COMMONS ACT 2006, Section 15

CITY AND COUNTY OF SWANSEA
(Registration Authority)

RE: LAND KNOWN AS PARC Y WERIN,
GORSEINON,
SWANSEA

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

into

AN APPLICATION TO REGISTER THE
ABOVE-NAMED AREA OF LAND

as a

TOWN OR VILLAGE GREEN

CONTENTS:

1. INTRODUCTION

1.1. I have been appointed by the Council of the City and County of Swansea ("the Council"), in its capacity as Registration Authority, to consider and report on an application, received by the Council on 23rd November 2015, for the registration of an area of land known as Parc y Werin, Gorseinon (fronting on to Princess Street and Brynawel Road), as a Town or Village Green under ***Section 15*** of the ***Commons Act 2006***. The application site is within the administrative area for which the Council is responsible, and is also, I understand, entirely within the freehold ownership of the Council.

1.2. The Council itself, in its capacity as owner of the site concerned, made an objection to the application in this case, as did a number of other persons or bodies (see further below). It is important to record at this point that my instructions in relation to this matter have come from the Council solely and exclusively in its capacity as Registration Authority under the Commons Act. I have had no involvement with the Council in relation to this matter in its capacity as landowner, as local education authority, or indeed in any of its other capacities, other than by way of receiving evidence and submissions on the Council's behalf as Objector to the application.

1.3. The Council as Registration Authority initially asked me to consider whether, in the circumstances of this particular case, and in the light of what had been said in the application and supporting documents, the objections to it, and the Applicant's initial response to those objections, the factual position was sufficiently clear and undisputed that it might be possible for a decision on the application to be properly and fairly reached, without the need for hearing any further oral evidence and argument from the parties.

1.4. I myself initially took the view that this might well be the case, but it became apparent following the exchange of a number of further written comments or representations from the two main 'Parties' in this case (the Applicants, and the Council as Objector) that the factual background to this matter was in a number of respects less clear and straightforward than had initially appeared. Accordingly the Registration Authority concluded, in line with advice from me, that it had become appropriate and necessary that a public local inquiry should be held, to hear further evidence and argument in relation to the aspects of the case where the position was less clear, and less straightforward. In this context the Registration Authority took the view, which I endorse and agree with, that it did not need to hear further evidence seeking to demonstrate that significant numbers of the inhabitants of Gorseinon had used Parc y Werin during the relevant period of 20 years for 'lawful sports and pastimes'; that proposition had been clearly established (and was not the subject of dispute) through the exchanges of written material which had already taken place. Likewise the Registration Authority was satisfied, on the written exchanges, that the administrative area of Gorseinon Town Council is capable of being a valid and relevant 'locality' for the purpose of Section 15 of the Commons Act 2006.

1.5. In this context I was appointed by the Registration Authority to hold a non-statutory Public Local Inquiry into the application generally, except in relation to the matters noted above, where the position was already clear, and to hear and consider the remaining evidence and submissions in support of the application, and on behalf of the Objector(s). I had in the circumstances outlined above already been provided with copies of the original application and the material which had been produced in support of it, the objections which had been made to it, and the further correspondence and exchanges which 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 later material, or the context of the Public Inquiry, I have had regard to all of it in compiling my Report and recommendations.

2. THE APPLICANTS AND APPLICATION

2.1. The Application was itself dated 13th November 2015, but was noted as received by the Registration Authority on 23rd November 2015; the latter is therefore the effective date of the application. It was made jointly by (Gorseinon Town) Councillors James Dunckley and Claire Lewis. They are therefore "the Applicants" for the purposes of this Report.

2.2. The application form indicated that the application was based on ***subsection (2)*** of ***Section 15*** of the ***Commons Act 2006***. The application was supported by a number of completed 'evidence questionnaires', and some other written and documentary material. I have already noted that there were a number of further submissions of written material from the Applicants, prior to the issue of Directions for the Inquiry.

2.3. I should also note that, following the initial making of the application in this case, a number of written representations in support of it were received by the Registration Authority from local people. I have read all of them, and taken them into account in forming my overall conclusions and recommendations.

2.4. On the question of the relevant 'neighbourhood' or 'locality', the application form as submitted referred to the Gorseinon Town Council Administrative Area as the relevant area, and attached a map. The Registration Authority has already accepted that this area is a valid 'locality' for the purpose of these proceedings (and I agree).

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

2.6. The site is currently a reasonably well maintained area laid predominantly to grass, with some trees, but also with some areas of hard-standing, including an area in the north-west laid out as a children's playground, and another adjacent area which seemed to be used mainly for parking cars. The general appearance of the site is that of a fairly typical local park or recreation ground. The site is generally surrounded by fencing, but with several ungated gaps through that fencing, so that it appeared to be permanently accessible to people on foot.

2.7. The site generally slopes down from north to south, but not so as to prevent there being significant areas of generally flat land, including areas laid out as pitches to be used for playing football (although none was taking place at the times of my visits).

3. THE OBJECTOR(S)

3.1. I have already noted that the Council of the City and County of Swansea, in its capacity as the owner of the area of land covered by the application, registered an objection to the application. It is also the case (and of potential relevance to the present proceedings) that the Council is Local Education Authority for its area, including Gorseinon and the application site.

3.2. Written objections to the application was also submitted on behalf of the Governors of Gorseinon Primary School, and by the Deputy Head Teacher on behalf of that School, and by a number of individuals. I have read and considered all of these written objections, and (insofar as they raise matters relevant to Section 15 of the Commons Act 2006) have had regard to them in reaching my overall conclusions and recommendations. They do not however raise any points relevant to the Commons Act which add anything to the case made on behalf of the Council, and I do not record them separately in this report. In the event none of these other objectors (than the Council as landowner and LEA) participated in the Inquiry which I was appointed to hold (although they were given the opportunity to do so), or submitted any further representations. The Council, in its capacity as landowner and LEA, is therefore *"the principal Objector"* for the purposes of the remainder of this Report.

4. DIRECTIONS

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

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

5. SITE VISITS

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

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

6. THE INQUIRY

6.1. The Inquiry was held at the Canolfan Gorseinon Centre, Millers Drive, Gorseinon, over three days, on 14th, 15th and 16th February 2017.

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

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

7. THE CASE FOR THE APPLICANTS – EVIDENCE

Approach to the Evidence

7.1. As I have noted above, the original Application in this case was supported and supplemented by a number of documents, including completed evidence questionnaires.

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

7.3. I have read all of this material, including documents and photographs, 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. In this particular case, significant areas of fact were not in dispute, such as the use by local people of the application site land for recreational purposes over a prolonged period (of at least 20 years). Nevertheless, to the extent that there were still factual matters in dispute, and as was mentioned in the pre-Inquiry Directions, and at the Inquiry itself, more weight will inevitably be accorded to evidence which is given in person by a witness, who is then subject to cross-examination and questions from me, than will be the case for mere written statements, etc., where there is no opportunity for challenge or questioning of the author.

7.5. With all of these considerations in mind, I do not think it is generally necessary for me specifically to summarise in this Report such evidence as was contained in the statements, completed questionnaires, etc. by individuals who gave no oral evidence.

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 Applicants

7.7. ***Councillor David Cole*** lives at 209 Frampton Road, Penreheol, Gorseinon. He explained that he is a member of the Council of the City and County of Swansea, for the Penyrheol, Gorseinon Ward.

7.8. He was born and raised in Gorseinon, and is now 64 years old. He went to the local nursery, infants and junior schools, and then to Gowerton Grammar School, before beginning his working life. From 1971 until retirement in 2005 he worked at 3M in Gorseinon. He was a health and safety officer at the plant at the time he retired. In 2010 he took up a position on Gorseinon Town Council, and in 2012 he was elected County Ward Member for his present Ward. He had been Captain of Neath Rugby football team in the 1970s.

7.9. When he was young his family lived on Bryn Close Road and they played football and cricket on Parc y Werin. Down at the bottom of the park, behind Brynawel Road, there were also a series of shallow ponds in which they caught newts and tadpoles as children. There were a lot of brambles on the land. He would say it was rough land. Parc y Wein at that time, in the 1950s and '60s, had a number of gates which the park keepers opened and shut. He did not recall any gate to the park behind Alexandra Road. He had no recollection of signage anywhere at that time on Parc y Werin.

7.10. The Carnival was the big local event of the year, held every second Saturday of July. The proceeds went to the Gorseinon Hospital. It was very well run. At that time money was collected on the gate. Years ago they would take fence panels away to let in the people who ran the fair. He believed the Carnival stopped in the 1990s. It was re-started in 2012, and he was treasurer on the Carnival committee until its final year in 2016. They were told by Swansea Council that they could not collect money on the gates.

7.11. As a member of Swansea Council's planning committee, he had raised concerns about the appropriation of this land in 2015. He went to the then Monitoring Officer seeking to *"call-in"* the appropriation. He thought they would consult the community more widely, but no notices were placed on Parc y Werin.

7.12. He later said that he thought the Carnival had in fact re-started in 2011. Before that it had stopped in the early 1990s, but he could not remember exactly when.

7.13. His father, who knew the site well, is Mr Ivor Cole who is currently aged 89. Mr Cole senior had been a park keeper.

7.14. Mr David Cole said that he had not discussed with his father the question of when the gates of the park were locked in those earlier days. He believed his father had been park keeper until 1995. Everything changed in about 1995, when the whole area was transferred from Lliw Valley to the City and County of Swansea. Mr Cole junior believed that his father had, as part of his job, opened and closed the gates of the park during the time that he had worked as park keeper.

7.15. *In cross-examination* Mr Cole said that there had been a number of changes in local government which had affected the park. Prior to 1974 the area had been in the Llwchwr Urban District. Then in 1974 Lliw Valley took over. Then on the 1st April 1996 Swansea took over. His recollection was that his father had been park keeper at Parc y Werin up until that last change.

7.16. There had been only two gates to the park. There was a double gate onto Princess Street, and another gate right opposite the hospital, on the corner near the bowling green. There had been no access from Alexandra Road to Parc y Werin.

7.17. Having considered some aerial photographs produced by the Principal Objector, Mr Cole agreed that a health centre had been built on the land to the south of the park between 1967 and 1971.

7.18. As for the entrances into the park, Mr Cole acknowledged that there was also an entrance from Brynawel Road, by the car park, but that entrance was not gated or closed. The only gates ever closed were the one onto Princess Street and the one on the corner by the bowling green. There had been three 'pitches' at the northern end of the park, which were two bowling greens and one tennis court.

7.19. He accepted that a 1981 aerial photograph showed that two football pitches had also appeared on the park by that time. He thought they were both junior pitches, and commented that the land had been very boggy until it was drained. On the 1981 aerial photograph there was shown yet another building to the west of the health centre, which Mr Cole said was a social centre. By the time of a 1992 aerial photograph there was shown yet a further building, which constituted a sheltered/social housing complex.

7.20. By the time of the 2005 photograph a playground had appeared near Brynawel Road, i.e. the children's play area. Mr Cole did not know why in a 2009 photograph the second football pitch appeared to have some smaller markings on it which did not clearly relate to the game of football.

7.21. He said that for local people, 'Parc y Werin' as a name meant everything north of the buildings running west from the health centre, right up to Brynawel Road. Therefore the bowling greens and tennis court were in what he would call the park, even though they are not within the present application site.

7.22. He accepted that the football pitches on the land took up a large part of the open area of it. They were used for the playing of games by local leagues and the like. He believed that the pitches were booked out from the local council. There would have been goalposts put in place, and occasionally nets he thought. He personally had played football there when he was aged 15/16 or so, but thereafter he played rugby. The pitches had been marked out with white lines. When the pitches were in use the public would stay off them, but they would go on that part of the land at other times. Outside league use the local people would use the goalposts on the pitches to practise shots etc.

7.23. He personally did not know how the bowling greens and tennis courts had been administered. As for the Carnival, there had never been an issue about the use of Parc y Werin in connection with it, but he believed that around the 1990s some problems had arisen about road issues and security, etc. However he did not know exactly when the Carnival had stopped at that time. Money for entry to it had been collected on the gates to the park, being the two gates he had referred to. When the Carnival re-started, the organisers had been told categorically that they could not collect money for entry. His recollection of the old system was that one paid one's money to go in, and would then be stamped on the hand to register the fact that one had paid. The committee organising the Carnival would have had permission to hold it there, and to do that. He himself had not been involved in any of that however, he had merely observed it.

7.24. As for the bowling greens and tennis court, he believed that these were now completely fenced off from the rest of the park; however that had not been the case originally. Those areas have been enclosed more recently. There was no such fence separating off those areas in the earlier days, according to his recollection.

7.25. ***Mr Crispian Huggill***, lives at 19 Pencaecrwn Road, Gorseinon. He had moved to Gorseinon in 1985.

7.26. He confirmed that as far as the present bowling green area is concerned, one cannot get in there without a key. There had originally been one bowling green and three tennis courts, he thought. The bowling green in the extreme north-east corner of the park had been fenced off, but to its west, back in 1985, there were two areas of tennis courts which had not been fenced off.

7.27. In the early 1990s Lliw Valley Borough Council did quite a lot of work on the park. They replaced two tennis courts with another bowling green, and replaced the old pavilion with a new one. The new pavilion is shown in the 2005 aerial photograph. He believed it had been opened by the Mayor of Lliw Valley in 1994/5. There is a name plate visible on the building which says this.

7.28. In the autumn of 2015, there was considerable unease in much of the local community about an appropriation order which had been made by the Council of the City and County on land at Parc y Werin. No-one local to the park seemed to know anything about it, when and how it was carried out or who had been consulted, if indeed anyone was. Having read up some case-law on the subject, he decided to start a formal enquiry to the local authority, that is the City and County of Swansea. He had not realised at the time that one such enquiry would lead on to another. So on 14th December 2015 he submitted a Freedom of Information request to the authority, to seek to find out the how, why and when of the appropriation order carried out in the summer of that year.

7.29. Another issue had been troubling many people at that time. Hearing that the community were about to lose part of Parc y Werin to development, there were some who were convinced that this could not be the case, that it could never happen. They believed the park had been given to the people of Gorseinon by Mr W R Lewis, who had built the hospital, a large house for nurses' accommodation, the working men's club in Brighton Road, and a pavilion in the car park. The question arose whether there was any evidence of this benefactor in the deeds to Parc y Werin (which means the 'People's Park'). So he had started another Freedom of Information request to investigate the root of title to this land.

7.30. He had not expected that one year later he would still have many unanswered questions concerning the statutory basis of the ownership of the land at Parc y Werin. Neighbours and friends also had continuing concerns which were unanswered, because the local authority has withheld a substantial amount of information in the course of his enquiries. Freedom of Information enquiries were still ongoing.

7.31. He provided information about five Freedom of Information requests which had been made to the Council of the City and County between November 2015 and May 2016. He explained the nature of what had been asked, and produced a

bundle of documentation containing the material he had been provided with in response to those various requests. He also commented with varying degrees of satisfaction or dissatisfaction about the quality of the information with which he had been provided. [I note however at this point that my Report is not concerned with the question of the quality or lack of it of any Freedom of Information responses provided].

7.32. The disparate nature of the collection of material provided by Mr Huggill in his Appendices does not make it appropriate for me to seek to summarise it as part of my record of his evidence in chief. Items contained in his Appendices will be referred to as appropriate later in my Report, in my recording of his further evidence, or of any of the submissions made, by either party, which have referred to the material produced by Mr Huggill.

7.33. *In cross-examination* Mr Huggill said that he believed he now knew the statutory powers under which Parc y Werin was held. From the information provided it is clear. In relation to what he called the *"1924 land"*, being land acquired by the Council's predecessor under a 1924 Indenture, that was public housing land acquired under the relevant housing legislation. A more significant issue arises in relation to what is known as the *"1921 land"*, sometimes also called the *"1944 land"*. These dates refer to a 1921 Lease, and an Indenture of 1944, the effect of the latter being to convey to the Council's predecessor the freehold reversion to what had been the 1921 Lease. Relevant to the acquisition of the reversion to that land, said Mr Huggill, was the ***1933 Local Government Act***. A meeting of the Llwchwr Urban District Council had resolved to buy the freehold interest in the land under the 1933 Act 'and any other Acts thus enabling'. The 1933 Act was a broad brush enabling provision. Nothing in any surviving record said which provision of the 1933 Act was referred to, and there is no indication in any documentation as to what other powers were being referred to.

7.34. *In re-examination* Mr Huggill made clear that in his latter answers he had been referring to the relevant resolution of the Urban District Council of December 1943, as referred to in a document dated 10th January 1944, which was among the papers with which he had been provided.

7.35. ***Mr Andrew Thomas*** lives at 13 Brynawel Road, Gorseinon. He is aged 45 and has resided at this address all his life, currently with his brother. Their house is opposite Parc y Werin and he has been acquainted with it all his life.

7.36. His parents lived in Frampton Road, Gorseinon, and moved to 13 Brynawel Road in 1956 as first residents of the newly built property. In 1969 his father became one of the park keepers for Parc y Werin, alongside Dai Evans and another man until when Mr Evans retired in 1986, and his father became the senior park keeper. He (the father) retired from that job in 1996 when Lliw Valley Borough Council was taken over by Swansea City Council.

7.37. From 1969 one of his father's duties in the park was to open the gates at 7.00am and close them and lock them at 8.00pm, or 9.00pm in summer, every day Monday to Saturday throughout the year. The park was closed or locked every Sunday, he thought. The park had three gates, a double gate in Princess Street, a single gate in Brynawel Road and a single gate on the corner of the two streets opposite the entrance to Gorseinon Hospital. His father had been very particular about the opening and closing. Anyone found trespassing outside of those hours, for there were gaps around the side of the park where the fencing was not complete, was told to leave in no uncertain manner. However, Mr Thomas never remembered him ever calling the police or asking that offenders be fined for any such incidents. In those days the threat of being reported to one's parents was enough.

7.38. He remembered however that there was a period when the single gate on Brynawel Road, opposite Brynhyfryd Road, was left unlocked for many years. People were living in two large static caravans parked inside the park, near one of the tennis courts, and near to where the pavilion is today. They each had small fences and a path leading to their door. He believes they were used when the Council was refurbishing the houses in the area during the mid-1970s to 1980s. Electricity and water were plumbed in. He used to see washing pegged to the sides of the vans to dry. Rugs, mats, towels and other things would be taken for a shake and a clean outside.

7.39. Up until 1996 there were three park keepers in Parc y Werin for most of the time. All that changed when Swansea took over in early 1996. In October 1995 his father was told to stop locking and unlocking the park. Since that time the two gates had remained unlocked. The corner gate by the hospital was however locked to secure the bowling greens, when a section of new perimeter fencing was erected in the early 1990s, and has remained so. When his father retired he was not replaced. So there has not been anyone regularly on site every day to look after the park in the manner that the previous park keepers had been employed to do.

7.40. Up until the late 1990s there had never been any signs at the entrances to the park or within it. Since early 1996 there has been no-one to apprehend anyone who might be considered to be acting in any improper way, such as had been the case previously.

7.41. *In cross-examination* Mr Thomas said that he had been born in 1970. He himself had prepared his statement, including the parts about his late father.

7.42. There had been two static caravans in the park. Their own house had been very close to the park, on the other side of the road. Those caravans were there during the mid '70s and into the mid-1980s. He did not recall when they went, but he thought they would have gone by the early 1990s. They were based where the car park is now, and also where some flower beds were which are now grassed over. His recollection was that there had been a steamroller kept there, a static caravan, and another static caravan positioned longwise.

7.43. The gate to the bowling greens had always been locked overnight. His father's routine as a park keeper had been to close at different times in summer and in winter. The park had been closed on a Sunday. His recollection now was that there were no locks on it, it was just closed by bolts which could be opened. So people were not really locked out. However his father had thought that once the park was closed there should not be anyone in there. Only the caravan people had used the park out of hours, Mr Thomas thought.

7.44. In 1996 the park was taken over by Swansea Council. From then they wanted to leave the gates open all the time. His father had then retired at the age of about 63.

7.45. *In re-examination* Mr Thomas reaffirmed that it had been in October 1995 that his father had been told to stop locking the park. He was sure that it had been October 1995 that that had happened, that was when the changes were made in relation to not locking the gates.

7.46. ***Mr Ivor Cole*** lives at 3 Bryn Close, Gorseinon. Because of Mr Cole's great age and relative immobility, with the agreement of all parties to the Inquiry, I heard Mr Cole's evidence, and his cross-examination, at his own house at 3 Bryn Close on the morning of the second day of the Inquiry.

7.47. Mr Cole was born in 1927. In 1950 he moved to Gorseinon when he was working at a local tinplate works. Six years later he moved to Bryn Close, and started working first in Brynlliw, and then at Betwys Collieries. When he retired from the colliery in 1987 he became a park keeper in Gorseinon. He was one of three keepers who were responsible for three local parks and the comprehensive school in Pontarddulais. Early in 1996 Swansea Council took over from Lliw Valley, and he was made redundant along with his fellow park keeper John Thomas. Neither of them were replaced.

7.48. His job in Parc y Werin included looking after the bowling green, the football pitches, the three tennis courts, the flower beds and the surrounding areas of grass, the pathways and the pavilion including changing rooms, which were always a mess after football matches. There was also a machine for dealing with the leaves.

7.49. When he started there was a black spiked fence round part of Princess Street, followed by an old post and wire fence in the privet hedge, which had since grown over. Further down there were some old galvanised hoop stakes which are still there today. The main entrance to the park was a set of double gates off Princess Street. From the corner opposite the hospital the black fence continued up Brynawel Road, with two single gates, at the corner and opposite Brynhyfryd Road.

7.50. One of his jobs was to unlock the park gates at 8.00am and lock them at 8.00pm, or 9.00pm in summer. He also had to do the same in Argyle Gardens in the town centre. In summer they left the park gates open an hour longer, especially if bowls players were practising. After about 1990 they were told to leave the No.3 gate, the one on the corner of Brynawel Road locked all the time. Soon after that the Council replaced all the old spiked fencing with the galvanised fencing which is there today.

7.51. In his day the Carnival was part of the hospital fete. It was a wonderful spectacle and he was always on duty. Lots of people drove cars and vans in through the Princess Street entrance, and set up their stalls around the football field. The fair, and the lorries and vans and cars and caravans that came with it, came in off Brynawel Road, parked on the practice pitch field, and on the rough hard surface that is now the car park. Some of the caravans arrived before the fair and stayed for a while after it had gone. The fair organisers had to remove some of the fence panels to allow all these vehicles to get onto the park and then off again when it was all over and they moved on. After several years the fair people stopped putting the fence back together. The Council had told them to leave it open, and it was then left open all the time. Nevertheless the keepers kept locking and unlocking the park gates as usual.

