, of 17 Pant y Dwr, Three Crosses

Ms Sally McGregor, of 41 Joiners Road, Three Crosses

Mr Warren Smart, of 28 Llwyn Derw, Three Crosses

FOR THE OBJECTOR – The Somerset Trust

Mr Matthew Dale-Harris, Counsel

- Instructed by Messrs Morgan LaRoche
PO Box 176, Bay House, Phoenix Way, Swansea SA7 9YT

He called no witnesses

No other party appeared or was represented.

APPENDIX II

LIST OF NEW DOCUMENTS PRODUCED TO THE INQUIRY

NB. This (intentionally 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 purposes of the Inquiry by the Applicant and the Objector Edenstone Homes Ltd (albeit that this objector did not in the event appear at the Inquiry). All of that material was provided to the Registration Authority, the relevant other parties and myself as complete bundles (or in a small number of cases as clearly identified accompanying documents).

BY THE APPLICANT:

Written Note of Opening Submissions

List of Witnesses

Written Note of Closing Submissions (with additional/amendment sheets)

BY THE OBJECTOR – The Somerset Trust:

Written Note of Opening Submissions

Written Note of Closing Submissions

BY THE REGISTRATION AUTHORITY:

Plan showing extent of Adopted Highway in vicinity of application site (now Appendix III)