7.52. Gradually more and more people started parking on the park, and some days the hard surface area was full of cars. On normal days the park keepers would check who was coming in to park there. Some owners would bring their dogs in their car, for a walk around the park. The bowls players started parking there too. Previously they had parked in Princess Street and walked up to the pavilion to change before their games. The old pavilion burned down, and when the new pavilion was finished in the early 1990s, and the fence near it was by then always left open, they started parking on the hard surface area which was right next to the new building. The bowls players had to book the green, which became two greens in the 1990s. They did that through the park keepers. Thus the keepers knew who was coming in and where they had parked.

7.53. There were three tennis courts in the park when he started. Sadly hardly any people used them in his time and they deteriorated. In the early 1990s the double court was turned into another bowling green, and the new pavilion which is still there today was built roughly where the third court had been. At the same time that the new galvanised fence was erected, a set of double gates was put in to replace the gap in the fence on Brynawel Road, but they were always left open and unlocked.

7.54. Football on the park was always popular in his day and has been since. Bookings for senior games on Saturdays and juniors on Sundays, and some weekday evenings in summer, was done through the Council offices. When the fence was left open lots of players and supporters parked on the hard surface area. Visiting teams would often come in a minibus so the place was full. In the days before the fence panels came down they would all park on the streets outside the park.

7.55. Some time after the fence was left open, they started keeping a skip on the hard surface area. That was for park waste, and a lorry would come to take it away when it was full and replace it with a fresh one. However local residents started using the skip for their own rubbish. Mr Cole was not happy and told them off and not to do that. However his own council boss did not seem to mind locals using it, so after a while Mr Cole stopped telling them off.

7.56. Most of his work time was spent on duty at Parc y Werin. But for two hours each day he had to work in Argyle Gardens, to unlock the gates there, collect up leaves, cut the grass, attend to the other maintenance jobs and lock up at the end of the day. That small park was not far away in the centre of Gorseinon.

7.57. For many years, back in the '50s and '60s, the local seller of *"pop"* (fizzy drinks etc.) regularly brought his horse to train on the park. Often on Saturday mornings he would bring his horse and cart and sell pop from the cart, and then take children for rides on it around the park. The children loved that. Mr Cole did not know whether the gentleman concerned had had a permit to sell in the park. This happened for many years, regularly.

7.58. The double gates on Brynawel Road were left open and unlocked after the new fencing was put in. He himself had been responsible for closing the gates at the end of the day until he was told to leave them open. He believed it was in 1994 that he was told to leave them open. It was definitely *before* he finished working for the Council. It was his seniors who told him to stop locking the gates. That was a good spell before he was sacke; he thought it was around 1994. He believed he had lost his job because of his age.

7.59. There was a time when the bowling enthusiasts wanted to have a match on Sundays. Hitherto the green was not supposed to be played on on a Sunday. He had asked his seniors and his foreman about this, and been told that no match was supposed to be played.

7.60. At the time Mr Cole lost his job he was 69. He was sure he was sacked because of his age.

7.61. As for the gates, all he could remember at that time is that they told him to leave the gates open. He believed that there had been a court case or something like that which led to this instruction to leave the gates open. There had been a fear that a vagrant might get in and perhaps die in there as a result of having been locked in, and that the Council might be liable, or something like that. Also the Council saved money by getting rid of him as a keeper. They saved money by not paying him to close the gates. He himself had been paid for two hours less work as a result of this change. However that suited him well at the time, as it was inconvenient to have to go to the park to close the gates.

7.62. *In cross-examination* Mr Cole reaffirmed that he had had to look after three parks and a comprehensive school's grounds. One of those parks was Argyle Gardens. He had to keep the parks clean and tidy. The park would always be empty when he locked up. He would walk round and check that everything was alright before locking up. The park was in his recollection also open on Sundays, but was locked at night.

7.63. He confirmed that at the time he was told to stop locking up, he thought there had been some kind of court case which meant that one had to leave the gates open, or else it would be the Council's fault if the gates were locked. He also thought that the Council had been trying to save money by getting rid of him. He could not actually remember which of the Councils (Lliw Valley or Swansea) it had been that had told him (to stop locking the gates). They definitely took two hours off his pay every day after the change, in order to save money. He was sure that that had happened before 1996.

7.64. The Fair when it had happened on Parc y Werin was a good and enjoyable day. It was held on a summer Saturday. Showmen came and set up stalls etc. People had to pay to get into the fair. The money was collected at the gate. In Gorseinon there were both a Carnival and the Fair. They were two big days and both were good. The Carnival was mainly moving around elsewhere, but would end up in Parc y Werin. People did not have to pay to get into the park to go to the Carnival. It was the Fair they had had to pay to get into.

7.65. *To me* Mr Cole confirmed that it had been at the park gates that the money paid to enter the Fair had been collected. People would come from all around to visit the Fair while it was held there.

7.66. ***Councillor Claire Lewis*** (Gorseinon Town Council) lives at 16 Brynhyfryd Road, Gorseinon. She is one of the two (joint) Applicants. She said that as far as what has become called the *"1924 land"* was concerned, her recollection was that at around the age of 7 or 8 (in the mid-1980s) she often went blackberry picking on land that is now occupied by the Llys y Werin nursing home, and the junior playing pitches. That land had been very overgrown. At that time there was a lane that led behind a building called Harlech House that led to an old metal gate onto this land. She did not recall if there was any fencing around the gate as it was all very overgrown with blackberry bushes. She had no recollection of signage around the gate, or indeed the rest of the park.

7.67. When she was young she remembered that the land on what is now the junior playing pitches was on one level. There was no drop down into the ditch like there is now. The ditch that is there now was put in in the 1980s. There were waterways around the edges, and they used to hunt for newts. The edges around that land also had shrubs around them, and they used to make dens in there. She would have been around 11 years old at that time.

7.68. She remembered the park gates being locked when she was a child, but thought that they had stopped locking them when she was about 12½ years old. There was still a park keeper at that time, and she remembered being told off for being there after hours. As far as she could recall, as long as there was a park keeper the gates were locked.

7.69. She has often ridden a bicycle on Parc y Werin; children often ride their bicycles there, but she has seen adults doing so as well.

7.70. In the area to the south-west of the present park, they used to pick blackberries. She used to go there to do that with her own father. She could not remember if other children played there. There had been a lane by Harlech House, which was the last house at the end of Brynawel Road, backing onto Llys y Werin.

7.71. *In cross-examination* Councillor Lewis said that the scrubby land to the south west of the main part of the park, where as children she and her friends used to play, was land which she had simply thought was open land. She did not remember if that land was ever maintained at that time. She could recall nothing being done there in particular to make it available for public use. The aerial photograph from the year 1967 which the Council had produced did reflect how the land appeared to her at the time; the distinction in appearance between the more maintained parts of the park and the scrubby land reflected what she could recall. She recalled that trees were later planted down the middle of the park. She could not remember a pitch being in place where the junior football pitches now are. Her recollection was that drainage was put in where the junior pitches are now. There was not a pitch there until later, then a full size adult pitch appeared.

7.72. She could see from the photographs produced that there were two pitches in 1981. She did remember them putting the drainage in, she thought in the late 1980s or early 1990s. Before the drainage went in the whole field was quite boggy.

7.73. She has been a Gorseinon Town Councillor for just over one year. She had lived on Brynawel Road from the age of 5 and then in Brynhyfryd Road from 10 years ago.

7.74. There are now some signs around the park, including near some of the entrances. They have been there for a few years, but are fairly new signs which she thought must have been there less than 5 years. She could not say if they had been there before November 2015. There is a dog waste bin near the Princess Street entrance. She thought that that had been there for a few years. There might have been some earlier bins, but the bins there now are newer bins.

7.75. There is a so-called *"fitness trail"* in the park now, consisting of five pieces of equipment. They were put in about 2½ years ago, having been donated by Gorseinon Town Council. That was in 2014 or later she thought. Some scallop shaped areas visible on some of the aerial photographs, near the present pavilion, were former flower beds, she believed.

7.76. In relation to where the enclosed play area is now, she thought that there had always been a play area there. She could recall a blue climbing frame when she was aged about 5. The present roundabout and some other pieces of equipment were put in there about 2 years ago, or possibly 2½ years.

7.77. The *"community pavilion"* referred to on one of the notices currently in the park is the same thing as the bowls pavilion. That notice does say that a permit is required for organised activities in the park. Her recollection was that people have always had to pay to play bowls there. Her understanding is that the bowls club runs itself, and has a long lease on the bowling greens.

7.78. As far as the soccer pitches are concerned, using them for games needs permission from the Council she believes, not that she has ever hired them. She believes that a football club maintains the pitches. She assumes that this is by agreement with the Council. Her belief is that the pitches have to be booked with the Council (Swansea Council) for organised matches.

7.79. She accepted that the public would not use the pitches while matches were taking place; that would be rude. She had never been aware of any football match being delayed by people going onto the pitch, other than by a dog running onto the pitch for example. She believes that anyone who went onto the pitch during a match would be told to get off. When a dog went onto the pitch and someone went to retrieve it, she had seen the incident but not heard it. The players had waved their arms around and shouted, she recalled.

7.80. There are other public parks or gardens in Gorseinon. One is Argyle Gardens, which is small, ornamental and in the town centre; there is another area called Melyn Mynach, which is about 300 yards from the town centre and very overgrown. That has fencing partly around it but no sports pitches. She thought that a skate park was at present being put in there. It has also had some paths on it. Parc y Werin is the only park in the town with tennis or bowls facilities on it. To her it is a public park.

7.81. *In re-examination* Councillor Lewis said that the south-western area of the park, albeit rougher land, had seemed to be part of Parc y Werin, because it all seemed to be open one part to the other. If she had been asked to say where that more scrubby land had been, she would have said it was down the back of the park.

7.82. ***Ms Anne-Marie Rees*** gave evidence in support of the application. She lives at 30 Llanerch Crescent, Gorseinon. She had been born on the Pontardulais Road, Gorseinon. She had played as a child in Parc y Werin.

7.83. She moved back to Gorseinon in 1992, and since then had taken her children to play in the park, and her grandchildren have also played there. She herself remembered playing in the same part of the park that Claire Lewis had referred to in her evidence. That referred to the 'waste ground' or rather more wild area in the south-west corner. She (Ms Rees) had played there all through her childhood. It was more interesting than the normal park.

7.84. They used to climb over a gate where Llys y Werin now is. That is where she spent a lot of time as a child. She stopped doing that when she was about 11. The land had been very overgrown and quite swampy. Lots of children used to play there. She did regard it as part of the park; there was nothing to separate it from the rest of the park. There were no gates between. The only gate was onto the road near to what is now the entrance to Llys y Werin.

7.85. ***Mrs Beatrice Jones*** lives at 48 Brighton Road, Gorseinon. She had used the park since she was very young. She has also used it with her own children. It is a very well used park. Parc y Werin was a very bad place to try to put a school. The traffic is bad, for example in the Brynawel Road, and people cannot park near the hospital. She would like the school to be relocated somewhere else with good access.

7.86. *In cross-examination* Mrs Jones said that she had lived for 48 years at Brighton Road. There are football pitches marked out within the park. A fair bit of the park can be taken up by organised football matches; those parts are quite often used for matches. Nets and flags are put up to mark the pitches.

7.87. She usually gets into the park via Princess Street but tends to go out at the other end.

7.88. She recalled seeing signs saying that it is a Swansea City Council park. She did not know how long they had been there but thought it was for quite a long time.

7.89. In addition to the oral evidence which I have just noted and summarised, and the material produced in the various bundles which the Applicants had produced for the purposes of the Inquiry, the Applicants also lodged shortly before the Inquiry a short statement with attachments which was described as being *further evidence in response to the Objector.*

7.90. This material sought to respond to a point which had been made in the evidence lodged from one of Swansea Council's witnesses (Mr Alex O'Brien). Mr O'Brien

had referred to the presence of dog bins on Parc y Werin, and suggested that their presence was indicative of an implied licence to use the land for informal recreation. The Applicants' response was to enclose evidence to demonstrate that in fact the dog bins and signage in question are situated quite widely over the surrounding locality.

7.91. The signs in question refer to a *"designated area"* for the purpose of the relevant dog fouling legislation. The Applicants contend that the designated area referred to is in fact the wider locality. They produced a map and photographs showing the location of bins and signs outside the park, but in the same general area.

7.92. Reference was also made to some byelaws which had been promulgated in 1932 by Swansea Council's predecessor, and which had been produced in evidence on behalf of Swansea Council. The Applicants' view was that the byelaws referred to no longer apply, as Parc y Werin is no longer in the Parish which it was then in (Llandeilo Talybont). If those byelaws had continued in effect, then the frequent parking of cars in the park would have been in breach of byelaw no.10. Yet Swansea Council has in fact consented to the parking of cars in Parc y Werin for many years, and certainly throughout the relevant period. This must be further evidence of acquiescence in the face of contentious user, it was suggested.

7.93. The Applicants also produced photographic evidence of rear access gates from people's properties in Brynawel Road onto the park. It was said that these gates have been in place for many years, and have not been objected to by the landowner. It was suggested that this again was evidence of acquiescence by the landowner.

8. THE SUBMISSIONS FOR THE APPLICANTS

8.1. The Applicants submitted to the Registration Authority a number of documents containing submissions or legal argument, even before the decision had been taken to arrange for a public local inquiry into the Application. Some of these 'submissions' documents dealt with matters which subsequently became uncontroversial, and also to some extent the Applicants' case matured and was refined as the case progressed. Nevertheless it is appropriate that I should record in this Report a note of some of the points made at earlier stages of the proceedings on behalf of the Applicants, in order to give a reasonably full picture of the totality of the arguments which were advanced.

8.2. In the Applicants' response to the original objection on behalf of the City and County of Swansea as landowner, the Applicants noted the distinction between the land obtained by the Council's predecessor under the 1921 lease and 1944 conveyance (the '1921 land'), and the land obtained by means of the 1924 Indenture (the '1924 land').

8.3. The Applicants also noted the 1932 byelaws which had been enacted by the former Llwchwr Urban District Council. They noted that those byelaws referred to Parc y Werin, which was described in the byelaws as a pleasure ground. However no map was appended to the byelaws. The Applicants' contention at that time was that the byelaws referred only to the 1921 land, which was referred to explicitly in the 1921 lease documentation as being held for the purpose of public walks and pleasure grounds or a recreation ground. The byelaws did not refer to the 1924 land, which 8 years previously had been acquired for housing purposes. Thus the 1924 land did not at that time form part of Parc y Werin. It was not clear at what point if ever it formally became part of the park.

8.4. In respect of the 1921 land it was noted that although the 1921 lease documentation referred to the grant of the lease for the purpose of laying out public walks and pleasure grounds, there was no direct reference to section 164 of the Public Health Act 1875 in the lease document. Likewise the 1944 conveyance referred to the land concerned as a pleasure or recreation ground known as Parc y Werin, but made no reference to the Public Health Act 1875. It was thus argued that it was not established that it was the intention of the former Urban District Council to acquire the land for the purposes of section 164 of the Public Health Act 1875. The Applicants felt that if such had been the intention then explicit reference would have been made to it in both the 1921 lease and in particular the 1944 conveyance.

8.5. As far as the 1924 land was concerned, the Applicants suggested that it was clear that it was not acquired by the Council's predecessor for recreational use. Plans and documents from the 1920s showed that the land was acquired for a housing scheme. It was suggested that the plans specifically showed that the area of the park included in the 1924 transaction was intended specifically for housing.

8.6. Consequently there is no basis for inferring that the 1924 land was allocated for recreational use. This is not a case like the ***Barkas*** case which was considered by the Supreme Court. There is no evidence that the 1924 land was laid out for any purpose other than housing. Therefore the public had no statutory right to use the land in question for recreation. Local people's use would therefore have been 'as of right' rather than by right.

8.7. The Applicants dismissed any argument against the application based on the concept of statutory incompatibility. They pointed out that in the case of ***Newhaven Port and Properties v East Sussex County Council***, the Supreme Court had clearly indicated that the mere ownership of land held by a public body, such as a local authority, which has statutory powers that it can apply in future to develop land, is not of itself sufficient to create a statutory incompatibility. In the Applicants' submission there was no case for considering that statutory incompatibility arose in circumstances where land was held for the purposes of *any* of the following: housing land, Public Health Act 1875 (section 164) purposes, or education purposes. There is no necessary incompatibility between land being held for any of those general purposes and its use *as of right* by local people for lawful sports and pastimes.

8.8. Submissions were also made about the locality issue, but this is not a point any longer in contention.

8.9. In later written submissions made by the Applicants in relation to the *"1921 land"*, it was pointed out that the 1921 lease had included a whole series of restrictive covenants which formed the basis of the original agreement to lease the 1921 land. Those covenants had been very specific, and included maintenance of fencing, the fencing to be to a particular standard and so forth. There was no reference to any of those covenants in the 1944 conveyance of the freehold to the same land. The Applicants' contention was that the status of the land following the 1944 acquisition was unencumbered and not pursuant to any relevant statutory trust. As such the use of the land by local people would have been as of right and not by right.

8.10. In the Skeleton Argument produced by the Applicants for the purpose of the Inquiry itself, and as included in the bundle of papers lodged by the Applicants for that purpose, the Applicants indicated that they regarded the qualifying period for the purpose of this application as being from 23rd November 1995 to 23rd November 2015.

8.11. The statutory framework of section 15 of the Commons Act 2006 was considered. The grounds on which Swansea City Council as landowner had objected to the application were also noted and summarised.

8.12. The critical issue in this case is whether use of the land at Parc y Werin by local people has been *"as of right"* or not. The (documentary) evidence as to the history of public ownership of the land at Parc y Werin is fairly extensive, and in summary includes an unexecuted 1921 lease between Cameron Estates Limited and the present Swansea Council's then predecessor, Llandeilo Talybont Parish Council. The Recital to that lease clearly envisaged that it was being granted for the purpose of public walks and a pleasure ground or a recreation ground being laid out thereon.

8.13. In contrast, the Indenture dated 30th December 1924 between Cameron Estates Limited and Swansea Rural District Council referred to the then council having submitted a housing scheme to the Ministry of Health, which would involve the acquisition by the then council of the land covered by the conveyance. The land was stated as having been acquired pursuant to the Housing Acts 1890 to 1919.

8.14. The 1944 Indenture between Cameron Estates Limited and Llwchwr UDC described the land concerned as forming part of the then council's pleasure or recreation ground. However one of the recitals to that Indenture made it clear that the agreement involved selling the property to the purchaser free from encumbrances except as thereinafter mentioned. It was also indicated that the

previous lease would forthwith be merged and extinguished in the freehold reversion of the property.

8.15. A minute of Llwchwr Urban District Council from December 1943 referred to the provisions of the ***Local Government Act 1933*** and other enabling powers being used to enable the Council to acquire the freehold of that part of the land. It is also clear from correspondence that Ministerial consent was not deemed necessary for that acquisition.

8.16. On the basis of the evidence, the Applicants submitted that it is for the Inspector and Registration Authority to establish the correct statutory power under which the two parcels of land at Parc y Werin are held. The legal approach of the Supreme Court in the ***Barkas*** case focused on the power pursuant to which land is held, and whether such power comprehends recreational use by the public, and therefore user by right.

8.17. Central to a determination as to whether user is by right or as of right is the issue of appropriation or lawful allocation of land. The more recent case of ***R (Goodman) v Secretary of State*** [2015] showed that appropriation or lawful allocation of land pursuant to statutes such as the Housing Acts could not simply be inferred from management actions on land held by public authorities. The need for evidence of a conscious deliberative process was emphasised.

8.18. The judge in the ***Goodman*** case had particularly emphasised that the ***Barkas*** judgment is not authority for the proposition that land can be appropriated without any evidence of a Council having considered whether the land was no longer required for the use for which it was previously held. Therefore appropriation cannot simply be deduced from a council's management of the relevant land.

8.19. Thus the Applicants' core submission was that the 1924 land was acquired and consented by the Minister for housing purposes, pursuant to the Housing Acts. At that time the role of recreational land in the area was fulfilled by the 1921 land, which was then held under lease.

8.20. The wider 1924 land was subsequently developed for housing over a period of 64 years, during successive stages of local government reorganisation. Additional housing was constructed on the 1924 land around 1950, and sheltered housing developed in 1989.

8.21. As such, while the Housing Acts provide a power lawfully to allocate land for recreation or open space, the 1924 land was in reality appropriated to housing use. The Objector has adduced no evidence to demonstrate that the land was deemed to be no longer required for the purpose under which it was previously held (i.e. housing).

8.22. In respect of the 1921 land the evidence indicated that the 1921 lease did indeed contain covenants and encumbrances pertinent to the ***Public Health Act 1875***. Those covenants and encumbrances were however extinguished on merger into the freehold acquisition of title by the local authority in 1944. The land therefore is unencumbered land, and the resolution of the former Llwchwr UDC in relation to its acquisition refers only to the ***Local Government Act 1933***.

8.23. That local authority had had a parks committee, but significantly the resolution was undertaken by the full Council. That accords with the contention that the land was acquired by the Council under a general enactment, pursuant to the ***Local Government Act 1933***. The fact that no ministerial consent was required for this acquisition accords with the contention that the land was acquired under a general power pursuant to the 1933 Act.

8.24. Additionally the Applicants adduced evidence to show that planning permission was given for the erection of six temporary housing caravans on the 1921 land in 1974 and 1977. No appropriation of 'open space' to such a purpose was ever undertaken. That accords fully with the contention that the land was held under a general enactment, and therefore no appropriation from open space was required.

8.25. In summary therefore the Applicants contended that on the basis of the evidence and arguments presented on the use of both the 1924 and the 1921 land, both areas had been use *as of right* during the relevant 20 year qualifying period.

8.26. On the question of *statutory incompatibility*, it was noted that in addition to what the Supreme Court had said in the ***Newhaven*** case, two subsequent cases before the High Court had helpfully lent clarity in terms of the applicability of the doctrine. These were ***Lancashire County Council v Secretary of State*** [2016] EWHC 1238 – a case of land held for educational purposes; and ***R (NHS Property Services Limited) v Surrey County Council*** [2016] EWHC 1715 – a case of land held by a local health board.

8.27. In the ***Surrey*** case the judge had said that one must consider the actual statutory powers under which the land is held, that the fact that in some cases parcels of land belonging to some statutory bodies have been registered does not give rise to a rule that any land held by any statutory body can be registered, and that it is not necessary that the land in question is used for a purpose incompatible with use as a village green. What matters is whether as a matter of statutory construction the relevant statutory purpose is incompatible with registration.

8.28. In the ***Lancashire*** case Mr Justice Ouseley had concluded that no incompatibility arose between general educational functions and use as a town or village green.

8.29. In respect of land purportedly appropriated for educational purposes (in 2015) in the present case, there were very clear flaws in the purported appropriation. Both

the relevant advice to the Council's cabinet and the public notice wrongly referred to the section of the ***Local Government Act 1972*** which relates to disposal, rather than appropriation. There was also no evidence of a resolution that the land was no longer required for the purpose for which it is currently appropriated, as is required by ***Section 122*** of the ***1971 Act***. The Applicants therefore conclude that the appropriation has not been carried out correctly or effectively, and is therefore invalid. To that extent the Applicants contend that the 1924 land remains land held for housing purposes. If however it were held that the appropriation had been valid, then the Applicants would rely on the conclusions of the judge in the ***Lancashire*** case that registration as a village green or land held for general educational purposes is not incompatible with the land being held by an authority for those purposes.

8.30. In respect of the so called 1921 land, the Applicants argued that the freehold title to that land was acquired in 1944 pursuant to a general enactment under the ***Local Government Act 1933***. Given the broad construction of that Act, no question of statutory incompatibility arises here.

8.31. In respect of land held for housing purposes, the Applicants note that ***Section 15*** of the ***Housing, Town Planning Act 1919*** enabled the laying out of land for open space or recreational purposes. Therefore as a matter of statutory construction the question of incompatibility could not arise. It therefore follows that statutory incompatibility does not arise on either the 1921 or the 1924 land.

8.32. The Applicants included in their Inquiry bundle further submissions headed 'Response to the Supplementary Objection Statement'. To some extent this document repeated earlier submissions, but I note here some points mentioned in it. There was a degree of concurrence as between the parties over the question of the siting of temporary housing caravans on the 1921 land in the 1970s and the 1980s. However the Applicants questioned a suggestion which had been made by the principal Objector, on the basis of a 1971 aerial photograph, to the effect that the caravans had actually been in place at that early date. The Applicants disputed that, and suggested that the structures indicated in that photograph related to construction work on the park.

8.33. In respect of the 1921 land, and the subsequent acquisition in 1944 of the freehold of that land, it was accepted that, at the time of the proposed acquisition of the freehold, the land might well have been in use as a public park, inasmuch as the land was held as such pursuant to the terms of the covenants referred to in the 1921 lease, which had clearly been designed to restrict the use of the 1921 land to recreational use. However, the only statutory provision referred to in the 1943 resolution to acquire the freehold was the ***Local Government Act 1933***. The land was (it was reiterated) therefore acquired pursuant to a general enactment, and this is entirely consistent with the text of the 1944 conveyance itself. The Applicants ascribe considerable import to the fact that the resolution in question at the time was undertaken by the full Council and not the old Urban District Council's parks committee. That also was consistent with the contention that the land was acquired

pursuant to a general enactment under the ***Local Government Act 1933***, not under the ***Public Health Act 1875***.

8.34. It appeared that both Applicants and the Objector agreed as to the presence and location of static caravans on the 1921 land. As for the static caravans, the Applicants' position is that the static caravans were consented and placed in 1974/5, and then re-consented in 1977. Written testimony from a former resident of Gorseinon, a Mr G Belmont, suggested that the caravans may have been in place as late as 1986/7. The Applicants do not dispute the use to which the caravans were put. The caravans were consented to under the Town and Country Planning legislation.

8.35. As far as appropriation is concerned, the Objector appeared to have misdirected itself in terms of its interpretation of the Applicants' stance. The Applicants are not suggesting that there was an implied appropriation of land here. The Applicants' position is that the 1921 land was acquired in 1944 pursuant to a general enactment, namely the ***Local Government Act 1933***. If, as the Objector contends, the land is held pursuant to a statutory trust under the ***Public Health Act 1875***, then there should be evidence of appropriation under ***Section 122*** of the ***Local Government Act 1972***, in connection with the placing of the caravans. The evidence that the caravans were consented in 1974 pursuant to the ***Town and Country Planning Act 1971*** is clear.

8.36. Since the Objector's contention is that the 1921 land is held under a statutory trust for recreation pursuant to ***section 164*** of the ***Public Health Act 1875***, the Applicants argued that there should be evidence of appropriation to an alternative use consistent with the terms of ***section 122*** of the ***Local Government Act 1972***, as it was originally enacted. The evidence shows that no such appropriation ever took place. The Housing Committee of Lliw Valley Borough Council resolved to place static caravans on the 1921 land on September 19th 1974. Five days later consent was granted by the development committee of that Council for a residential caravan site in that location.

8.37. From that key evidence it is clear that no two week advertisement pursuant to ***section 122*** of the ***Local Government Act 1972*** was undertaken by the Borough Council. It is notable that while the acquiescence of the Council's Leisure and Recreation Committee had been sought, consent had been granted before a formal resolution of that committee in October 1974. The Applicants' position therefore is that the non-appropriation of land for temporary housing is evidence that the land in question was not held pursuant to statutory trust for recreation at that time, and this remains the position throughout the registration period. That position is consistent with the original 1944 conveyance.

8.38. There are inherent inconsistencies in the Objector Council's case. If as the Objector asserts the 1921 land is held under a statutory trust for recreation pursuant to the ***Public Health Act 1875***, then formal statutory appropriation mechanisms

should have been complied with before the land could be used for anything else, such as the use of part of it as a caravan site, yet no such appropriation took place.

8.39. It was further argued in relation to the 1932 byelaws, that by virtue of ***Article 41*** of the ***Local Government Area Changes Regulations 1976***, the byelaws would have ceased in 1974 to be in effect, because the Parish of Llandeilo Talybont would have ceased to exist upon the reorganisation of 1974. The byelaws would no longer be applicable to the new administrative unit to which Parc y Werin was transferred, and there was no evidence that Swansea Council have drafted new byelaws.

8.40. In further refined submissions prepared for the purpose of the Inquiry by Counsel representing the Applicants, it was argued that the sole issue for the Inquiry was whether the relevant user had been as of right or by right. In the case of ***Mann v Somerset County Council*** it was held that the evidential burden is on the objector to raise a vitiating circumstance which rendered otherwise qualifying user *"by right"*. The same must apply here.

8.41. The basic conveyancing history of the application land has been set out in the material provided by the Objector Council. As far as the 1924 land is concerned, that is the housing land or the western part of Parc y Werin, the 1924 Indenture records that the land was being purchased pursuant to the Housing Acts 1890 to 1919. It is conceded that this was the statutory basis of the acquisition.

8.42. The Objector argues that as a matter of fact the authority formed and extended a pleasure ground over this part of the land acquired for housing, and that it was a plain inference that this part of the land was held for the purposes of ***section 15*** of the ***Housing Act 1919***.

8.43. The question whether the fact of the authority forming and extending the pleasure ground onto this land renders use of the land 'by right' is not the correct test. In the ***Barkas*** case it was held that user would be by right where: (a) the Minister had granted the required consent for the fields to be laid out as a recreation ground; and that there has (b) been a lawful allocation or designation by the authority of that land as public recreational space. Putting the matter another way, it is argued that there is a general test: did the local authority hold land pursuant to a statute the provisions of which were broad enough to encompass and enable the local authority to make the land available for recreational use? (i.e. a statute that provided a power to provide land for recreational purposes). Then a further limb of the test is whether the local authority made a lawful decision to use the land for recreational purposes. If the answer to those two questions is *"Yes"* then that will amount to a non-statutory appropriation sufficient to render use of the land *"by right"*.

8.44. In the present case the position is very simple. There is no evidence at all that the Objector or its predecessor obtained the consent of the Minister for setting out the

1924 land as recreational space, or that any allocation or designation was made to that effect. Accordingly there was no ***Barkas*** style appropriation of the land to recreational purposes. The Objector has conceded that there was no appropriation pursuant to ***section 122*** of the ***Local Government Act 1972*** or its predecessors.

8.45. All of the above is supported by the fact that part of the land which was formerly available to the public, and contiguous with the application land, was leased off in 1989 for development. There is no evidence of any procedure under ***section 122*** of the ***Local Government Act 1972*** having been undertaken. Moreover the question can be posed: why does the Objector not say that this land was allocated or designated for recreation?

8.46. This is reinforced by what was said in the ***Goodman*** case. In that case the court was concerned with an alleged appropriation under ***section 122*** of the ***1972 Act***. There the judge was quite clear that there had to be some conscious deliberative process by the local authority concerned in relation to the transfer of land from one purpose to another, and that it cannot simply be inferred from how a council manages or treats the land. It was held that the ***Barkas*** case is not authority for the proposition that land can be appropriated without any evidence of the council concerned having considered whether that land was no longer required for the use for which it was held.

8.47. The present case is not concerned with ***section 122*** of the ***1972 Act***, so the nature of the decision making process would be necessarily different. However a ***Barkas*** style appropriation still requires a decision making process as well. It cannot simply be inferred from the factual management or expenditure in respect of land held under Housing Act powers. Neither can it be inferred from the factual use of land by the local population, or the name which has been attributed to the land or part of the land from time to time.

8.48. As far as the land which had been subject to the 1921 lease, and the 1944 freehold acquisition, was concerned (the eastern part of the land), there is no argument to contradict the point that the Objector's predecessor in title acquired a lease in 1921 for the purpose of providing public walks and pleasure ground or a recreation ground on that part of the land. However as to the acquisition of the freehold reversion in 1944 over the same land, it is not clear that this was for the purposes of the ***Public Health Acts 1875 to 1925***. The resolution authorising the purchase had only referred to the provisions of the ***Local Government Act 1933*** and all or any other powers then enabling.

8.49. The comments of the then council's clerk in a letter of 1944 is not itself part of the resolution. The recitation in the 1944 conveyance itself that the land was held as a pleasure ground is simply a matter of fact. The Objector's predecessor could have been acquiring the freehold interest for any purpose, notwithstanding the purpose of the previous lease.

8.50. The circumstances here are close to what arose in the ***Malpass*** case. In that case there had been no clear contemporaneous evidence as to the power under which the land concerned was originally acquired, and the court in that case appeared to have thought that this lacuna was not resolved even by the execution of a subsequent very clear deed by the authority concerned.

8.51. The Objector in this case relies on the legal presumption of regularity. The authorities show that the true meaning of this rule is that the presumption can reasonably be drawn where there was an intention to do some formal act, where the evidence is consistent with that intention having been carried into effect in a proper way, but the observance of the formality has not been proved or disproved, and its actual observance can only be inferred as a matter of probability.

8.52. In the present case there are several matters which are destructive of the inference which the Objectors seek to rely on. The initial resolution relating to the 1944 acquisition is set against the inference that this land was acquired for 1875 Act purposes. The later resolution in 1974 to use the land to station caravans is inconsistent with that view. Further, in connection with the caravans, no due regard was paid to the provisions of ***section 122*** of the ***Local Government Act 1972***. There was no evidence of ministerial consent or publication of an alternative proposed use for public recreational land, or any consideration by the authority that the land was no longer required for public open space.

8.53. It is inappropriate for the Objector to rely on ***section 120(1)*** of the ***Local Government Act 1972***. This was not land which was acquired for one purpose but then not immediately required for it. There is no evidence of a decision taken that would engage those powers. Also the land had been in the ownership of the Objector for decades at the time of the caravan use, and there could be no question of its not being immediately required for some other purpose. Further, if temporary use powers applied to all land without the need for a decision making process, that might emasculate the provisions relating to the power of appropriation, as land would be deemed to be held for whatever purpose it currently happened to be used for.

8.54. If for any reason the Registration Authority were to determine in respect of any of the application land that use became *by right*, but only after a period of 20 years of 'as of right' use, then the applicants reserved the right to contend that ***section 15(7)(b)*** of the ***Commons Act 2006*** applies. If the use by right commenced only after the commencement of the 2006 Act, it is indisputably clear that this provision would apply.

8.55. As for the question of implied licence, in the ***Mann*** case the judge spelt out what amount to six principles. The first is that the owner must make it clear that the public's use of the land is with his permission, and this may be shown by excluding the public on occasional days. Second the owner must do something on his land to show that he is exercising his rights as owner over it, and that the public's use of it

is by his leave. Third, there must be a positive act by the owner in respect of the public, although a notice is not necessary, provided the circumstances relied on allow the inference to be drawn. Fourth, implied consent by taking a charge for entry or a similar overt act communicated to the public is sufficient, without the need for an express explanation or notice. Fifth, such conduct need only occur from time to time during the period under scrutiny. Sixth, such conduct will be expected to have an impact on the public and show that when the public have access they do so with the leave or permission of the owner.

8.56. However the present Applicants argue that it is very doubtful that these principles apply to land which is in public ownership in the present circumstances. In other words, where a local authority owns land used for recreation, and acquiesces in recreational use, despite not having appropriated it to such use, actions consistent with such acquiescence will not be understood to give rise to use by right.

8.57. Merely pointing to events on the land, even if very frequent, will not inevitably lead to the inference of an implied permission, as was clear from the judgment in the ***Goodman*** case.

8.58. The principle set out by the judge in the ***Mann*** case derives from ***Beresford***. Acts of upkeep which are not pursuant to any lawful allocation, designation or appropriation should merely be understood as acts of encouragement, not as the granting of a permission or right.

8.59. It is noted that reliance is placed by the Objector on prohibition or regulation of activity, such as formal sports on a marked up pitch, facilities and byelaws. Activities on the land which were authorised by the landowner, whether using facilities or not, are confusing implied permission with deference.

8.60. As to the byelaws, it was further submitted that this is not a case where they bite on the question of use as of right, for the following reasons: There is no reason to show that they were sufficiently advertised on the application land during the qualifying period, or during any period, by any relevant public authority. Further it seems that in the absence of a plan the byelaws might have been void for uncertainty. In any event they cannot apply to the 1944 land, as that was not acquired until after the byelaws purportedly came into force. Further, it was suggested that the operation of the ***Local Government Area Changes Regulations 1976*** meant that by automatic operation of law the byelaws ceased to apply when the Parish of Llandeilo Talybont was abolished and its area transferred to a new administrative area. In any event long before 1976 the byelaws appear to have lapsed.

8.61. As far as statutory incompatibility is concerned the purported appropriation of 16th July 2015 was a defective one. In any event the principle of statutory incompatibility as laid down in the ***Newhaven*** case applies only where specific land is to be held for a specific defined statutory function which would come into

irreconcilable conflict with the statutes governing status as a town or village green. Only in those circumstances will the land be outside the ambit of the ***Commons Act 2006*** as a matter of statutory interpretation.

8.62. It is surprising that the Objector submits that land identified for educational purposes is covered by this principle. It is known that the ***Lancashire*** case is going to the Court of Appeal on, inter alia, the statutory incompatibility point, and is conjoined with the ***NHS v Surrey*** case. The Applicants submit however that Mr Justice Ouseley's judgment on this point was correct, and that the Inspector in the present case should prefer the approach of Mr Justice Ouseley as opposed to the submissions made by the Objector. Were the Registration Authority to conclude that Mr Justice Ouseley was wrong, then it ought to await the result of the conjoined case in the Court of Appeal before making a decision on this present application.

8.63. Reverting to the question of the purposes for which the local authority has held the land at Parc y Werin, in order to defeat an as of right claim the Objector has to show both a decision by the owning authority to devote the land to recreational purposes, and a proper approval of that. There has clearly been no non-statutory appropriation in this case. One only has to look at the evidence in relation to land now built on which used to be part of this same site. One cannot simply deduce from factual circumstances that the owning authority has in a non-statutory way appropriated the land to recreational purposes.

8.64. The Applicants' view on the evidence is that the locking of any gates stopped some time in 1995, but that the use of Parc y Werin had been as of right in any event. Undoubtedly this land had been clearly understood by people to be owned by a public authority. But awareness of that does not amount to the grant of a permission to the public to use the land in circumstances where the land has not been provided expressly, as it had been in the ***Barkas*** case for example. The matter takes on a different light where the ownership of a piece of land is not in a public authority. The Objector suggests that marking pitches and hiring pitches and so forth makes people realise that use at other times was with permission. However that is not the case where land has not been appropriated either in a statutory or non-statutory way to recreational use by the public.

8.65. In closing submissions for the Applicant, Counsel noted that the Objector claimed that this application has no reality. However the core issue in this case is whether in circumstances where a local authority holds land in a way not giving rise to a right in the public to use it, inferences can be drawn from every quarter to render that use 'by right'. This is a case where such inferences would have to be drawn for the Objector to succeed.

8.66. The ***Goodman*** case in Exeter was local authority land. There the underlying statutory basis on which the land was held was inadequate to render use by right, notwithstanding the spending of money on and the holding of events on the land.

8.67. As for the issue raised about statutory incompatibility, the Applicants argue that there is a problem in this case with the purported appropriation. There is no indication of a statutorily proper appropriation to anything at all. The so-called ***Boddington*** principle does not apply to a resolution so defective that it cannot be understood without extraneous evidence.

8.68. The claimed appropriation in this case was also purportedly carried out under the wrong section. The advertisement which might have given rise to local objection said that the proposal was for 'property development'. The notice was wholly defective; it was for the wrong purpose, and under the incorrect section. It is not correct that one should have to have reference to outside material in order to support it. Anyway the outside material does not support there having been a proper appropriation.

8.69. The preliminary question is: what was the decision? There may have been a decision which in itself was valid, but that decision cannot be changed in order to suit the purposes which are helpful in this case, or a purpose which someone in the Council may have intended, had they thought about it properly. The purported appropriation may therefore not be a matter beyond all challenge. If the Council moved diggers onto the land for example, a local person may well be able to seek an injunction to prevent it. [It was pointed out in passing that the Welsh Government have apparently introduced regulations which might be relevant to the appropriation of open spaces like this one. However these regulations were understood to be new, and not applicable at a relevant time for this present case].

8.70. Even if the Applicants were wrong about this, they would still rely on what the Supreme Court said in the ***Newhaven*** case. The principle enunciated in ***Newhaven*** must have fairly limited application. There cannot be many other cases having such particular facts. If statutory incompatibility has to be considered, this present case is on all fours with the case of ***Lancashire County Council v Secretary of State*** [2006] EWHC 1238 (Admin). The Inspector and Registration Authority should prefer the approach of Ouseley J to that of the Objector in this case. There is in fact compatibility between land being appropriated for educational purposes and the village green type use being allowed to take place there. The Council's own witness had said that at present local children from the primary school go to Parc y Werin as part of such recreational activities. The evidence in this case fits what Ouseley J said in paragraph 79 of his judgment.

8.71. ***Mrs Herbert-Evans*** for the Council had not said that the local authority was now currently in breach of its statutory obligations to educate the children of the locality because of such use being made. One only has to consider her statement of evidence, where she acknowledged that any revised case in terms of school provision in Gorseinon would need to be considered in the appropriate way with the Welsh Government. There was no suggestion that it would be impossible to provide other schools elsewhere in or around Gorseinon.

8.72. Here on this land the local authority would be able to carry out educational functions, but in a different way, much as Ouseley J envisaged in the ***Lancashire*** case. Mrs Herbert-Evans had not pointed to any moment when the local authority would be in breach of its statutory obligations to the children.

8.73. On the question of whether Ouseley J's judgment in the ***Lancashire*** case was *obiter* or not, it was pointed out that all grounds raised by the applicant in that case had been expressly rejected by the judge. Therefore it would be appropriate for the Registration Authority in this case to get on with taking its decision if it is in agreement with the approach of Ouseley J on the statutory incompatibility issue.

8.74. On the important issue of *"as of right"* versus *"by right"*, the Objector has the burden of raising any vitiating circumstances, once it is established that the statutory tests within ***section 15*** of the ***Commons Act*** have been met. As far as the Housing Act land is concerned (also called the 1924 land), ***section 1*** of the ***Housing, Town Planning Act 1919*** did not itself set out a power to provide open space on housing land. It was ***section 15(1)*** of that Act that provided a power on housing land to lay out open spaces. Therefore the scheme under ***section 1*** of that Act did not provide for open space to be laid out on the land. The *"scheme"* referred to in the Indenture of 1924 was a scheme for the provision of houses. The existence of the Indenture therefore is no proof that any part of the land was laid out as recreational land or open space under the housing legislation.

8.75. It is quite clear, even when one considers what the Supreme Court said in the ***Barkas*** case, that one can look at historic material relating to the acquisition of land etc., but one has to be extremely careful as to the inferences to be drawn from such material. One should not simply look at the use of the land which has taken place. There has to be some basis for concluding that the land was provided for recreational purposes in some proper way.

8.76. The ***Goodman*** case was a case about formal statutory appropriation. In that case Dove J said that in the case of appropriation one could not simply look at (for example) expenditure on planting trees on the land, or things of that sort.

8.77. It seems clear from the 1969 Ordnance Survey Plan, for example, along with other evidence, that it was not until the 1970s that the western part of Parc y Werin was set out in a formal way. The 1969 Ordnance Survey Plan is destructive of any inference that the land had all been set out as a park or open space by that time. It should of course have been noted that the ***Housing Act*** which was in force by the time the western part of the land was laid out in the 1970s was an entirely different one from the one in force in the 1920s.

8.78. The Applicants would say it is much more likely that no actual decision was made to provide a park in that western part of the land in the 1970s. The byelaws which had been referred to did not identify the particular area which they purported to cover. This is all very unhelpful when one is considering land acquired and held for different powers at different times. It is not at all blindingly obvious what area should be construed as having been Parc y Werin in a document such as the byelaws.

8.79. There are other factors destructive of any inference that the western part of the application land was laid out in some statutory way as a park or open space. The area of land where the nursing home now stands was leased off in 1989. That was not an appropriation, but it does not mean that the circumstances would not have triggered ***section 123*** of the ***Local Government Act 1972***. There does not seem to have been any such process undertaken here. There was a lack of any consideration of loss of parkland in those circumstances. In those circumstances, how can it be inferred that either that land, or the other land which remained undeveloped in the western part of Parc y Werin, was land statutorily held for park purposes?

8.80. It had been suggested by the Objector that various passages in the ***Barkas*** case justified drawing an inference that the land was being held for some kind of park or open space purpose. However it is not the case that where provision is made, or where a public space is provided by a local authority, then one should have to search around to find a statutory basis to explain that provision. Even in the consideration given in ***Barkas*** to the earlier ***Beresford*** decision, the justices thought it had been the statutory approval of the new town plan, in other words a decision taken by the local authority, which would have meant that the land had been specifically provided for recreational use by the authority. The Applicants' argument in the present case is for the retention of a decision-based analysis in cases such as this. In other words, was there a decision actually taken by the local authority to provide this land for recreational or park purposes, or was there not? Clearly that is a difficult position for a local authority to find itself in. If there is anything inconsistent with such a decision having been taken, or rather with an inference that such a decision had been taken, then one should not draw an inference that the land is being held for some recreational purpose.

8.81. In the case of the so-called 1944 land, or 1921 land, this is not a position where any inference at all needs to be drawn. The comment of the Clerk in the letter of 1944 as to the reasons why he thought that the freehold had been acquired is nothing more than the comment of the Clerk. It is the contents of the local authority's resolution to acquire the land that matter. The prior position that the previous lease had been pursuant to open space purposes is irrelevant to this. Nothing coming from what was a private law situation is relevant here. This is a public law matter. There may have been good reasons for the local authority in 1943/4 *not* to acquire the freehold of the land under the ***Open Spaces Act 1906***. Prior to the ***Local Government Act 1972*** it was very difficult for a local authority to use open space land for anything else.

8.82. The provision actually referred to in the resolution to acquire the freehold was ***section 157*** of the ***Local Government Act 1933***, which enabled acquisition for the purpose of any of the functions of an authority. The circumstances are analogous to those in the ***Malpass*** case, where the record of a conveyance of 1936 had been similarly vague about the specific purpose for which land had been acquired by the local authority concerned. In ***Malpass*** the judge had said that this had been a lacuna. The minutes created during the 1960s were not considered by the judge to be relevant in that case. The case clearly demonstrates the lacuna the current Objector finds itself in. The lacuna in ***Malpass*** was not cured by the deed hanging in the council chamber.

8.83. In this present case we have a clear resolution. The Objector tries to rely on the presumption of regularity, but in this present case the presumption is destroyed from the beginning, because the actual resolution is set against the inference which the Objector seeks to draw. One cannot seek to use extrinsic material in order to make a resolution say something which it does not say. The presumption only comes in where there is a missing piece of evidence.

8.84. Also relevant is the 1974 resolution to use part of this land to site six caravans. This was done after the ***1972 Local Government Act*** came in. Yet there is no consideration of this being open space land recorded in the local authority minutes, nor of any need to get ministerial consent for what was proposed, nor was there any record of consideration of whether the land was any longer required for open space use. The Objector seems to rely on the temporary use provision in ***section 121*** of the ***Local Government Act 1972***. However the Objector's argument is flawed. One only has to consider what was held in the ***Goodman*** case. There are simply no council minutes in this case to justify the Objector's argument, yet the position is that the council minutes in general are quite full and complete for this period. And there is no record justifying making an inference that a decision was taken to provide for *temporary* use of this land for the stationing of caravans. The land here had been owned by the local authority for decades. Also there can have been no question of the land not being required for its previous purposes, that is (on the Objector's view of things), ***Public Health Act 1875*** purposes in this case. The provision only allows for temporary use to take place where the land is not immediately required for its statutory purpose. Thus it is important to construe this provision quite tightly, as a matter of public importance.

8.85. Some reliance had been placed by the Objector on the very name of the site here. Yet it is the case that the Welsh word *"Parc"* can also mean *"Field"*, and not just *"Park"*.

8.86. As for the argument about implied licence, Mr Cole senior had made it clear that there was no exclusion of people on Sundays. There had been some locking and unlocking of gates, certainly. Mr Cole senior had been an excellent witness, with clear recollection of most things. From his evidence it is clear that by the early 1990s at least one of the gates was always left open and unlocked. This is relevant because closing and locking could be taken to be an act of exclusion. However this is not the case here. Mr Cole senior was also very clear as to the situation which

had led to him ceasing to close and then open the other gates. He placed that cessation in 1994, with reference to a court case that he had heard of. It took two hours off his work, as he recounted. Therefore he had multiple reasons to remember this circumstance, even if he could not remember which council it was that made the change. It had clearly been a good while before he finished working, and we know that he retired in 1996. Therefore one can be confident that there was no locking of the gates at the time of the start of the qualifying period for the present application. Mr Cole senior had been quite clear that the locking stopped a good while before he retired, and therefore the land has been constantly open since the early 1990s.

8.87. The Applicants do not accept that any earlier implied permission would continue in effect for any length of time. Any 'hangover' permission from an earlier period of opening and locking gates and so forth would be very short lived. A daily action, such as the daily opening and closing gates, if that disappears, not to be resumed, would hang over in terms of its legal effect only for a very short period. Therefore this point should be dismissed on the facts of this present case.

8.88. If it were to be concluded that some unlocking and locking of gates had taken place within the relevant period to this present case, then one should look at the factors as they were considered in the ***Mann*** case, and compare them with what Dove J had said in the ***Goodman*** case. As Dove J had said in the ***Goodman*** case at paragraph 37, these matters are fact-sensitive. Indeed it is suggested that the ***Goodman*** judgment is binding on the Registration Authority in this case. In this case some of the things relied on by the Objector are more subtle. The funfair here apparently charged for admission. However that is very similar to what had happened in the ***Goodman*** case, as far as the organised events there were concerned. As for the sports field activity on Parc y Werin, it is difficult to see how people playing football from time to time on the land lead to there being an implied licence, if even the presence of a funfair charging for entrance would not do so.

8.89. As far as the people playing organised games of football were concerned, there are some analogies to be drawn between this and the situation of the golfers and local people in the well-known ***Redcar*** case. Here it would have been rude of local people to interfere with the footballers playing their games. It was a reasonable matter of give and take that local people on Parc y Werin would not rudely interfere with games of football which were taking place.

8.90. The situation of the people playing tennis or bowls was entirely distinct, because they were separated off. There was no prospect of members of the public using those areas without making arrangements to do so. It is noted in the context of the decision in ***Mann*** in the High Court that the circumstances here in relation to the tennis and bowling areas were entirely different. An entirely fenced area, with ostensibly permanent fencing, would not lead to the inference that the use of the whole park outside that fencing was by permission. Likewise the building on Parc y Werin would have been locked and not generally available.

8.91. It is accepted that the land here was regulated by a park keeper until 1996. That is not entirely inconsistent with a public entitlement to use the land. Regulation by charge is clearly not enough. The existence of a park keeper is also not enough to imply permission to members of the public to be there. And also the gates had ceased to be closed off in the by then distant past.

8.92. As for signs, there was very little good evidence about when they were erected. The words on them seemed to have referred to organised activities, not to informal use by the local people. Also witnesses had said that the signs had appeared relatively recently.

8.93. Reverting to the question of the byelaws, consideration of the ***Newhaven*** case makes one ask whether they were effectively communicated. There was no evidence about this. The lack of a plan associated with the byelaws causes real difficulty. Were the byelaws too uncertain to be effective? What did the reference to Parc y Werin in the byelaws actually mean? On top of this there is the potential significance of ***Regulation 14*** of the ***Area Changes Regulations***. [At this point it should be noted that Mr Blohm QC on behalf of the Objector accepted that the byelaws in this case are not relevant to the question of implied permission during the 20 year period of significance under ***section 16*** of the ***Commons Act***].

8.94. As for the matter that other land had been sold off from the 1924 land, if that land had been open space, it would have been subject to the requirement to advertise etc., subject to the relevant predecessor provisions to those in the ***Local Government Act 1972***.

9. THE CASE FOR THE PRINCIPAL OBJECTOR – EVIDENCE

9.1. As was the case with the Applicants, a considerable amount of reference to historical documentation was made in the representations of the Principal Objector, even before the decision was taken that this matter should proceed to a Public Local Inquiry. In the case of the Principal Objector, nearly all of this historical material was provided again in the context of the bundles prepared for the purpose of the Inquiry, and produced by the Principal Objector's witnesses. It is in my summaries of the evidence of those witnesses that I will refer to the documentary evidential material thus produced, as far as is necessary, and as far as it is not covered elsewhere in what I report.

9.2. ***Mr Alex O'Brien*** is a Chartered Surveyor, and is employed as Property Manager in the Corporate Building and Property Services Department of the City and County of Swansea. He has worked for the Council since 2012.

9.3. He is jointly responsible for the management of the Council's property holdings. He has reviewed notes, correspondence and Council minutes, and had also been able to locate a number of historic aerial photographs and Ordnance Survey plans,

to which he referred during his evidence. He produced aerial photographs of various dates between 1967 and 2014, and a substantial series of Ordnance Survey plans dated from between 1916 and 1999.

9.4. He dealt first with the so-called 1921 land, which had been acquired by the Council's predecessor under a lease of 1921, with acquisition of the freehold then having taken place in 1944. The Council's records show that the relevant part of the application site was originally acquired by the Council's predecessor by way of a lease of 31st December 1921. The lease was for 99 years from September 1915. It is clear that the lease was granted to the lessee for the purpose of public walks and pleasure grounds or for a recreation ground being laid out thereon. There were powers granted in the lease to lay out plant, improve and maintain the land for those purposes according to the provisions of the ***Public Health Act 1875*** and the ***Local Government Act 1894***. No plan had been attached to the 1921 lease agreement, although the identity of the demise was explained further in the Indenture of 1944. The unexecuted 1921 lease agreement and a copy of the Council's registered title for the land were produced.

9.5. Following the acquisition of that 1921 lease, the Council's predecessors, Llwchwr Urban District Council, subsequently acquired the freehold interest in the land by a conveyance dated 24th June 1944. A copy of the conveyance was produced. Mr O'Brien also produced a letter from the then Council to the Welsh Board of Health of January 1944, with a resolution endorsed on it, but which also confirmed that the statutory authority for the acquisition of the freehold land had been the ***Public Health Act 1875*** to ***1925*** and the ***Local Government Act 1933***.

9.6. The historic aerial photographs showed that between 1981 and 1992 a small part of the 1921 land was used for the siting of two caravans for the purposes of temporary housing accommodation. The caravans were sited on the north-west corner of Parc y Werin, fronting onto Brynawel Road. Some housing committee minutes of Lliw Valley Borough Council of 19th December 1974 were produced, referring to the siting of two of them on Parc y Werin. A planning application record from 1974 was produced, which provided for the siting of six caravans there for temporary housing accommodation. That application was further renewed in 1977. However, Mr O'Brien said, there was no evidence that any more than two caravans were in fact sited on Parc y Werin.

9.7. A 1992 aerial photograph showed that the caravans had been removed and replaced with a landscaped area which is consistent with the setting of the park.

9.8. Parc y Werin as it existed in 1932, which comprised the land acquired under the 1921 lease, and part of the lands covered by the 1924 conveyance, was also the subject of byelaws produced by the Llwchwr Urban District Council in respect of pleasure grounds in March 1932. The byelaws specifically state that the land is to be used as a park and recreation ground.

9.9. The pavilion and two bowling greens to the north of the application site are not within that site, although they are part of the original acquisition and have formed part of Parc y Werin.

9.10. The remaining part of the application site, which has been referred to as the 1924 land, was originally acquired by the Council's predecessor by a conveyance dated 30th December 1924. The land was acquired for the specific purpose of providing housing for the working classes under the ***Housing Acts 1890*** to ***1919***. A copy of the 1924 Indenture was provided, which included a plan of the land conveyed. Much of the land acquired in 1924 was indeed developed for housing, but the part within Parc y Werin was used for recreational or park purposes.

9.11. Following the acquisition in 1924 the then Council instigated the construction of housing development on the majority of the land conveyed, which was to the north-west of the acquisition site. However in accordance with ***section 15(1)*** of the ***Housing, Town Planning Act 1919*** the local authority included an area for the purposes of public recreation. This part is the western part of the application site.

9.12. Having studied the historic aerial photographs and the earlier Ordnance Survey plans, it is apparent that the housing development commenced soon after the acquisition, with the majority of the development finished by 1935 at the latest. It appeared that between 1935 and 1948 a small further area was developed and a new through road serving the area was established.

9.13. In terms of the area set aside for public recreation, there is no evidence to suggest that the land was used for anything other than as a public park. A 1971 aerial photograph did appear to show the land being worked, with various portacabins and spoil heaps located on the site. However by looking at the earlier and later aerial photographs it appears that the 1971 works were purely for the purposes of improving the facilities at Parc y Werin. That evidence is consistent with the laying out of a surfaced football pitch.

9.14. In terms of the wider acquisition area in 1924, a number of freehold interests have subsequently been disposed of by the local authority via the right to buy scheme. Land directly to the north of the application site was also disposed of for the purpose of developing a hospital and care facility. A section of undeveloped land to the south-west of the application site was sold off on a long leasehold basis to a housing association. Also a small strip of land was sold off to residents to facilitate garden extensions and the building of garages.

9.15. Land lying immediately south of the present application site had been previously acquired by the Council's predecessors under two separate acquisitions. A small part had been acquired in 1949 for use as a daytime nursery, and the land and buildings there are still held by the Council for use as a nursery school, appropriated to education. A larger section of this southern land to the west of that was acquired in 1968 for use as a health centre. The land was then developed by

the Council's predecessor for those purposes and subsequently sold off to the local health board due to a reorganisation within the NHS. A further parcel to the west of that is still held by the Council for use as a social service facility. [N.B. it subsequently transpired that the information given by Mr O'Brien, as recorded in this paragraph, did not present the full, correct picture in relation to this land, to the south of the application site – see below].

9.16. A notice under ***section 122*** of the ***Local Government Act 1972*** was issued by the Council on 23rd May 2015 to appropriate the open space land at Parc y Werin for educational use. Mr O'Brien exhibited a copy of the 'notice of appropriation' and the relevant cabinet report from July 2015. He also produced cabinet minutes and a plan.

9.17. The entire area of Parc y Werin has been continuously maintained by the Council since its acquisition as open space, for the recreation of the public. The park is listed on the Council's website under an A-Z of Parks and Nature Reserves.

9.18. The Council has installed various items of park furniture over the years, including Trim Trails, general waste bins, dog fouling bins, a children's play area, football pitches, bowls greens, benches and signage. Organised events at the recreation ground are controlled and managed by the Council's Parks Section, and have been since the acquisition of the land, albeit that pre-1996 records are limited. Mr O'Brien produced photographs showing the current configuration of the park, and a plan showing the position of various items of park furniture.

9.19. The football pitches are maintained and controlled by the Council's Leisure and Tourism department and require permits in order to use the facilities. He produced information detailing usage of the pitches, and a standard booking form which is used internally. In the year 2014/15 there were 34 senior matches, 17 junior matches and 38 mini-matches. Thus in that time almost 3,000 users would have used the pitches with the consent of the Council.

9.20. The Council has erected signs at the site stating that any organised event will require permission from the Council. The boundaries of the park are enclosed with railings and hedgerows with gated entrances on the western and eastern sides of the site. From historic mapping, and in consideration of the byelaws it would be reasonable to assume that the site has been enclosed since its original acquisition. However Mr O'Brien understood that the gates had not been locked for a number of years owing to financial constraints.

9.21. In later evidence in chief Mr O'Brien corrected some of what he had said earlier about the strip of land to the south of the present application site. From documentation which appeared to show what was conveyed in 1924, it now seemed clear that the area to the south of the present application site, on which various buildings have been constructed, was in fact included within the acquisition by the Council's predecessor in 1924. In other words the lands

occupied now by the nursery school, the health centre, the social centre etc., were in fact included within the 1924 acquisition.

9.22. *In cross-examination*, in relation to the 1944 acquisition of the freehold (of what had been the *"1921 land"*) Mr O'Brien accepted that while the Council clerk's letter of 10th January 1944 about the acquisition referred to both the ***Public Health Act 1875*** and the ***Local Government Act 1933***, the record of the resolution of the authority (noted also in that letter) referred only to the ***Local Government Act 1933***.

9.23. In relation to the 1924 land, Mr O'Brien agreed that until 1989 the area to the south-west of the present application site, now occupied by the Llys y Werin residential scheme, was also part of an area of green open space. There is no definitive evidence to show that the area of the 1924 land within the present Parc y Werin was ever officially designated for use for recreation. No paperwork has been unearthed supporting that definitively. The 1924 documentation did not make specific reference to the ***Housing, Town Planning Act 1919,*** but merely mentioned that the acquisition was in connection with a scheme for the provision of housing for the working classes.

9.24. The byelaws of 1932 had no plan associated with them. He was not aware whether there was any evidence that the byelaws had ever been advertised on Parc y Werin. He did not know when the Trim Trail exercise equipment was put in at Parc y Werin, nor when the litter bins or the play area were installed there.

9.25. He did not have the construction dates for the buildings which had been erected in the strip to the south of the present application site. A series of aerial photographs were useful in identifying the approximate dates when those buildings were erected.

9.26. He accepted that a photograph which hung in the lobby of the premises where the Inquiry was taking place appeared to show a picket fence between Parc y Werin and the rough area to the south, and that by reference to the other aerial photographs it was possible to date that particular aerial photograph to somewhere between 1971 and 1981.

9.27. *In re-examination* Mr O'Brien said that the 1935 Ordnance Survey plan showed a solid line between the area marked as Parc y Werin and an area apparently marked as rough ground to the south of it. Such a solid line suggested a physical boundary between those areas at that time.

9.28. Although a clause in the 1924 draft Indenture appeared to make reference to the approval by the Ministry of Health of the scheme of housing which was intended at that time, Mr O'Brien himself had not seen any surviving record of that scheme.

9.29. As for the park furniture within the park, the waste bins and dog bins would be replaced regularly, as for any park belonging to this Council. Mr O'Brien did not know if the Council still owned the park which had been referred to as Argyle Gardens.

9.30. ***Mrs Louise Herbert-Evans*** is a Programme Manager and Head of Capital Planning and the Delivery Unit in the Education Department of Swansea Council. She has worked for the Council since 2008.

9.31. She had been involved in leading the project to construct a new primary school building on a single site for Gorseinon Primary School. She explained the way in which proposals for reorganising and investing in schools in Swansea had been taken up with the Welsh Government. A budget involving capital spending on work for a new building for Gorseinon Primary School had been duly approved. Planning permission for the new building for the primary school, which was to be on part of Parc y Werin, had been given in December 2015.

9.32. Evidence was given about the business case which has had justified these proposed works, and a number of shortlisted options which were considered. Any new site had already to be in the Council's ownership, as well as being within the Gorseinon catchment area.

9.33. Other sites than Parc y Werin were considered, but they all had various problems.

9.34. The option involving establishment of a new build primary school on a single new site at Parc y Werin came out as the most satisfactory scheme, after the Council's considerations. Approximately 3.2 acres of the total 8.77 acres at Parc y Werin would be used for the school scheme. These 3.2 acres currently incorporate two mini pitches and a modestly equipped playground.

9.35. *In cross-examination* Mrs Herbert-Evans said that the Argyle Garden site was too small for a school, and also had restrictive covenants which affected how it could be used. She did not know who has the benefit of the restrictive covenants affecting Argyle Gardens, but did not consider this to be a relevant point.

9.36. The Council has appropriated part of the land at Parc y Werin for educational purposes. If the land here were registered as a town or village green, then the Council as Education Authority would have to completely revisit the business case for the new school. She did not know if there was any way to provide a new school if Parc y Werin is not available. Other sites may not meet the necessary objectives.

9.37. Nevertheless the Education Authority is not currently failing to meet its statutory obligations to the relevant children. The existing accommodation for the relevant

children is on three sites. It would be necessary to make significant investment in the existing building if the school was to remain on that site. The Council has responsibilities in respect of how it spends public money. Nevertheless no analysis had been done on refurbishment on the existing site.

9.38. Mrs Herbert-Evans acknowledged that the notice of the intended appropriation of the land at Parc y Werin had (in its wording) suggested that the Council intended to appropriate the land for the purposes of property development.

9.39. *In re-exam*ination Mrs Herbert-Evans said that outside the area proposed specifically to be used for the school, whether the school made use of the other land within the park would be at the option of the school. If the school wished to book pitches on the park then they could book grass pitches free of charge.

9.40. *To me* Mrs Herbert-Evans said that the Council's Open Spaces audit had identified an overall surplus of open land of this kind in the Gorseinon area. The proposed provision of a multi-use games area on the park (as part of the proposal to take land from the park for the new school) would potentially represent an enhancement to the park.

10. THE SUBMISSIONS FOR THE PRINCIPAL OBJECTOR

10.1. As in the case of the Applicant, the Principal Objector in this case put forward a considerable number of submissions or representations, spread over a period of many months, even before the Public Local Inquiry into the application was arranged (and these were all exchanged and made available as between the principal parties concerned).

10.2. In its initial fully reasoned objection statement, the Principal Objector indicated that it took three specific points of objection. The first was that recreational use of Parc y Werin, at least until July 2015, was by right and not as of right. The second was that registration of Parc y Werin as a town or village green would be incompatible with the statutory purpose for which Parc y Werin is held. Reliance was placed on the Supreme Court Decision in the ***Newhaven*** case. The third point then taken by the Principal Objector (but subsequently abandoned) was that the Applicants had failed to prove that the locality on which they had relied had existed for 20 years.

10.3. As for the facts, it was pointed out that one part of the land at Parc y Werin had originally been acquired by the Council's predecessor under a lease of 1921. However only an unexecuted draft of that 1921 lease was available. That draft appeared to have been attached to an agreement for a lease. By that lease certain lands were demised to the then Parish Council for a term of 99 years from 1915.

There is no copy of the plan attached to the 1921 lease, but the identity of the demised land is explained by a 1944 Indenture relating to the same land.

10.4. The 1921 lease documents made it clear that the lease was being granted of the land *"for the purpose of public walks and pleasure ground or a recreation ground being laid out thereon …"*. The lease documents also granted power to lay out, plant and improve the land for those purposes *"according to the provisions contained in the Public Health Act 1875 and the Local Government Act 1894 …"*. It was clearly intended that the leased land would be used as public walks or pleasure grounds or a recreation ground and for no other purpose.

10.5. In respect of the other main part of the present Parc y Werin, an Indenture dated 30th December 1924 was made between the previous landowners and the Council's then relevant predecessor. This Indenture conveyed to Swansea Rural District Council certain land in Gorseinon (which was shown on a plan). The first recital to the 1924 Indenture provided that Swansea RDC acquired the land for the purpose of houses for the working classes under the ***Housing Acts 1890 to 1919***.

10.6. It appears from the recitals to an Indenture of 1944 that in 1930, Swansea RDC was converted into the Llwchwr UDC, and that Llandeilo Talybont Parish Council was dissolved and its assets vested in Llwchwr UDC. Thus the leasehold land subject to the 1921 lease, and the freehold land subject to the 1924 Indenture vested in Llwchwr UDC.

10.7. In 1932 Llwchwr UDC made byelaws with respect of a number of pleasure grounds and recreation grounds including Parc y Werin, which is described as a pleasure ground. The byelaws were approved by the Minister of Health.

10.8. In 1944 an Indenture was made between the freehold owners of the land leased in 1921 (and certain other parties) and Llwchwr UDC. This Indenture conveyed to Llwchwr UDC the freehold reversion to the 1921 lease. The land conveyed by the 1944 Indenture is shown on a plan, and faces what we know as Princess Street and Brynawel Road. In fact the plan referred to both as proposed roads; it is inferred that the plan was taken from the 1921 lease, which was entered into at a time when the area had not yet been developed.

10.9. Clause 1 of the 1944 Indenture describes the land conveyed as forming part of the purchaser's pleasure or recreation ground. That clause also provided that the 1921 lease should merge in the freehold reversion.

10.10. Llwchwr UDC became part of Lliw Valley DC in 1974. The District of Lliw Valley became part of the area of Swansea Council in 1996.

10.11. Much of the land acquired under the 1924 Indenture was developed for social housing. However, since its acquisition by the local authority in 1921 and 1924, Parc y Werin has always been used as an area for public recreation, and has been maintained by the local authority which owned the park from time to time as a recreational space. It is a typical urban park or recreation ground, mostly laid to grass. The facilities on it were described.

10.12. Swansea Council as Local Education Authority had in 2015 decided to build a new infant/primary school on part of Parc y Werin. In 2015 it published a notice under the ***Local Government Act 1972*** of its intention to appropriate part of the park for educational purposes. An appropriation for part of the park to be used as a school site was made by the Council's Cabinet in July 2015. That attracted local opposition and led to the present TVG application.

10.13. The present application excludes a pavilion and two bowling greens which are within Parc y Werin, but includes an enclosed children's playground and a car parking area which are within the park.

10.14. It was stated in the Principal Objector's initial objection statement that it was expressly accepted that:

(i) Parc y Werin has been extensively used since the 1920s as a park for recreation by local people and the general public;

(ii) there have been no permissive signs on the park

(iii) the gates to the park were not closed or locked.

10.15. On the first main ground of objection, in relation to whether use of the park had been *"as of right"* or not, it was argued that the public were using the park by statutory permission at all material times, at least until the July 2015 appropriation. It was established in the ***Barkas*** that if a local authority holds land for statutory purposes which authorise it to use the land for public recreation, and the local authority intentionally does so use it, the public are using the land *by right* pursuant to statutory permission, and not *as of right*.

10.16. The Objector's argument was that the two parts of Parc y Werin were (until the 2015 appropriation) held for different statutory purposes. As for the land acquired leasehold in 1921 and freehold in 1944, that land was acquired and held under ***section 164*** of the ***Public Health Act 1875***. That Act empowered local authorities to purchase or lease land for use as public walks or pleasure grounds. This fully accords with the terms which appear to have been in the 1921 lease. That also squares with the description of Parc y Werin as a pleasure ground in the 1932 byelaws.

10.17. As for the 1944 Indenture, all the indications are that the freehold was also acquired and held under ***section 164*** of the ***Public Health Act 1875***. The land was already held leasehold under that provision. Clause 1 of the 1944 Indenture describes the land as *"part of the purchaser's pleasure or recreation ground"*. No amendments were made to the 1932 byelaws or to the use of the land. The land was plainly acquired with the intention that its existing use should continue.

10.18. The land subject to the 1921 lease and 1944 Indenture was thus held under ***section 164*** of the ***Public Health Act 1875***. Clear case-law shows that the public have a statutory right to use such land. That proposition had been upheld in the Supreme Court in the ***Barkas*** case. Thus public use of Parc y Werin was clearly by right and not as of right, at least until some or all of it was appropriated for educational purposes in 2015.

10.19. Turning to the land acquired under the 1924 conveyance, it is plain from the first recital that the land was acquired pursuant to the ***Housing Acts 1890 to 1919*** for provision of housing for the working classes. Part 1 of the 1919 Act dealt in some detail with the provision of local authority housing for the working classes. ***Section 15(1)(a)*** empowered a local authority to lay out and construct *"open spaces"* on land acquired to provide housing for the working classes. ***Section 15(1)(b)*** empowered the local authority with the consent of the Local Government Board to provide incidental facilities such as places of recreation.

10.20. The substance of these powers has been preserved in all subsequent consolidations of the housing legislation. The current legislation is the ***Housing Act 1985***. A power to lay out and construct recreation grounds in connection with housing accommodation provided by local authorities is in ***section 12*** of the ***1985 Act***, and the power to lay out open spaces on such land is in ***section 13*** of that Act.

10.21. This case is on all fours with the decision in ***Barkas***. There as here the land was acquired for housing purposes. A recreation ground or open space was laid out and maintained on part of that land for the benefit of the occupants of the local authority housing. It does not matter that the recreational land also benefits the public generally. Recitals to the 1924 Indenture here recite that the Minister had approved the housing scheme and the acquisition of the land. It is a reasonable inference that the scheme envisaged recreational use of the land incorporated into Parc y Werin, so that the Minister can be taken to have consented to use as a recreation ground. In any event there is a presumption of regularity, and so any necessary Ministerial consent can reasonably be inferred. Further, Ministerial consent was not in fact required for laying out and maintaining open spaces. The land here was an *"open space"* as defined by the ***Open Spaces Act 1906***. In this situation the Supreme Court in ***Barkas*** held that the public has a right to use the recreation ground, so that the public has a statutory right to use the land for recreation. This is use *"by right"*.

10.22. Recreational use of Parc y Werin, at least until the 2015 appropriation, was therefore not *"as of right"*. The Applicants therefore cannot prove 20 years

qualifying use. Even if the statutory appropriation was not validly worded, recreational use of Parc y Werin continued to be by right and not as of right until the date of the TVG application.

10.23. The decision of the Supreme Court in the ***Newhaven*** case has introduced a new legal principle into the law relating to the registration of TVGs. It was held that land cannot be registered as a new TVG if registration would be incompatible with the statutory purposes for which the land is held. In that case a beach within Newhaven Harbour could not be registered as a TVG because the statutory restrictions on development of a TVG would be inconsistent with the exercise of statutory harbour powers. The statutory restrictions are those in ***section 12*** of the ***Inclosure Act 1857*** and ***section 29*** of the ***Commons Act 1876***. The principle of statutory incompatibility applies to land held by local authorities.

10.24. Thus, since the 2015 appropriation, the land comprised in Parc y Werin has potentially fallen into three classes:

(i) land appropriated for educational purposes;

(ii) land still held for the purposes of ***section 164*** of the ***Public Health Act 1875***;

(iii) land still held for housing purposes.

10.25. As for the first class, registration of the land as a TVG would be incompatible with the statutory purpose for which the land is held, since it would prevent the building of the proposed new school. As for the second class, it was accepted that registration as a new TVG would not be incompatible with the purposes of ***section 164*** of the ***Public Health Act 1875***. As for the third class, although the land is used for recreation at the moment, it could be used as social housing under the statutory housing powers on which it is held. It was suggested that registration as a new TVG would be incompatible with the use of the land for social housing. Thus it was argued that the statutory incompatibility principle prevented registration as a TVG of at least two out of the three categories of the land at Parc y Werin.

10.26. In a supplementary objection statement submitted by the Principal Objector in August 2016, the Objector responded to some further information put forward by the Applicants, which had pointed out that two static caravans had been situated on part of Parc y Werin for a period of some 9 years up to about 1997.

10.27. It was indicated that the Principal Objector believed that those two caravans had been sited on the small part of the park for some years in the 1970s and 1980s as temporary accommodation for council tenants, initially while neighbouring council houses were renovated. The caravans were visible on an aerial photograph dated 1981, but were not on another one dated 1992. There was some uncertainty about the date of another photograph thought to be showing two caravans on the site, which was believed to have dated back to the early 1970s.

10.28. There was a record of a temporary planning permission being given in 1974 for a residential caravan site to accommodate up to six caravans for temporary housing in the north-west corner of Parc y Werin, fronting Brynawel Road. There is a record of a renewal of that permission in 1977. There was no evidence that any more than two caravans were ever sited there.

10.29. A 1974 minute had been found which referred to a decision to place two caravans at Parc y Werin as temporary accommodation. Another set of minutes from 1980 record a council house exchange relating to a caravan in Parc y Werin. It seems clear that the caravans were sited on the part of Parc y Werin which was acquired under the 1921 lease and the 1944 conveyance. The caravans were sited on part of the land which has now been appropriated to educational purposes.

10.30. It was noted that the Applicants were arguing that the land that had been acquired in 1921/1944 could not have been held for the purpose of public walks or pleasure grounds if part of it was used in the 1970s/80s for siting caravans. The Applicants had further argued that some or all of that land must have been appropriated for statutory purposes consistent with the use for siting caravans. The Applicants had also pointed out that siting caravans would be in breach of the 1932 byelaws, and that any failure to close and lock the gates of the park was in breach of the 1932 byelaws. The Applicants had further argued that when the 1921 lease was merged into the 1944 conveyance, the latter acquisition was not for the same purpose as the original acquisition of the lease.

10.31. The Objector's response to these points was that it is completely clear that the 1921 lease was for the purposes of ***section 164*** of the ***Public Health Act 1875***. Clause 1 of the 1944 conveyance described the land as part of the purchaser's pleasure or recreational ground at Parc y Werin. The evidence shows that after the 1944 conveyance the land conveyed still continued to be used and maintained as a public park. The fact that the 1944 conveyance provided for the 1921 lease to merge into the freehold does not mean that the freehold land was held under different statutory powers from the leasehold land. The 1943 resolution and the letter about it in 1944 are consistent with the proposition that the freehold was being purchased for continued use of Parc y Werin as a public park under the ***1875 Act***. There is no evidence that Llwchwr UDC were purchasing the freehold reversion of Parc y Werin for any other purpose than use of it as a public park.

10.32. It is necessary to consider the totality of the evidence to decide under what statutory power the freehold reversion to Parc y Werin was purchased in 1944. The Applicants do not put forward any other statutory purpose for which the freehold reversion to the 1921 lease was purchased in 1944. The evidence all points one way, i.e. that it was purchased for the purposes of ***section 164*** of the ***Public Health Act 1875***.

10.33. The Applicants have argued that if Parc y Werin was still held for the statutory purpose of a public park after 1944, then it was appropriated for other purposes

when part of the park began to be used as a caravan site; but they do not suggest that there is any evidence of an express appropriation, so they must be suggesting some sort of implied appropriation.

10.34. However only a very small part of Parc y Werin was used as a site for two caravans. The rest of the land continued to be used as a public park. In those circumstances it is not possible to infer an appropriation of the whole of the park, as opposed merely to the site of the two caravans. As for any argument based on implied appropriation of the land used for siting the caravans, there was no such implied appropriation.

10.35. Whether any such appropriation was under the ***Local Government Act 1972*** (which was in effect from 1974), or whether it was under earlier legislation, the case-law relevant to this topic establishes two requirements of a valid appropriation. First there must be a determination by the appropriating authority that the land is no longer required for the purposes for which it was acquired. In the present case there is no evidence of any such determination. Indeed the evidence suggests that the proposed use for siting caravans was always perceived as temporary, and that the caravan site would revert back to public park use in due course.

10.36. Second, there must be an actual decision by the relevant local authority to appropriate the land for a new purpose. It is not enough that the local authority just uses it for a new purpose. In the present case there is no evidence of any decision by the Council to appropriate the caravan site for a new statutory purpose. So far as the evidence goes, the Council just used the land for the new purpose. Accordingly there was no implied appropriation when part of Parc y Werin was used as a temporary site for caravans.

10.37. The Applicants had argued that the local authority could not use part of Parc y Werin as a caravan site without an appropriation. This raises two issues, first whether the then authority could lawfully use land purchased for use as a public park temporarily for other purposes, and second, whether use for a purpose other than the statutory purpose necessarily requires the inference of an appropriation.

10.38. The first issue is, as far as the Objector is aware, undecided and was left open in the recent ***Goodman*** case in the High Court. It had been decided back in the 19th century that land acquired for sewerage purposes could be used temporarily for recreational purposes until required for the sewerage purposes. The ***Local Government Acts*** of ***1933*** and ***1972*** both contained a power to buy land in advance of its requirement for a particular purpose, and to use it temporarily for another purpose. So a local authority can lawfully use land temporarily for a different statutory purpose from that for which it was acquired, without appropriating it for another statutory purpose.

10.39. The second issue referred to had been determined by the recent ***Goodman*** case, where the judge held that Exeter Council had been using for public open space purposes land which was in fact held for development purposes. The previous council in this present case may have been acting unlawfully in using part of Parc y Werin as a caravan site, but such use did not necessarily imply an appropriation to caravan site purposes.

10.40. A further difficulty which faces the Applicants on the implied appropriation argument is that, if use of part of Parc y Werin as a caravan site in the 1970s gave rise to an implied appropriation away from public park purposes, it is hard to see why the cessation of use as a caravan site and renewed use as a public park did not give rise to an implied appropriation back to public park purposes. If so, Parc y Werin has been held for the purposes of ***section 164*** of the ***Public Health Act 1875*** since the early 1990s, and this is fatal to the present application.

10.41. Further, the Applicants do not in fact put forward the identity of the new statutory purpose for which they contend that Parc y Werin was impliedly appropriated in the early 1970s. However, if there were an implied appropriation, the obvious statutory purpose in the light of the evidence that the caravans were to be used for temporary housing purposes, would be housing purposes. If so, the same by right argument would apply as to the land purchased in 1924 for housing purposes.

10.42. It was noted that the Applicants argue that the various councils successively owning Parc y Werin have not complied with the 1932 byelaws in a number of respects. These included the stationing of the caravans, and failure to close the park one hour after sunset. There is nothing in this point. If the byelaws have been breached that cannot conceivably affect the statutory purpose for which Parc y Werin has been held. There is no evidence that the byelaws have ever been revoked.

10.43. It was further argued that the enclosure of part of Parc y Werin for the purpose of siting the temporary caravans would have given rise to an implied permission by the Council to use the rest of the park for recreation, on the principle of the decision in the case of ***R (Mann) v Somerset County Council*** [2012] EWHC 814.

10.44. In summary submissions put forward on behalf of the Principal Objector shortly before the opening of the Inquiry, it was pointed out that the land here had in fact been used by the authority and its predecessors as a pleasure or recreation ground and sports ground for local schools and local sports clubs since the 1920s, but subject to that it had been used by local inhabitants for informal recreation.

10.45. The Objector does not dispute that a significant number of the local inhabitants of the Gorseinon Town Council area have used the application land for lawful sports and pastimes during the relevant application period. It was expressly accepted that the Gorseinon Town Council area is a locality for the purposes of ***section 15*** of the ***Commons Act***.

10.46. However the Objector contends that the application land has throughout the application period, and for many decades before that, been held by the local authority and used by the public by virtue of statutory permission. The very name of Parc y Werin means *"the people's park"*.

10.47. Alternatively, if the land was not held by the local authority for the purposes of recreation, local inhabitants have used the land pursuant to an implied licence. Use in those circumstances would not have been as of right either. Furthermore, the registration of the land as a TVG would be inconsistent with the intended use of a substantial part of it for educational purposes.

10.48. The factual disputes in this case appear to be limited. The title to and factual acquisition of the land by the predecessors to the present Objector do not appear to be challenged. The eastern part of the land was originally acquired by the Council's predecessor under the 1921 lease. The western part of the application site was a relatively small part of some freehold land conveyed to the Council's predecessor by an Indenture of December 1924. The freehold reversion of the 1921 land was conveyed to the Council's predecessor in 1944. The Objector's predecessors in title therefore had possession of the entirety of the land from 1924, and freehold title to it all from 1944.

10.49. There does not appear to be any substantial dispute as to the use of the application land during the application period, which is from November 1995 to November 2015, or indeed since 1924. It has been used as a typical local authority pleasure ground and recreation area. It contains typical recreation facilities, including sports fields which are let out for use by the local authority.

10.50. A small part of the land acquired in 1924 (bordering on Brynawel Road) was used for temporary housing with the placing of two mobile homes and associated works, following a grant of planning permission for six mobile homes. The mobile homes were removed by 1987 and the land was reinstated as recreational land.

10.51. It was noted that the Applicants had also referred to a pile of spoil being visible in an aerial photograph taken in about 1970. That appeared to be consistent with works of improvement to the application land as recreational land, which works were carried on at about that time.

10.52. It was accepted that parts of the land acquired under the 1924 conveyance adjacent to or near to Parc y Werin had been disposed of and used for other purposes, such as a hospital or housing. However that was consistent with the purposes for which the land has always been held.

10.53. The factual issues remaining therefore appear to be:

(1) Was the application land held by the local authority for recreational purposes when acquired?
(2) Was the application land ever appropriated to any other purpose subsequently, and if so what?
(3) To what extent and under what powers was land historically used as a recreational land at Parc y Werin used for housing purposes?
(4) If so, was use of the land by local inhabitants subject to a licence by implication?
(5) What is the statutory purpose for which the application land is currently held?

10.54. In order for use of open land to be *"as of right"* the use must amount at the time of use to a trespass. Where land is held by a public body for the purpose of permitting local inhabitants to enjoy lawful sports and pastimes on it, then their use is by right or permissive use, the antithesis of use as of right. This was clearly decided by the ***Barkas*** case.

10.55. As for whether the local inhabitants had a right to use this land during the application period, a local authority is a creature of statute, and can only lawfully do what it is authorised to do. The first step therefore is to consider what statutory power the application land was acquired under. Once that is established, so is the purpose for which the land was held. The next question is whether the purpose has been altered by an appropriation under the relevant provisions of the 1933 or 1972 ***Local Government Acts***. The Objector's case is that the land acquired in 1924 was acquired under the ***Housing Acts***, which among other things authorised the laying out of land as recreation land. The land whose freehold title was acquired in 1944 was acquired under ***section 164*** of the ***Public Health Act 1875***, which required that land to be held for the purposes of recreation. In neither case has there been any subsequent appropriation.

10.56. The basis on which the Council or its predecessors acquired the land is a matter of evidence. In the present case there are no available minutes setting out the purposes of the demises or conveyances. In the absence of formal evidence of the authority's intention (such as minutes resolving to exercise a specific power) the best evidence lies in the recitals in or terms of the formal instruments by which the land was acquired. In the absence of any such evidence the Objector would rely on the principle known in Latin as *"omnia praesumuntur rite esse acta"* (the presumption of regularity), and would seek to infer a lawful origin from the contemporaneous use of the application land as recreation land. However, by reason of the actual terms of the conveyances here, and the surrounding circumstances, it is unnecessary to do that in this case.

10.57. The Objector here holds the land through two titles, the 1944 conveyance of the eastern part, following on from the 1921 lease of the same land, and then the 1924 Indenture of the western part. There is no other conveyance of the application land. The 1921 lease was expressly for the purpose of the land being used as a pleasure ground. That purpose was restated in the demise itself, and the terms of

grant. The only appropriate or credible statutory purpose is that contained in ***section 164*** of the ***Public Health Act 1875***. The fact that Parc y Werin was included in byelaws as one of the local authority's parks and pleasure grounds is entirely consistent with this. The 1944 conveyance of the freehold reversion of this land did not set out the purpose for which the land is acquired, but recited that the land was held as a pleasure ground. Given that the lease was held for the purposes of public recreation and had 76 years still to run, the absence of any statement of alternative statutory purpose is a very strong indication that the purpose for which the land was held remained the same as it was before, namely recreation. That is consistent with the use of the land in fact remaining the same after the conveyance as before. There is no evidence that the land was acquired for any other purpose.

10.58. That matter is confirmed by the copy letter dated 10th January 1944 from Llwchwr UDC to the Welsh Board of Health, indicating that the acquisition was to take place under the ***Public Health Acts 1875 to 1925***, as well as the ***Local Government Act 1933*** (which gave the Council power to acquire land for their statutory purposes).

10.59. As for the land acquired in 1924, the 1924 Indenture recited that the land was acquired for the purpose of carrying out a scheme for housing the working classes under the ***Housing Acts 1890 to 1919***. Among the powers contained in that legislation were provisions empowering an authority to construct open spaces on land acquired to provide such housing, and to provide facilities incidental to the housing such as places of recreation. Unsurprisingly, if a local authority was empowered to construct housing estates, it was also empowered to provide ancillary facilities, including those for recreation.

10.60. As a matter of fact the authority formed or extended a pleasure ground over that part of the land conveyed which is presently known as Parc y Werin. The plain inference is that this part of the land was held for the purposes of ***section 15*** of the ***1919 Housing, Town Planning Act***.

10.61. There is no evidence of any subsequent appropriation of the application land to different purposes. Until 1972 an appropriation of local authority land had to comply with the provisions of ***section 163*** of the ***Local Government Act 1933***. After 1972 appropriation was governed by ***section 122*** of the ***Local Government Act 1972***. That would have required the authority to consider that the land was no longer required for the purpose for which it was acquired, and that it was now required for some other statutory purpose. Ministerial consent to the appropriation would have been required under the 1933 legislation, and thereafter public advertisement of the change of statutory use.

10.62. Insofar as the Applicants contend that the construction of permanent housing on land formerly part of Parc y Werin is material to consideration of the basis on which the land is held, the Objector argues that in fact no such construction took place on Parc y Werin, but that if it did the land which was held under the ***Housing Acts*** was held precisely for the purpose of providing housing, and would not have

been appropriated to a different use. Insofar as appropriation to such use was required, the necessary appropriation to be inferred would have extended only to the land so used for construction.

10.63. The evidence of use of a small part of the application land for temporary housing for a period in the 1970s and 1980s (the caravans) does not indicate or evidence an appropriation of either the application land as a whole or a small part of it. Neither is there any evidence of ministerial consent, publication of the alternative proposed use, or consideration by the authority that the land was no longer required for public open space use, such as would have been required under the legislative provisions relating to appropriation of local government land.

10.64. There was in any event no need for the land to be appropriated to another use where the use to which the land was to be put was temporary. The case of ***Attorney General v Teddington UDC*** [1898] 1 Ch 66 was referred to.

10.65. As for the question of implied licence, use is permitted by implication if it would be evident to members of the public carrying out that use that they have the permission of the landowner to do so. Where public use of land is restricted by the landowner for part of the time, then use by the public at other times may be permissive. The well-known ***Beresford*** case was referred to. Where the public use of part of the land is restricted by the landowner to part of the time, then the public use of the whole of the land at other times may be permissive. The ***Mann v Somerset*** case was referred to.

10.66. The underlying concept is one of regulation. If a landowner makes it plain to the public that he has the power to regulate their usage of the land, which he may do by prohibiting or restricting certain types or periods of usage, the usage which they do in fact carry out, and which is not regulated, is in effect subject to the landowner's will. It is obvious that anyone seeing a formal sport taking place on a marked up pitch would conclude that the teams playing had been given the exclusive use of at least the pitch for the duration of the game. Further, the land here is obviously a local authority park with facilities. It is fenced and gated, albeit that the gates have not been shut for many years. As with parks, byelaws are applicable to it. No member of the public would have considered that he was trespassing, because he would have assumed from the surrounding circumstances that the local authority permitted or authorised him to be there.

10.67. The Council's original objection had asserted statutory incompatibility arising from the holding of part of the land for educational purposes for the latter part of the relevant period. The question thus arose whether the land concerned was in fact appropriated for educational purposes. The issue is whether the Objector purported to appropriate the land, not whether it was validly appropriated. The report leading to the claimed appropriation in July 2015 set out the legal effects and requirements of appropriation. Although the actual decision was to appropriate the land *"from the director of place to the director of people"*, the meaning of the decision when

read with the report is clear. The Council was appropriating the land from recreational use to educational use, to enable it to construct a school.

10.68. The decision is to be presumed effective until it is challenged and set aside. Although it could be rendered void *ab initio* by a court of competent jurisdiction, until then it is presumptively effective.

10.69. Is there a statutory incompatibility here? In the ***Newhaven*** case Lord Neuberger had held that where Parliament has conferred on a statutory undertaker powers to acquire land and to hold and use that land for defined statutory purposes, the ***2006 Commons Act*** does not enable the public to acquire by user rights which are incompatible with the continuing use of the land for those statutory purposes.

10.70. The underlying principle is one of statutory construction. The ***Commons Act 2006*** is to be interpreted so as not to permit the registration of TVG rights where land is during the relevant 20 year period held by the landowner pursuant to particular statutory powers, and the continuing performance of those statutory powers would be interfered with were the land to be subject to TVG rights. The issue is not of failure to perform duties; it is of the hindrance of the continuing statutory purpose. That will require the Inquiry to identify the continuing statutory purpose for which the land is being used.

10.71. The 'continuing use' of the land includes not only the factual use but also the likely or contemplated use. In the ***Newhaven*** case that use had gone on for many years without conflict with the public recreational use. Notwithstanding this, the Supreme Court considered that it was plain that there would be conflict from the very terms of the statutory purpose. It appears that had the conflict not been obvious, then the court would have accepted evidence to ascertain whether the statutory purpose was likely to be hindered by the creation of a town or village green.

10.72. The Supreme Court in ***Newhaven*** had distinguished a number of cases where TVG applications had been used on land owned by local authorities. The point that distinguished those cases from the ***Newhaven*** case was not the mere fact that the landowner was a local authority, but that the particular purpose for which the land was held, and its use, was not inconsistent with registration. The contrast is with the mere holding of land for a statutory purpose which is not of itself sufficient to create a statutory incompatibility. The distinction with the situation in ***Newhaven*** was that the land there was being used for a statutory harbour purpose and was being used as a working harbour. In none of the local authority-owned examples discussed was the statutory inconsistency point argued, and the court considered that in no case was the purpose for which the land was held a relevant statutory purpose.

10.73. The statutory incompatibility point has recently been considered by the High Court in the case of ***Lancashire County Council v Secretary of State*** [2016] EWHC

1238 (Admin). The comments of the judge in that case were *obiter* as he upheld the findings of the Inspector that the land was not held for educational purposes. That was a necessary step prior to consideration of statutory incompatibility.

10.74. Here, the land has been or will be appropriated to educational use by decision of the Council. The use to which the land is to be put, and for which it is required, is the construction of a new school, and the detailed plans are set out the Objector's evidence. The education legislation imposes on education authorities statutory duties as to the provision of education facilities. There are also duties on local education authorities and governing bodies to ensure the safety of children, and which provide for the governing body to have control of the school premises for that purpose. The point is a simple one: Parliament provides that school premises are to be subject to the control of the school for the purposes of education, and that is entirely inconsistent with a public right of entry subject to "give and take". Where a local education authority has decided, as it is empowered to do, to use its land for the purpose of education, then it will be wholly inconsistent for the public to have or to be able to exercise a right of recreation over it.

10.75. In further submissions at the opening of the Inquiry it was suggested that the reason why the 1921 land had initially been leased to the local authority, rather than sold as freehold, would have been that it was at the time settled land, and it was therefore much easier for the settled land trustees to lease it to the local authority for use as a park. It was clear from the totality of the evidence that by 1924 the park at Parc y Werin was in existence. In 1944 the Cameron Estate (the owners of the freehold) had effectively offered the local authority the opportunity to buy the freehold reversion, and the local authority agreed. It is plain from the surrounding documents and circumstances that the purpose of that freehold acquisition in 1944 was for the land to continue to be used as a park. Therefore it is obvious that this land has always been used for a park. Even if that were not the case, it would have been obvious to anyone using the park that they were permitted to do so by the local authority.

10.76. Further, it was argued in relation to the statutory incompatibility point, that if the land is held under a particular statute then Parliament cannot have intended that land held for that particular purpose could have rights generated under other legislation which are inconsistent with the statutory purpose for which the land is held.

10.77. In closing submissions at the end of the Inquiry, it was argued on behalf of the Principal Objector that there is a degree of unreality around the present application; it is a surprising application. In order to obstruct development certain local residents are asserting that their use of land which has been a well-known public park since the 1920s has been as trespassers, and that therefore they can assert that the land should be registered as a town or village green, with the consequences that: (a) the public have a general right to use all of the application land for recreation, subject only to "give and take"; (b) any construction work on then land

will be prohibited in perpetuity. The Applicants' case is based on a misreading of the relevant authorities, and reliance on an absence of complete Council records.

10.78. The Principal Objector contends that the application land has at all material times been held by the Council for the purpose of public recreation, and that the public's use of the land has been *"by right"*. The circumstances indicate plainly and objectively that the public has used the application land for recreation by permission of the Council, and hence not as of right. Further, the Council has appropriated part of the application land for educational purposes, specifically to construct a new combined school, and it is inconsistent with the purpose for the land to be registered as a TVG.

10.79. As for the first main argument, where land is held by a local authority for a use which permits public recreation, subsequent public recreation will be by right and not as of right. That was the decision in the ***Barkas*** case. In ***Barkas*** the issue concerned a situation where land was held under ***section 80(1)*** of the ***Housing Act 1936***. ***Barkas*** did not concern itself directly with how the local authority might go about proving that any particular statutory regime applied to any particular piece of land. Nor did it formulate any requirement that any such right had to be approved by a Minister.

10.80. There is a fundamental difference between establishing a statutory power under which a local authority holds land on acquisition, and on subsequent appropriation. An appropriation is a change of holding power. Prior to the ***Local Government Act 1933***, when a local authority ceased to require land for the purpose it had been acquired for, it had to dispose of the property, even if it wished to use it for some other purpose. It would then have to re-acquire it.

10.81. Although in the ***Beresford*** case Lord Walker had referred to the formal appropriation of public authority land for public open space purposes, this is now regarded as referring to no more or less than a decision by the authority to hold land for a public open space purpose for which it is entitled to hold it – see the ***Barkas*** case.

10.82. There are no formality requirements in respect of the recording or making of a decision to acquire land on a particular statutory basis. It is a matter of fact as to whether a local authority has decided to acquire land on a particular basis, and if so what.

10.83. Matters of fact are susceptible of proof by relevant evidence. Evidence is relevant if it tends to show that the fact asserted is more or less likely. Even without direct evidence, factual matters may be inferred from surrounding or circumstantial evidence.

10.84. As for the powers on which land is held on acquisition, there is a practical hierarchy of evidence in such circumstances. This will be: (1) a formal minuted decision as to the basis of acquisition; (2) a record in the instrument as to the basis of the decision to acquire; (3) contemporaneous evidence of the decision; (4) surrounding circumstantial evidence of the decision; (5) evidence of usage.

10.85. The Applicants rely on the ***Malpass*** decision to establish that evidence of subsequent use is not evidence, or not sufficient evidence, of the purpose for which land was acquired. ***Malpass*** was in fact a judicial review decision where the inspector had found as a fact that it was not possible to say what the purpose was for which the land had been acquired. The case is not authority for the proposition that the statutory purpose cannot be ascertained from secondary evidence. Indeed the judge considered that further evidence, together with the evidence previously before the inspector, may have shown a probability that the land was acquired under the ***Public Health Act 1875*** as a matter of fact. This indicates that it was thought quite possible for the purpose to be inferred in this way.

10.86. The ***Goodman*** case, relied on by the Applicants, does not assist here. It deals with the quite different and specific requirements for statutory appropriation under ***section 122*** of the ***Local Government Act 1972***, which requires a conscious decision that land is not required for the previous use. A mere change of use is unlikely to provide this, the inspector having found as a fact that the council officers had gradually forgotten that the land had previously been appropriated to industrial use in that case.

10.87. In ***Barkas*** the Supreme Court was willing to consider that in the absence of evidence, approval of a proposal by the Minister, where that was required for a lawful holding, would be presumed.

10.88. This is an aspect of the presumption of regularity. Where an official act is performed (for example, the acquisition of land which requires Ministerial consent) it will be presumed that Ministerial consent had been obtained because it is on balance unlikely that the authority would have acted unlawfully.

10.89. As for the 1924 Indenture, we do not have the original or executed Indenture, or any minute or document relating to the acquisition of the land. Given that the acquiring authority was Swansea RDC, and that body has been through three subsequent transformations (to Llwchwr UDC in 1930; to Lliw Valley DC in 1974; and to Swansea City Council in 1996) that is not surprising. The only relevant contemporaneous document is the draft Indenture. The disposals off of various pieces of land recite the title arising from the draft Indenture, and it is common ground that an indenture in this form was executed.

10.90. The Indenture recites the submission of a scheme to the Minister of Health for the provision of houses for the working classes, and the (undated) approval of that scheme. The Indenture also recites that Swansea RDC was the local authority

within the meaning of the Housing Legislation. The Indenture was intended to transfer the land to Swansea RDC under the then Housing Legislation. Such a scheme required the consent of the Local Government Board (later amended to the Minister of Health).

10.91. Where land was so transferred the local authority had power to lay out and construct public streets and roads or open spaces on the land. There were other powers to let or dispose of the land to other parties, the exercise of which required the need to obtain consent. The local authority in this case did not dispose of the application land acquired under this Indenture. It follows that it had the power to construct open space areas, without the specific consent of the Local Government Board, on any part of the land subject to the scheme. The Applicants' suggestion that ministerial approval was required for such construction or use is wrong. The scheme did not need to specify the open space. If the scheme had contained a specification for open space then it would have been binding on the authority.

10.92. In fact the Council thereafter constructed Parc y Werin to its present size. The byelaws also indicate that Parc y Werin was in existence by 1932. The Applicants' argument that the later conveyances away of some of the 1924 land, and the demise of part of the 1924 land to a housing association, give rise to an inference that the application land was not held as open space is misconceived, for a number of reasons. The first is that the land concerned in those conveyances, etc., was never part of Parc y Werin. There is no evidence that it was ever maintained as such. The evidence that was heard made the point that it was particularly muddy and overgrown. It was shown on the 1935 Ordnance Survey Map as overgrown. By the 1970s, if not earlier, the land to the south of the park was fenced off, as had been seen from photographic evidence. The land to the south of the park was appropriated for other purposes after being transferred. It was not necessary for Llwchwr UDC to appropriate the land to another use before transferring it.

10.93. It was unnecessary for Swansea Council to appropriate the land it demised to the housing association before it did so, even if it had been set out as an open space. Land held under acts of this sort may be used for housing, even if they are historical open space. They need not be formally appropriated to a different purpose, as is clear from the ***Barkas*** judgments.

10.94. As for what is known as the 1944 land, the 1944 conveyance of it did not state the purpose for which the freehold reversion was conveyed. However, looking at the evidence as a whole, it is as plain as it can be that the land was transferred as a pleasure ground. The following matters lead to that conclusion: The 1921 lease provided for the land demised only to be used as a pleasure ground. By 1935 the land was in use as a pleasure ground. It had a football pitch, a bowling green and tennis courts on it, and was regulated as a park by byelaws. The approach to dispose of the reversion came from the Cameron Estate, not the Council. The offer of disposal related to the freeholds of both the Parc y Werin and Argyle Gardens, which were both recreation grounds. The reason why the original disposal was by

lease appears to have been because the estate was unwilling to sell the freehold at the time. The implication therefore is that the Council would have been willing to acquire the freehold as a pleasure ground if so offered in 1921, rather than the long lease entered into. The price paid (in 1944) appears to have been based on years' purchase of the covenants under the lease, rather than any premium value based on alternative use. The clerk in his letter of 10th January 1944 recorded the Council's resolution as having been to buy the land under the powers contained in the 1933 Act and all or any other powers then enabling. The 1933 Act gave the Council power to buy land for any of their powers under general acts. The resolution in effect does not specify the purpose for which the land was acquired. The letter to the Welsh Board of Health however states that the land was acquired not only under the ***Public Health Acts 1875 to 1925*** but also the ***Local Government Act 1933***. The letter was written by the Clerk to the Council within a month of the resolution, and would be expected to be accurate. The reference to the ***Public Health Act 1875*** is consistent with the use under the lease to date. The use of the land thereafter continued to be exactly as it was before.

10.95. The use of a small part of the land for temporary housing (caravans) was either an error (in that there should have been an appropriation) or a temporary use in respect of a parcel of land that the Council did not consider was needed for recreational purposes. The power to use for other purposes where there is no requirement to use the land for the purpose for which it was held was sanctioned by the ***Attorney General v Teddington*** case, referred to earlier. There are also statutory provisions (again referred to earlier) enabling this in certain circumstances. It would be absurd to deny authorities reliance on these provisions where they no longer require land for the purpose for which it was acquired, but do not immediately require it for the purpose to which they wish to appropriate it. Equally it would be absurd to require the land to be disposed of if it was temporarily not needed for the purpose for which it was acquired. The ***Goodman*** case is not authority against this approach. It is a decision based on the inspector's factual findings in that case.

10.96. The argument about implied licence is an alternative argument. The point can be tested by asking, if the Council could not show on what basis they held the application land, would the public be using the land as trespassers? That is in effect another way of putting the test from the ***Barkas*** case.

10.97. The Applicants suggest that the Objectors cannot rely on mixed use of land as demonstrating a licence, because that is contrary to the ***Lewis v Redcar*** judgment. This is a misunderstanding of the effect of the ***Lewis*** case, which concerned the effect of 'deference'. That meant that if the public always deferred to the landowner he would not be put on notice that he should object to their presence. The Supreme Court in that case concluded that he should be put on such notice. In an implied licence case the issue is different. It is whether a reasonable member of the public should have thought that he was being permitted to go onto the land. The ***Lewis*** judgment is no authority on that question.

10.98. The ***Lewis*** point was considered by the judge in the ***Mann*** case. He concluded that ***Lewis v Redcar*** did not prevent the operation of the doctrine of implied licence.

10.99. Various matters give rise to the implication of a licence in this case. Until 1994, or possibly October 1995, or the date when Swansea took over (according to the various different pieces of evidence given to the Inquiry) the park gates were shut daily. The shutting of the gates would indicate to the public that they were being periodically excluded, and hence that their use when it did occur was permissive. It does not matter if the shutting of the gates ceased before the commencement of the application period. If an implied licence existed before that date, it would continue for a period after it, and extend on into the application period.

10.100. Until Swansea acquired the application land, Gorseinon had an annual fair which charged for entry onto the land. That is a classic event that indicates that the use of the land is permissive.

10.101. The landowner regulated the use of the land by reason of its use of the sports field, which was licensed exclusively but intermittently to third parties. There was no question here of "give and take". The landowner and his express licensees used it when they wished, and the public kept off the pitch in consequence. People cannot and did not use the land when it was in use for formal games.

10.102. The landowner here (the local authority) licensed use of the tennis courts and bowls lawns. It is immaterial for these purposes that those areas are outside the application land. They are within Parc y Werin as a whole, and the concept of licence applies to Parc y Werin. Local residents would have understood that the facilities were being used by exclusive licensees.

10.103. Furthermore the land was regulated by a park keeper or keepers until mid-1996, and signage on the land indicated that the land was under control and regulation of the owning local authority.

10.104. This was public land. In the ***Goodman*** case the judge had distinguished the ***Mann*** judgment for that reason, relying on the judge's reference to the commercial nature of the usage of part of that land. It is likely that Dove J in ***Goodman*** misunderstood the point of the ***Mann*** case. In ***Beresford*** Lord Walker had suggested that the notion of an implied licence had its attractions.

10.105. Lord Carnwath's discussion in ***Barkas*** of the ***Beresford*** case suggested that the fact of public ownership of the land concerned was material tending towards the finding of an implied licence. Where a local authority has power to grant a licence, the inference will be that a licence had been granted.

10.106. In further submissions it was argued that it was a fundamental requirement upon the Applicants that it be shown that local people using Parc y Werin had effectively been doing so as trespassers. The idea of trespass in a municipal park seems bizarre. The Objector's arguments are on the side of common sense.

10.107. In the Principal Objector's view the Applicants' case is based on a misreading of the legal authorities. It also depends on the absence of certain Council records. Going through the basis of the Council's holding of this land, no-one has the absolutely full records of what happened between 60 and 100 years ago. The Applicants' case appears to say that various important points cannot be proved as they are not clearly there in documents. In response to this the Council has three broad arguments. The first is the argument in relation to *"as of right"*. The application land has at all material times been held by the Council, right through to 2015, for the purpose of permitting the public to use the land for lawful sports and pastimes. Even if the land was not so held, everyone has tacitly agreed that they have implied permission or licence to be there. Further, because the Council has purported to appropriate part of the land for school use, that is inconsistent with registration now as a TVG; that part of the land cannot be registered as a TVG.

10.108. There has been much discussion in this case of the concept of appropriation. There is a fundamental difference between the rules when a local authority acquires land and the way in which it changes the purpose of land which it already holds. Local authorities are creatures of statute, or unnatural persons. They only have power to do what they are allowed to do. Therefore a local authority generally has to show a statutory power in order to acquire land. It used to be generally thought that once a local authority no longer needed land for its original purpose it had to sell it. Then in 1933 Parliament said that local authorities could use surplus land for another purpose. Originally in this context there was a requirement that such a change had to be approved by a Minister. That was for a formal appropriation. There is a certain amount of confusion when the term *"appropriation"* is used. In the ***Barkas*** case, both the Court of Appeal and the Supreme Court made it clear that the kind of appropriation being discussed did not necessarily mean formal appropriation. The judgment of Lord Justice Sullivan in the ***Barkas*** case was considered; this suggested that any means of allocation by a local authority of land to recreational use is sufficient to make the land held for open space purposes. In that case the judge was analysing the particular statutory power relevant to the land concerned in Whitby, Yorkshire. The position at Parc y Werin is not in exactly the same terms. The Housing Act legislation at Parc y Werin did not require ministerial consent for use as open space. It is clear from the Supreme Court judgments in ***Barkas*** that that court accepted that land does not have to have gone through a formal appropriation procedure such as that under ***section 122*** of the ***Local Government Act 1972*** in order to be regarded as properly appropriated or allocated for public recreation purposes.

10.109. The fact that the relevant statutory procedure has been gone through does not have to be recorded in any formal way. It is also a matter of fact whether any formal requirement has been complied with. Any such question is susceptible of proof by relevant evidence. It is thus legitimate to ask whether there is anything relevant as showing the likely position. One does not need direct evidence, one can take this from circumstantial evidence. For example, it could be an inference from the fact

that a local authority has spent much money making available a park for public use. This would suggest that it intended to do so. In practice there is a hierarchy for ordering evidence. If there had been a full minuted decision that would be conclusive of the matter. If there was a record in the instrument of acquisition then that would be good first hand evidence of the position. Circumstantial evidence can also be useful. In other words it is relevant to consider what people actually did after the putative decision had been taken.

10.110. In the ***Malpass*** case, the inspector had found that there had been a by right use of the land concerned on the basis of a 1964 confirmation deed. He had also found as a fact that he was unable to say what the purpose of the original acquisition was. In other words the only basis for his conclusion was the deed of 1964. It is clear from a proper analysis of the ***Malpass*** decision that the judge was willing to accept that the subsequent acts of a local authority can be relevant to deciding what was the original purpose of an acquisition. There is nothing in that case which supports the proposition that the original purpose of acquisition cannot be found from subsequent events.

10.111. As for the ***Goodman*** case, that related to land held by a local authority under various forms of landholding. The starting point in that case was that the land was not held for recreation. Thus the objector could only succeed if it could demonstrate that the land had been formally and strictly appropriated to recreational use under ***section 122*** of the ***Local Government Act 1972***. In that case the objector had referred to informal appropriation. It appeared to be suggested that one could imply an appropriation from the circumstances. Much of the difficulty appears to stem from people confusing the notion of implication with that of inference. It is not good enough to say that a use would be unlawful unless land had been appropriated to that use; that would be to suggest that by implication an appropriation had taken place. This is impermissible. What is acceptable is to rely on matters of inference. If one looks at the facts and concludes as a matter of fact that a local authority did appropriate then that would be permissible.

10.112. The point of the ***Goodman*** case was that the judge was troubled by the point that for an authority to exercise the power of appropriation under the 1972 Act, it has to be satisfied that the land is no longer required for the purpose for which it was previously held. That requires some conscious deliberative process so as to ensure that the statutory powers under which the land is held is clear. Therefore the judge in that case held that appropriation from one use to another cannot simply be inferred from how the council manages or treats the land. Thus, insofar as the ***Goodman*** judgment suggests that some formality is required, it is dealing with a different point entirely from anything which arises in the present case. It is clear however from the ***Barkas*** judgments in the Supreme Court that that court accepted that for example one could assume ministerial consent in the absence of proof contrary. Such an approach is consistent with the presumption of regularity.

10.113. As far as the 1924 Indenture is concerned, we do not have an original or an executed Indenture. Nor is there a minute or document relating to the acquisition

of the land. The Council has searched for these things and they are simply not available, notwithstanding numerous freedom of information requests. We only have a draft Indenture. Nevertheless it is common ground that an Indenture broadly like this was executed. It is plain that an Indenture of the relevant date was in fact executed, because this is made clear by the later documentation which has been found. Therefore the 1924 draft Indenture is a good root of title. Furthermore the recitals in the draft Indenture of 1924 stipulate that ministerial consent needed to be obtained. Everything that is recorded is consistent with a formal Indenture having been entered into. Nevertheless we do not have the details of the consent that the Minister gave. It is unthinkable that this transfer would have been executed for such a large piece of land without the consent of the relevant Minister. The fact that the transfer was executed, as we know from the subsequent conveyancing history, leads to a strong factual inference that the consent was properly obtained. This is the presumption of due execution.

10.114. With regard to ***section 1*** of the ***Housing, Town Planning Act 1919***, ***section 1(2)*** does not say or did not say that a scheme had to detail open space proposals, merely that it may do so. In ***section 15*** of that Act, no consent from the Local Government Board (later the Minister) is required for the provision of open space. However there is provision for consent being required relating to sale or letting of land. In this case the local authority concerned did not sell or dispose of any of the land once it had acquired it. Therefore the construction and provision of the open space here must have been under the provision which allowed for such construction without ministerial consent. It is therefore unnecessary for the local authority to demonstrate ministerial approval for that specific use on this land. This contrasts with the position in respect of ***section 80*** of the ***Housing Act 1936*** in the ***Barkas*** case. In the present case we know that Parc y Werin was provided to broadly its present extent for as long as anyone can remember. The earliest evidence of its extent is in fact from the 1935 Ordnance Survey Revision. We further know from the 1932 byelaws that Parc y Werin was in existence by that date.

10.115. The Applicants maintain an argument based on the fact that some of the rough land to the south has been disposed of without any formal statutory appropriation away from open space use. The argument was that it should be inferred that in the original scheme this land was not to be held or considered as open space land. The Applicants' argument is misconceived because it is not necessary for land to be designated as open space anyway. The 1890 – 1919 housing legislation did not require designation, just the allocation by provision and use as an open space. The land leased off in the 1980s for development by a housing association was not land which had been maintained as part of the park or open space. We know this from actual evidence. It is also plain from Ordnance Survey and aerial photographs that the nature of that area of land was quite different from that of Parc y Werin. Thus whatever the Council's predecessors had decided to do with Parc y Werin, they did not do with that other land to the south. As for the other land to the south of Parc y Werin, that was not appropriated by the Council because it was disposed of to some other authority. The relevant receiving authority appropriated it to their particular use once they had received the land.

10.116. If land falls within the Housing Acts but is used as open space, a local authority does not need to appropriate it before actually using that land for housing. That is clear from the ***Barkas*** decision. If that is right, the fact that the Council chooses to let land for the construction of housing would not lead to the conclusion that the land was not held as open space in the first place.

10.117. As far as the 1944 conveyance is concerned, it is agreed that that does not stipulate the power under which the freehold reversion was acquired. Nor are there any formal minutes showing the basis of the transfer. However looking at the evidence as a whole, it is as plain as can be that the land was transferred as a pleasure ground. The 1921 lease was clear that it was only for use for such a purpose and gave the Council full power to lay the land out for that purpose. It was on a 99 year lease for a fixed rent. The rent was to be increased by 20 times if used for any other purpose. We know from the evidence that by 1935 the land was in fact in use as a pleasure ground. It had a football pitch, bowling greens, tennis courts and byelaws in place. It was a permanent park.

10.118. In 1943 the estate which owned the freehold proposed the sale of this land with another freehold reversion. The other land concerned at Argyle Gardens, it is clear from the Ordnance Survey Plans, was laid out to flower beds and walks. All of this tends to confirm that the acquisition of these freehold reversions was not part of a plan to acquire the land and remove the restrictions on its use and develop it. The price paid in 1943/44 seems to be based on a years' purchase assessment of the rental covenant in the lease. It was clear that this was not being put forward as the acquisition of a valuable site for development purposes. The local authority was just buying out the freehold reversion.

10.119. As for the letter of the 10th January 1944, one should ask why one would not have regard to this. It was written by an office holder dealing with a body having statutory functions. It was written to the chairman of that body, and one should be able to rely on the statement of the clerk as to what the factual purpose of the acquisition was. This is extremely strong evidence that the intention was to continue to use the land as public open space under the ***Public Health Act 1875***. As a matter of fact that use of the land continued thereafter. The Applicants' suggestion that the freehold of the land was acquired for wider or general purposes is simply wrong. Nothing in the record gives any indication of any intention other than that of using and continuing to use the land as a park. That should be the end of the matter.

10.120. The appearance of the caravans is a very small and minor point. There is a possibility that the use for temporary housing would be within the Housing Acts anyway. The likelihood is that the correct legal position was simply overlooked. Thus it would appear that there was either an error in the usage temporarily for a caravan site, or that that part of the land was not needed for public open space for the time being, and so was used temporarily for another statutory purpose namely that of housing. It is impossible to raise inferences as to the purpose of the 1944 acquisition from these actions, which took place in the 1970s or 1980s.

10.121. As for the question of implied licence, it would have been clear to local people that they were being permitted to go onto the land. The Council was clearly controlling access to the land as a whole, and from time to time as to part of it. How would the matter have appeared to the public? It is possible to imply a licence by the acts of the landowner, even if not from the inactivity or acquiescence of the landowner. Here it was evident that a licence was in existence. Up to almost the start of the relevant period the gates were being regularly shut. The local authority was demonstrating that the public were not allowed to have access to the land at all times. There was some confusion in the evidence as to exactly when this stopped, but it was clear that it was somewhere between 1994 and 1996. It is the shutting of the gates which gives rise to the implication of a licence, and it is likely that that perception would have continued beyond November 1995.

10.122. Furthermore the annual fair continued until Swansea Council took over. It affected the whole park. Entrance to the park was regulated and a fee paid for admission. This is a classic example of use not being as of right. It does not matter if the entrance fee was paid to the owner or to a licensee of the owner.

10.123. It is also clear that the Council regulated use of the sports fields on the site. It is clear from both the ***Mann*** and the ***Goodman*** cases that implied licence cases are extremely fact-sensitive. Lord Walker in ***Beresford*** was effectively saying that the fact of public ownership makes it more likely that allowing the public in will amount to a licence or permission.

10.124. It is clear from the Ordnance Survey Plans and photographs that the area used for formal sports has fluctuated. For example the second football pitch only appeared after drainage works were carried out. During the relevant period for the present application the football pitches substantially covered much of Parc y Werin. Thus the park is a combined public park and sports field regulated by the local authority, not a town or village green.

10.125. As far as the statutory incompatibility argument is concerned, there is a question mark over the validity of the appropriation which has rightly been raised by the Applicants. Although that is right it is not material, because the effect of an administrative decision by a local government body is to have effect until it is challenged in court. When it is challenged it is then set aside retrospectively. It may never be challenged. The decision was taken in connection with planning matters, and there have been various other acts which have taken place in reliance on it.

10.126. The incompatibility argument is therefore based on the appropriation of 2015. The logic of the ***Newhaven*** decision was that one does not derogate from specific acts in reliance on provisions in general legislation. In the present case there was not specific legislation but enabling legislation delegating to local authorities the power to use land in the ways that they determine. It is apparent from ***Newhaven***

that if the use of land as directed by the relevant legislation had interfered with the registration, then that would have amounted to statutory incompatibility.

10.127. As far as the ***Lancashire*** case was concerned, what Ouseley J had said about statutory incompatibility was *obiter*. The relevance of the argument here is that if before the end of the relevant statutory period the local authority decide that the land will be used for the purpose of a school, and that the public will be excluded from the land, then that is inconsistent with a subsequent decision to declare the land a TVG. Parliament cannot have intended both uses to operate simultaneously. That particular educational use, specific to a piece of land, takes priority over ***section 15*** of the ***Commons Act***.

10.128. On this point it is argued that the decision should be taken now that there is statutory incompatibility, and it is not argued that one needs to wait for Court of Appeal decisions in the ***Lancashire*** or ***NHS v Surrey*** cases.

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 subsection applies where:

> *"(a) a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years; and*
>
> *(b) they continue to do so at the time of the application."*

The application was received by the Registration Authority, on 23rd November 2015. That is therefore the 'time of the application', and the date from which the relevant 20 year period needs to be measured (backwards).

Assessing the Facts

11.2. In this case, as things turned out, there were at the Inquiry only relatively minor areas of factual dispute as to the history of the use of the application site at Parc y Werin over the relevant years, and to some extent over the earlier history of the site before those years. The Principal Objector correctly noted the point that the law in this field initially puts the onus on an applicant to prove and therefore justify his/her case that the various aspects of the statutory criteria set out in ***Section 15(2)*** have in reality been met on the land of an application site. However the point was also made (correctly it seems to me) on behalf of the Applicants, that if all the facts

required to meet the statutory criteria have in fact been proved, it is for an objector then to justify a claim that there is some vitiating factor which nevertheless comes into play, so as to prevent registration of the land concerned.

11.3. To the extent that any of the facts were in dispute in this case, it is necessary to reach a judgment as to the disputed aspects of the evidence given, insofar as that evidence was relevant to the determination whether 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 (particularly 'pro forma' statements), questionnaires and the like, which have not been subjected to any such opportunity of challenge.

11.5. I do not think that the nature of the evidence given to me in this case necessitates my setting out in my Report, in a formal, preliminary way, a series of 'findings of fact'. Rather, what I propose to do, before setting out my overall conclusion, is to consider in turn the various particular aspects of the statutory test under ***Section 15(2)*** of the ***2006 Act***, and the case-law based question of *'statutory incompatibility'*, and to assess how my conclusions (on the balance of probabilities) on the facts of this case relate to those aspects. It should not however be assumed that any facts I mention under one heading are only relevant to that heading. I have taken into account the totality of the underlying evidence in reaching my conclusions under all the headings, and (of course) in reaching my overall conclusions as well.

"A significant number of the inhabitants"

11.6. In this case, right from the start, there has been no dispute that significant numbers of Gorseinon people have regularly used the application site at Parc y Werin recreationally, over very many years. This is not surprising, as it has, and has had, all the appearance of a typical municipal park or recreation ground, whatever its actual legal status might be (as discussed later). The evidence given of use of the park over many decades also supports this view.

"… of any locality …"

11.7. Initially this aspect of the statutory criteria appeared to be in dispute, but before the Inquiry, and consistently since that time, it has been agreed that Gorseinon (i.e. the area covered by Gorseinon Town Council) is a valid 'locality' for the purposes of

Section 15 of the ***Commons Act***, and has been for the whole of any relevant period of 20 years. This view is obviously correct, in my opinion. It is unnecessary therefore to consider the statutory concept of a 'neighbourhood'.

"indulged … in lawful sports and pastimes on the land"

11.8. Once again there was no real dispute that local Gorseinon people, during the whole relevant period, have made regular use of the open land at Parc y Werin for both informal and formal sports and pastimes, over the whole of any relevant 20 year period. I note that there is in fact an area covered in tarmac within the northern part of the site, which seems quite regularly to be used for car parking, albeit that much of this may be associated with recreational use of the park. The evidence suggested that parking in this area had taken place over a good many years. Nevertheless no party to the proceedings suggested that this 'parking area' and its use should be treated or considered as distinct from the remainder of the application site. That appears to me to be a reasonable approach to take to the factual circumstances here, and I recommend it to the Registration Authority.

"for a period of at least 20 years"

11.9. As I have already in fact noted, there was no dispute at all that recreational use by local people of Parc y Werin has taken place for well over 20 years, or that it was still taking place when the present application was received in November 2015.

11.10. The question whether that unhindered use by local people was in fact regularly interrupted on significant parts of the application site, namely the marked out football pitches, was logically raised by some of the evidence. This relates to the evidence, which was not really challenged, that the marked out football pitches on the park have been quire regularly licensed by the owning local authority (the Principal Objector) to local football clubs and groups for use for specific organised matches. Common sense, and normal standards of human behaviour, would suggest that other local inhabitants, not involved in the organised match, would not normally go onto the marked out pitches while such a game was going on, other than in unusual circumstances, such as to retrieve a dog which had strayed onto the pitch. That view was entirely supported by the relatively small amount of direct evidence which I heard on the topic.

11.11. However this issue was not raised by the Principal Objector on the basis that it suggested material 'interruptions' to the required 20 year period on at least some parts of the land, and there was no suggestion (for example) that the parts of Parc y Werin constituting the marked out pitches should be treated differently in the result form the remainder of the park. Rather, it was suggested by the Principal Objector that these aspects of the park's use go to whether its use by local people really was *"as of right"*, as opposed to *"by right"*, or (perhaps more relevantly) with the permission or licence of the owning local authority. This is the subject of the next part of this concluding section of my Report.

11.12. Likewise there was an element of uncertainty on the evidence as to whether an earlier management 'regime' on the park, of regularly locking at least some gates into it overnight, had or had not continued just into the very early part of the relevant 20 year period, beginning in November 1995. The evidence was (in my judgment) completely clear that no locking of park gates had taken place after Swansea Council took over from Lliw Valley Borough Council in the Welsh local government reorganisation of April 1996.

11.13. My conclusion, on the balance of the evidence which I received, is that the regular locking of park gates ceased some time before that, in the circumstances which were canvassed in the evidence, notably that of Mr Ivor Cole, and that the practice had ceased before November 1995.

11.14. However, in any event, the issue of the earlier locking of park gates was not really raised by the Principal Objector as an argument against the establishment of an uninterrupted 20 years of 'lawful sports and pastimes' use, but more as another 'marker' of the status of the land at Parc y Werin, which (the objector argued) was a facility provided for public use by the licence or permission of the local authority, rather than an area of open land being used *"as of right"*.

"As of right"

11.15. The view of the Supreme Court, in the well-known and leading case of ***R (Barkas) v North Yorkshire County Council*** [2015] AC 195, [2014] UKSC 31, appears to be that the use by the public of land where there is a clear statutory *right* to make such use, is exactly the same in principle as a use with the (implicitly revocable) *permission* or licence of the landowner, and that, they both constitute use *by permission*. The reason for conjoining these two types of situation appears to be to fit them both neatly into the category *"precario"* [by, or with permission] in the well-known Latin tag applied regularly in 'as of right' prescription cases: *"nec claim, nec vi, nec precario"* – without secrecy, without force, without permission.

11.16. I would venture to suggest (with considerable and respectful diffidence) that there is some potential logical difficulty in this particular view of their Lordships. There is a conceptual distinction (it seems to me) between, on the one hand, someone being on a piece of land by virtue of an incontrovertible statutory right to be there, and on the other hand, being on land with the revocable permission or licence of its owner. What is however completely clear from the ***Barkas*** judgment is that, both where there is a revocable *permission* from the owner to be there, *and* where there is an actual statutory *right* to be there [*"by right"*], the situation is fundamentally different from one where *"as of right"* use can be demonstrated. *"As of right"* really does mean *"as **if** of right"*: that people have to be using the land ***as if*** they had the right to be there, when in fact they did not.

11.17. Thus there is in effect a trespassory element to 'as of right' use. The people whose use gives rise to a claim have to have been (at least technically) trespassers on the

land concerned, even if they might have been tolerated trespassers, whose use was acquiesced in by the landowner.

11.18. It is clear from considerably older case-law, and confirmed by ***Barkas***, that where land has been provided as a public park or recreation ground under ***Section 164*** of the ***Public Health Act 1875*** (as amended over the years), or as a 'public open space' under the ***Open Spaces Act 1906***, the public have an actual ***right*** to enjoy the use of such land, subject only to the need to obey any relevant byelaws which might be in force. The public's use therefore is *"by right"*.

11.19. ***Barkas*** went further than that, and held that where a recreation ground had been duly provided under powers in the housing legislation to provide such grounds in connection with the provision of housing accommodation, then the public (and not just the occupiers of the specific local housing) are allowed to use such grounds, and also do so *"by right"*. Such land could not therefore be registered as a town or village green on the basis of long user by local people *"as of right"*.

11.20. None of this was really in dispute between the parties in this present case, but it is worth re-stating as the agreed basis from which one needs to consider the specifics of this case further. The Applicants' case essentially is that there are aspects of the history of this particular land at Parc y Werin which mean that, whatever the outward appearance might have been, it was not at any relevant time a public park of the kind people are entitled to use *"by right"*, and nor was there any kind of express or implied permission from the local authority land owner for local people to use the park.

11.21. In spite of the fairly uniform general appearance of Parc y Werin today (apart from areas such as the tarmac 'parking' area, the children's playground, and a few individual items of *"trim trail"* equipment), in reality it consists of two adjacent blocks of land, with a distinctly different original acquisition history. This is not controversial as between the parties, and indeed the discovery of a lot of the historical detail owes much to the assiduous efforts and researches of those involved on both sides of the present dispute.

11.22. Very approximately the eastern or north eastern two thirds of the present Parc y Werin (including the area of the bowling greens outside the current application site) was initially acquired by the present Swansea Council's predecessor on a long lease dated 31st December 1921. The Council's relevant predecessor at that time had been the Llandeilo Talybont Parish Council.

11.23. No copy remains available of the executed lease of 1921, nor of the plan associated with it. There is only a draft Indenture for the lease. That the lease was in fact executed on 31st December 1921 is known from a later conveyancing document of 24th June 1944, whereby the present Council's predecessor (by then the Llwchwr Urban District Council) acquired from the trustee freeholders the freehold interest in the land which had been the subject of the 1921 lease. The 1944 conveyance

does contain a plan of the land concerned, and I accept as probable the Principal Objector's point that this plan has the appearance of being the same as the one which clearly had been attached to the executed 1921 lease.

11.24. It is of interest to note that the 1944 Conveyance, states on its cover that it relates to *"hereditaments forming part of Parc-y-Werin Gorseinon ..."*. I shall refer to the land the subject of the 1921 lease and the 1944 conveyance as *"the 1921 land"*.

11.25. The south-western (very approximately) one third of the present application site was acquired freehold by the present Council's predecessor by an indenture dated 30th December 1924, as part of a very much larger area of land. The Council's then relevant predecessor was the Swansea Rural District Council. Later conveyancing documentation (the 1944 conveyance) records that in 1930 Swansea Rural District was formally converted to the Urban District of Llwchwr, and that in the process the Parish Council of Llandeilo Talybont was dissolved and merged into the new Llwchwr Urban District Council.

11.26. The available record of the 1924 indenture suggests that the acquisition by Swansea RDC of the land it related to had been approved by the Ministry of Health, and was pursuant to a scheme for the provision of *"houses for the Working Classes"* which had been submitted by that Council to the Ministry of Health, in the exercise of powers under the ***Housing Acts 1890 to 1919***. No record remains available of the scheme which was submitted to the Ministry of Health. Again, on my understanding of the parties' positions, as they were made clear at the Inquiry, none of what I have recorded thus far in relation to the 1924 Indenture is controversial as between the parties.

11.27. The part of the present application site which was included within the indenture of December 1924 is what I shall refer to as *"the 1924 land"* – although in this instance it will be necessary also to make some reference to other parts of the land acquired by Swansea RDC in 1924.

11.28. I shall need to consider the *"1921 land"* and the *"1924 land"* separately, as in many respects quite different issues and considerations arise in each of the two cases, as far as the general issue of whether there has been *"as of right"* use of the land by local people is concerned.

11.29. Before embarking on that separate consideration of the two adjoining landholdings, it is appropriate that I should note that in 1932 the Llwchwr Urban District Council made, and had approved by the Minister of Health, a set of Byelaws *"with respect to Pleasure Grounds"* in the UDC's area. Though they do not obviously say so expressly on their face, those byelaws have the appearance of being byelaws in respect of Public Walks and Pleasure Grounds made pursuant to ***Section 164*** of the ***Public Health Act 1875***.

11.30. One of the 'pleasure grounds' which the 1932 Byelaws relate to is 'Parc y Werin, Gorseinon'. Byelaw no.1 appears to say that both Parc y Werin and a recreation ground at Pontlliw are *"in the Parish of Llandeilo Talybont"*. I have already noted that the Parish ***Council*** of Llandeilo Talybont had apparently ceased to exist in 1930, as would automatically have happened at that time, when an Urban District Council was created. However it may well be (though nothing turns on it, in my view) that the Parish of Lland(e)ilo Talybont continued to exist for either (or both) geographical or ecclesiastical purposes.

11.31. I also note, from the helpful series of large scale Ordnance Survey Plans produced by the Principal Objector, that by 1935 the Ordnance Survey was showing 'Parc y Werin' as appearing to include effectively all of what I am calling as the *"1921 land"* and the *"1924 land"*, together possibly with a small amount of further land (within the 1924 acquisition), a little further to the south-west, which has been subsequently developed.

The 1921 land

11.32. It is clear that the leasehold interest in this land which was acquired by the Council's predecessor in 1921 was acquired for the express purposes of setting up a 'public walk or pleasure ground', or a recreation ground, on the land concerned. The ***Public Health Act 1875*** was not mentioned in the lease. This may have been because the former Llandeilo Talybont Parish Council was not, strictly speaking, an 'urban authority' of the kind referred to in ***Section 164*** of that Act.

11.33. However by 1930 Parc y Werin had been inherited (through a local government reorganisation) by Llwchwr Urban District Council, which undoubtedly was an 'urban authority'. It is known that by 1932 (if not well before that) Parc y Werin had been formed as a 'pleasure ground', because Llwchwr UDC secured byelaws governing Parc y Werin as a pleasure ground. These byelaws are entirely in a form which suggests they were made under ***Section 64*** of the ***Public Health Act 1875***, even though the Act does not appear to be mentioned in them. It is reasonable to infer that they were so made, and I do so infer.

11.34. As was fairly typical for byelaws of that time, they do not include any map or plan showing the exact geographical extent of Parc y Werin, or indeed of any other park or recreation ground to which they applied. It was to be a matter of local knowledge and evidence what the extent of a park or recreation ground was, should the matter ever be questioned in a byelaw prosecution (for example). It is again reasonable to infer that they must have applied at the very least to the land which in 1930 the Llwchwr UDC had inherited from the former parish council, held under the 1921 lease. We alsoknow from the Ordnance Survey record that by 1935 something called 'Parc y Werin' [the People's Park] was evident on the ground to the cartographers covering (apparently) the whole of the 1921 land, and further land to the west.

11.35. It was conceded at the Inquiry on behalf of the represented Applicant that if the 1921 lease had remained in effect through its full term, which would have expired in 2014, then the 1921 land would have been held by the present Council and its predecessor(s) under ***section 164*** of the ***Public Health Act 1875***, as a public park or recreation ground, for almost the entirety of the 20 year period relevant to the present case. Accordingly it would have been completely clear, following the principles enunciated by the Supreme Court in ***Barkas***, that the 1921 land cannot be registered under the Commons Act as a town or village green, because its use over the years by local people would have been 'by right', not 'as of right'.

11.36. In my view this concession was correct, and reflects the conclusion I would have drawn in any event. The argument for the Applicants however is that this situation no longer applied after the freehold to the 1921 land was acquired by Llwchwr UDC in 1944, because (in effect) that freehold was acquired for general purposes, not 'public walks or pleasure grounds' purposes; the 1921 lease was merged into the freehold, and so it and its terms ceased to exist; and other things which happened later suggested that the Council's predecessors did not treat the land as being held as 'public walks or pleasure grounds' – the original ***1875 Act*** terminology, but which covers what in more modern parlance are referred to as public parks or recreation grounds. I shall consider these points.

11.37. As already noted, in 1944 Llwchwr UDC acquired the freehold to the property free from incumbrances, with the 1921 lease merged into the freehold, so the specific lease terms about use and laying out as public walks or a recreation ground ceased formally to exist. The 1944 conveyance itself says nothing about the statutory power under which the freehold was being acquired, although it does describe the land as forming *"part of the Purchaser's pleasure or recreation ground … known a Parc y Werin…"*.

11.38. The further historical research carried out by the parties (some of it by means of pursuing Freedom of Information requests) produced a considerable volume of correspondence from the 1943/44 period dealing with this acquisition. Much of it does not add a great deal, but from it we learn that on 9th December 1943 he Llwchwr UDC resolved *"pursuant to the provisions of the Local Government Act 1933, and all or any powers them enabling"*, to apply to the Ministry of Health for consent to make the purchase of two freeholds where leases were currently held, one being the '1921 land' at Parc y Werin, and the other being Argyll [sometimes spelt Argyle in the evidence] Gardens, another (small) park or pleasure ground in Gorseinon.

11.39. It is this reported resolution which forms the essential basis of what I understand to be the Applicants' argument. Because the resolution itself made no express mention of the ***Public Health Act 1875***, but only the ***Local Government Act 1933***, and the land was acquired free of incumbrances and not subject to the former lease terms, it is argued that thenceforth the land (now freehold) was held by Llwchwr UDC for general purposes, not as a park or recreation ground.

11.40. The relevant power in the ***1933 Act*** was taken by both parties to be ***Section 157***, which allows local authorities to acquire land by agreement for the purpose of their functions under that or any other act. No ministerial consent was in fact required to exercise this power. My attention was also drawn to ***Section 158*** of the ***Local Government Act 1933***, which allowed the purchase, *with* ministerial consent, of land which was *not* immediately required for the local authority's relevant purpose(s).

11.41. The Applicants argue that because the land was thereafter held for general purposes, it was no longer a public park or recreation ground which local people could use *"by right"*. If they carried on using it, they were now doing so *"as of right"*.

11.42. However it is important to note that on 10th January 1944, just over a month after the reported resolution, the Clerk to Llwchwr UDC wrote to the Chairman of the Welsh Board of Health (in answer to a query), stating that *"the statutory* [authority] *of the Council for the proposed acquisition is derived not only from the Public Health Acts 1875 to 1925, but also the Local Government Act 1933"*. Somewhat ironically, it turned out (as seen in the later correspondence) that no ministerial consent was in fact required, because the Council was not proposing to borrow any money in order to buy the two freeholds. I should perhaps also note that, strictly speaking, the reported resolution of the 9th December 1943 was not actually to ***make*** the relevant freehold purchases, but only to make an (apparently unnecessary) application to the Ministry for consent. Presumably the actual operative decision in fact to make the purchases was taken later, following the correspondence referred to, although the parties have not been able to unearth a formal record of that decision. It must have been taken *after* the Clerk's clarification of the relevant statutory authority on 10th January 1944.

11.43. The conveyance of the freehold(s) pursuant to that decision was dated 24th June 1944. My conclusion, having regard to the balance of probabilities as far as the evidence is concerned, and the presumption of regularity ('*omnia praesumuntur* …'), is that a proper decision was taken to buy the freehold, relying on powers including the ***Public Health Act 1875*** – which in this context must mean ***Section 164*** of that Act.

11.44. Everything about the local authority's then conduct is consistent with this: the land was already held and laid out as park/recreation ground, and there was not the slightest indication of any intent to change this; the use as park/recreation ground did not in fact change after 1944, but (the evidence clearly suggests) carried on as before; the price paid in 1944 did clearly appear to represent a "years' purchase" approach to the previous rent being paid under the 1921 lease, rather than any kind of 'hope value' relating to other potential uses; the byelaws for Parc y Werin would (on the face of things) have continued unchanged, and there is no indication of any attempt to alter that position.

11.45. I found the submissions on behalf of the Principal Objector as to this particular aspect of the matter entirely convincing, and my conclusion is that after 1944 Llwchwr UDC continued to hold the 1921 land at Parc y Werin as a park or recreation ground under its ***1875 Act*** powers.

11.46. The Applicants advanced an argument that by virtue of the ***Local Government Area Changes Regulations 1976*** S.I. No. 246, the byelaws would have ceased to have any effect after March 1976. This argument, as advanced to the Inquiry, appeared to me to be based on an apparent misconception that the 1932 Byelaws were somehow related to a local government area then existing, consisting of the Parish of Llandeilo Talybont, whereas we know from the evidence that this civil parish and its Council had ceased to exist in 1930, two years before the Byelaws came into existence.

11.47. The Byelaws as enacted clearly related to the area of the old Llwchwr UDC, which continued to exist until in 1974 it was replaced by the new Lliw Valley District (or Borough) Council. In any event it seems to me to make no difference whether the Byelaws ceased to have effect in 1974, or 1976, or indeed earlier or later; and I note that the Principal Objector made clear that it did not seek to argue for the continued effectiveness of the old Byelaws during any part of the relevant 20 years under consideration in this case.

11.48. Subject to what I say below, it is clear in my judgment that the 1921 land carried on being held by the owning local authority as a park or recreation ground under ***Section 164*** of the ***Public Health Act 1875,*** after 1944, and indeed still after the local government reorganisations of 1974 and 1996. The (local) public using this land were not trespassers (or even 'technical' trespassers), but were doing so 'by right', in my judgment.

11.49. Against this clear view the Applicants sought to argue that the High Court decision in ***R (Malpass) v Durham County Council*** [2012] EWHC 1934 (Admin) should lead to a different result. Insofar as relevant here, that case appears to hold that where it was unclear (and the Inspector in that case had found it to be unclear) under what power a local authority had acquired and then held a piece of land, it did not avail that in a much later deed a local authority had put on record its view that the land was held as public open space or public works (but not gone through an appropriation process at that later time).

11.50. In this present case however, the evidence clearly points (in my view) to the freehold being acquired in 1944 in order to carry on the land's already established use as a public park or recreation ground, and I so find as a fact.

11.51. An important further fact on which the Applicants place great significance is that in the 1970s the Lliw Valley Borough Council took a decision to permit the temporary stationing of up to six caravans for residential use, as a temporary measure while some houses were being repaired/renovated, on an area within the

northern part of Parc y Werin. In the event only two such caravans were apparently so placed for a period (the precise dates of which were not completely clear from the evidence), and as it happens these seem to have been in the western corner of the '1921 land'.

11.52. The Applicants argue that this therefore shows that the local authority knew or considered that it held the land at Parc y Werin as general purpose land, with which it could (subject to any other relevant legal restrictions) do what it liked, rather than as a park or recreation ground. Or, putting it another way, that it is further evidence suggesting that the local authority's predecessor in 1944 really did intend to, and in fact did, acquire the freehold to the park for its general purposes.

11.53. It undoubtedly is the case that no records have been found showing that Lliw Valley Borough Council properly considered, still less carried out, an appropriation from park/recreation use to the temporary use for caravans. However it is equally the case that they carried out no formal (re)appropriation in the other direction when the temporary caravans were removed, and the land restored for many further years to its use as part of the park/recreation ground.

11.54. It is difficult for me to judge, on the basis of any material presented to the Inquiry, what exactly was in the 'mind' of Lliw Valley Borough Council when it agreed or decided upon the temporary caravans, other than a short term solution to a current practical problem. Although the matter was dealt with as a matter of town and country planning, I do not know what if any legal advice the then Council received or considered in relation to its powers (or lack of them) in relation to changing the use of land it owned for a particular purpose. I do not know (for example), and nor did any of the parties to the inquiry claim to know, whether Lliw Valley acted in the belief (or on advice) that it had powers to make such temporary use of open land it owned, or whether it just went ahead in (legal) error, and without any proper advice.

11.55. What is clear, it seems to me, is that it is logically impossible to conclude that it made some kind of implied [or 'to be inferred'] appropriation from open land in park/recreational ground use to use as a residential caravan site, without also concluding that it must have made a similar 'appropriation' in reverse, when it removed the caravans and restored the original use.

11.56. It does not seem to me therefore, as a matter of judgment, that the 'temporary caravans' episode has any bearing on my conclusion that, from at least the 1930s, the 1921 land at Parc y Werin has, on a proper view, been held by the Council and its predecessors for park/recreation ground purposes under ***Section 164*** of the ***Public Health Act 1875***. I shall deal later with the question whether the purported 'appropriation' of July 2015 – which included a small part of the 1921 land – raises an issue of 'statutory incompatibility'. It has no effect on my conclusions on the *"as of right"* issue. The 1921 land has ***not*** been used *"as of right"* by local people, in my judgment on the evidence.

11.57. Argument was also advanced on behalf of the Applicants, based on the fairly recent judgment of Dove J in the High Court in the case of ***R (Goodman) v Secretary of State for Food and Rural Affairs*** [2015] EWHC 2576 (Admin). I have considered carefully both the arguments advanced and the judgment of Dove J. The gist of that judgment seems to me to be that it cannot properly be assumed from the mere conduct of a local authority, in terms of its management of land in its ownership, that it has validly *"*appropriated*"* the land from one undoubtedly lawful previous ownership purpose or function, to a new one reflected by the more recent land management practice. For an 'appropriation' from the previous valid purpose to have occurred, the authority has to be seen to have gone through a process which either was, or was closely akin to, that required under ***Section 122*** of the ***Local Government act 1972***, of forming the view that the land was no longer required for the purpose for which it was previously (lawfully) held.

11.58. I am afraid I do not see this judgment of Dove J as in any way helping the Applicants, as far as the 1921 land is concerned. Indeed it tends to confirm my view that the temporary stationing of two caravans on a small part of that land in the late 1970s and 1980s was a mere footnote or (less than fully explained) 'quirk' in Lliw Valley Borough Council's management of this land. It did not mean that Lliw Valley Council had 'appropriated' any of the 1921 land away from park/recreation ground use to a temporary housing use – nor indeed that it 'appropriated' the land back to park/recreation ground after the caravans went. The purpose for which Lliw Valley Council lawfully held that land during the whole of the period relevant to this point was as a park/recreation ground, on my assessment of the facts in this case. As mentioned above, this view is supported by the clear fact that, after the caravans went, the land did in fact revert, without any apparent record of formal decisions being taken, to its park/recreation ground use.

The 1924 Land

11.59. As noted above, the formal history of this land, in terms of statutory powers for its acquisition and subsequent ownership, is almost completely distinct from that for the 1921 land, even though at present the 'plots' merge seamlessly into one another, and appear to be in exactly the same use, a situation which the evidence suggests may well have been the case for very many decades.

11.60. This land was acquired freehold in 1924 by the Swansea Rural District Council, another predecessor of the Llwchwr UDC which was established in 1930, and hence eventually also of the present Principal Objector Swansea Council. I have already noted that this land was acquired by Swansea RDC as part of a very much larger purchase of land in this part of Gorseinon pursuant to a *"scheme"* under the Housing Acts 1890-1919 for the provision of *"houses for the working classes"* which had been submitted to the Ministry of Health. The conveyancing documentation from 1924 records that the purchase was approved by the Ministry of Health. No record has been found of the contents of that 'scheme'.

11.61. It is clear from the evidence I received that much of the land acquired under the 1924 Indenture was indeed developed for housing, with some other associated development. However I have seen or heard no evidence that *"the 1924 land"* within the present application site was ever developed for housing purposes in the sense of ever having houses or domestic curtilages etc. set up on it.

11.62. Indeed, as noted above, by the time of the 1935 large scale mapping by the Ordnance Survey, the cartographers marked indistinguishably as 'Parc y Werin' an area which appears to include the whole of the present *"1921 land"* and *"1924 land"* within the application site, together with a small amount of further land to the west (but which was also included within the 1924 purchase). It is not entirely clear however, from any evidence which I received, whether at the time of the 1932 Byelaws Llwchwr UDC would have regarded 'Parc y Werin', as referred to in those Byelaws, as including the *"1924 land"* within the present application site.

11.63. The 1935 Ordnance Survey also showed as open, undeveloped land, but marked in the way usually associated with 'rough grazing' or similar, another long strip of land, running along the entire southern boundary of the present application site, and then rather further west. This strip of land was also included in the purchase under the 1924 Indenture, and in the event I heard a considerable amount of evidence in relation to it.

11.64. It seems to have remained largely undeveloped for several decades, and indeed this was still the case at the time of a clear aerial photograph of 1967 which was produced to the Inquiry, when the land had the appearance (from the photograph) of fairly rough scrubland – a description which accords with such oral evidence about it as was given to the Inquiry. However the more south-westerly parts of the present application site also had (in the 1967 photograph) the appearance of fairly rough scrubland, as opposed to the more manicured, or at least 'managed' appearance in the photographs of the remainder of the site to the north-east. Some of the oral evidence I heard also corroborated the view that around that time the south western part of the present application site was fairly rough ground. The 1967 aerial photograph did however give the impression of some demarcation existing between the present Parc y Werin and the other strip of land to the south of it, as did (rather more clearly) another large aerial photograph from a probably slightly later period which happened to be hanging in the lobby of the Inquiry venue.

11.65. It is right to note also that the series of large scale Ordnance Survey maps which were produced to the Inquiry, dating from more recently than 1935, did not show a consistent demarcation line between more managed land and rougher land to its south and south west, several times (notably in the 1969 survey, but also in others) showing rougher ground extending northwards into the present application site.

11.66. However it is a notable feature of what has happened immediately to the south of the application site that since the late 1960s the entirety of this strip of land (also included in the 1924 purchase) has been gradually developed with a series of

mostly quite large buildings, with their curtilages, which now have a character (and uses) quite different from that within the application site. Only the extreme eastern end of that southerly 'strip' of land had been developed, with one small educational building, by the time of the 1967 photograph.

11.67. A reader unfamiliar with the background and arguments in this case might wonder why I devote so much attention to a strip of land outside the application site under consideration. This is because the Applicants seek (in effect) to argue that this particular strip is a strong example justifying the view that the land acquired in 1924 has been held as a whole by the present Council's predecessors more in the way of being general land kept available for the purposes of potential development, rather than being land some of which (that on the application site) has been made available for recreational use by local people 'by right', or by permission.

11.68. It is certainly true that no record remains available of what specifically was envisaged in the 'scheme' submitted to the Minister in 1924 as the intended use of the 1924 land, within the application site or elsewhere. However such evidence as there has been leads me to the conclusion, on the balance of probabilities, that the 1924 land within the application site has been consistently provided as a matter of fact, for use by local people for recreational purposes, even if (as noted above) some parts of it have for some of the time consisted of rather rougher ground than the rest of it. Indeed the evidence is convincing that over very many decades *"the 1924 land"* (in this sense) has been made available for public use in much the same way as has been the '1921 land', as discussed above.

11.69. I accept the point however that this in itself does not necessarily mean that the 1924 land within the application site was being held by the Council's predecessors for a purpose or purposes which gave the public a right or permission to use it. It is necessary to consider more deeply what this land was actually being held for over the years, and whether there are any inferences which can reasonably be drawn from such facts as are known.

11.70. Plainly, as noted previously, much of the wider area of land acquired in 1924 was in fact developed for housing estates, as one would expect. The Inquiry's attention was however drawn to some of the specific provisions of the ***Housing, Town Planning Act 1919***, which was (it seems) the most recent and current piece of housing legislation in effect when the 1924 acquisition was made. ***Section 1*** of the ***1919 Act*** set out some specific requirements which a *"scheme"* for the housing of the working classes had to satisfy, when it was put forward for approval, initially by the Local Government Board, latterly by the Ministry of Health. These requirements did *not* include anything about open spaces, parks or recreation grounds within the areas to be developed **[*Section 1(2)*]**, but did allow for schemes to contain 'incidental, consequential and supplemental provisions'. Once a scheme was approved, it was binding on the local authority concerned **[*Section 1(3)*]**.

11.71. However, as noted above, no record remains of the scheme which was approved in this case, or whether it said anything at all about the provision of open space, etc, within the housing area, or more particularly about where within the acquired land such provision was to be made.

11.72. However ***Section 15(1)*** of the **1919 Act** specifically allowed local authorities to *"lay out and construct ... open spaces on the land"* which they had acquired for the purpose of 'housing the working classes', and it is clear from the section that no further ministerial or Local Government Board consent was required in order to do that.

11.73. The relevance of this, it seems to me, is that it is reasonable to infer from the evidence that this land (the 1924 land within the application site) was, at an early date following its acquisition, set apart as an open space area within the much wider area acquired for housing, and that this was something the local authority at the time was fully empowered to do, pursuant to the statutory power I have just been discussing. This, it seems to me, is the 'presumption of due process' being applied in a proper way. The land concerned has never really been used for anything else other than as an open space recreational area, within the wider area being developed over the years. More than that, it has been consistently managed for many decades as part of a park or open space.

11.74. It does not seem to me to matter that other (large) parts of the overall land acquired in 1924 were in fact developed for housing; that is exactly what one would expect, and does not detract from the evidence that the '1924 land' *within* the application site was in fact laid out and provided as open space for local public use, pursuant to the statutory power to do precisely that.

11.75. Nor does the fact that the 'southern strip' of land, to the south of the present application site, has been sold or leased off for other purposes seem to me to affect the position. Most of the plots were sold or transferred to other public organisations pursuant to specific decisions by the Council's predecessors to make such transfers. The most recent development on the 'southern strip', pursuant to a lease to the Gwalia Housing Association, was specifically for a housing use, the original overall purpose of the 1924 acquisition.

11.76. There is no evidence, it seems to me, that any of the land within the 'southern strip' ever was treated as an indistinguishable part of the open space, or part of Parc y Werin, only to be later removed from such use without any recorded 'appropriation'. That land always was treated as separate and distinct from either the 1921 land or the 1924 land within Parc y Werin, it seems to me from the evidence.

11.77. In my judgment therefore, the position in relation to the 1924 land within the application site is in fact strongly analogous to that of the recreation ground within a former municipal housing estate considered by the Supreme Court in ***R (Barkas)***

v North Yorkshire County Council [2015] AC 195. In that case the recreation ground had been provided on what was originally 'housing land', pursuant to a statutory power to provide such a facility, which in that case required a ministerial consent, which was (it seems) obtained. In this present case part of an overall area acquired for a housing scheme was, on my judgment of the facts, provided by the local authority as an 'open space' area, pursuant to a statutory power to do so which did *not* require ministerial consent.

11.78. It does not in my view avail the Applicants to argue that we do not know whether ***Section 15*** of the ***Housing, Town Planning Act 1919*** was still in force whenever the 'decision' was made to lay out the '1924 land' part of Parc y Werin as an open space area, as it is my general understanding (and in accordance with the submissions for the Principal Objector about this point) that the power to lay out and provide open spaces within housing areas persisted right through the subsequent legislation in ***1936 Housing Act***, and is still there in ***Section 13*** of the ***Housing Act 1985***.

11.79. I do not see how, in the light of the ***Barkas*** judgment, it can be plausibly argued that the local public using the deliberately provided '1924 land' part of Parc y Werin were doing so as trespassers, 'as of right'. They were clearly doing so, in my judgment, 'by right' or 'by permission' of the owning local authority.

'Implied Permission', etc.

11.80. The case-law does indeed indicate that the concept of *implied permission* can be of relevance in 'village green' cases (as a matter which can vitiate 'as of right' use), and a certain amount of time was spent at the Inquiry discussing it. It was argued by the principal Objector in relation to both the 1921 land and the 1924 land, i.e. in effect the whole of Parc y Werin. However I would express some reservations as to its relevance as a matter needing further consideration, in a case where the correct view on the law and the facts appears to be (as I conclude and advise it to be here) that there was an *actual* right or 'permission', arising from the status of the land, for members of the public to use the land at all relevant times.

11.81. The points pursued by the Objector which I have in mind are those about the occasional closing of the park (to all but paying customers) for funfairs, the previous history of closing gates at night, fencing off the bowling greens area, licensing specific groups to use the football pitches etc.

11.82. By way of an aside, it is not entirely clear to me how some of these reported aspects of the running of the park would have been consistent with the 1932 Byelaws (for as long as those remained in effect), although undoubtedly some of them would have been. However they all seem to be fairly typical of the sorts of thing which are commonly expected in a public park, at least from time to time, and the fact that they happened does not in any way suggest (in my judgment) that at other times local people were using the park as trespassers (i.e. *"as **if** of right"*).

They clearly had a lawful ***right*** to be there, in this public park/recreation ground, subject only to any properly enacted and enforced byelaw provisions.

11.83. Other arguments were also (briefly) raised by both sides during the course of the Inquiry, or in the exchanges of representations before it, about matters as diverse as the 'Dog Fouling Bins' within the park and surrounding area, or the existence of some 'rear access gates' into the park from people's back gardens. Neither these points, nor any others which may have been mentioned in passing, has any effect on what in my judgment is the clear position that local people were, during the whole of the relevant period, using Parc y Werin 'by right', not as trespassers, or 'as of right', for the reasons discussed above.

'Statutory Incompatibility'

11.84. In initial advice which I gave to the Registration Authority, which was seen by both principal Parties, I expressed some doubts as to the soundness of this point (in the context of this present case), as it had been raised in the Principal Objector's original statement of objection. At that time it had been argued that the principle of 'statutory incompatibility' barred the registration under the ***Commons Act*** of *both* the '1924 land' originally acquired for housing purposes *and* the (substantially but not entirely overlapping) land which had been purportedly appropriated in July 2015 to education purposes.

11.85. This objection as a whole was based on the line taken by the Supreme Court in its then relatively recent judgment in the case of ***R (Newhaven Port and Properties Ltd) v East Sussex County Council*** [2015] AC 1547; [2015] UKSC 7. That case related to the somewhat unusual factual circumstance of a 'village green' claim having bene made in respect of a tidal 'beach' which was itself within the territory of a working port of harbour. The working of that harbour was both governed and empowered by various pieces of local and more general harbour legislation. It was held by their Lordships in the Supreme Court that registration of the piece of land concerned as a 'town or village green' was incompatible with the statutory empowerment, under other more specific provisions, of the use which could be made of the same piece of land as part of a working harbour.

11.86. I advised the Registration Authority previously, and still say, that I do not find the reasoning and explanation of the principal judgment in ***Newhaven***, given by Lord Neuberger and Lord Hodge jointly (with Lady Hale and Lord Sumption agreeing), entirely easy to follow, in terms of the intended scope and breadth of any principle that they were laying down. I also noted in passing that Lord Carnwath did not agree with the majority on this point. It is clear that a 'statutory incompatibility' principle applies when there is an active, statutorily empowered current use (in that case the harbour use) whose continuation is (or at least might be) manifestly at odds with registration under the ***Commons Act***. But on the other hand, as the Applicants in this present case had pointed out in their Response, Lords Neuberger and Hodge did also specifically say (***Newhaven***, para 101): *"The ownership of land by a public body, such as a local authority, which has statutory powers that it can*

apply in future to develop land, is not of itself sufficient to create a statutory incompatibility."

11.87. Since the initial exchanges of submissions by the parties in this present case, and my initial advice as referred to above, the principle of 'statutory incompatibility' in the context of town or village green claims has been addressed in High Court judgments in two different cases: ***Lancashire County Council v Secretary of State for the Environment etc, and Bellingham*** [2016] EWHC 1238 (Admin), and ***R (NHS Property Services Ltd) v Surrey County Council*** [2016] EWHA 1715 (Admin).

11.88. In the ***Lancashire*** case Ouseley J upheld the determination of an Inspector to the effect that the principle of 'statutory incompatibility' [based on the ***Newhaven*** judgment] did not apply so as to prevent registration of some land which (it was argued) was held by the County Council for education purposes. I should note briefly that there was some argument in these present proceedings as to whether the part of Ouseley J's judgment dealing with this particular part was *obiter* or not.

11.89. In the ***NHS Property v Surrey*** case, Gilbert J concluded (to give a very brief summary) that some land held by a property 'arm' of the NHS could not be registered as a village green (in spite of the ***Commons Act*** tests being met), because that was incompatible with the potential development of that land for statutory purposes associated with the NHS.

11.90. Neither Counsel appearing before me expressed the view that it is easy to detect a common and consistent logical thread running through those two judgments, and I would respectfully agree on that point. The key point which they did both draw to my attention (and which I was in any event aware of through professional sources) is that both of these cases are apparently due to be considered further, by the Court of Appeal, it seems potentially in a conjoined hearing, in the autumn of this current year.

11.91. Thus, had this point turned out to be the key determining issue in this present case, it may well have bene appropriate for the Registration Authority to have delayed issuing its final determination until after the appearance of the Court of Appeal's anticipated judgment in the two cases referred to. The alternative to this would have been (in my view) to proceed to take a decision now which placed the greatest emphasis on what the Supreme Court Justices actually said in ***Newhaven***, including the sentence which I have quoted at paragraph 11.85 above.

11.92. Regardless of which of these would have been the better course to take, there are other additional conclusions which can in my view be fairly drawn now in relation to the Principal Objector's statutory incompatibility argument. As it was being put by the time of the Inquiry, the Principal Objector's argument on this point relied solely on the purported 'appropriation' of the western part of Parc y Werin which was carried out in July 2015 by the Council's Cabinet, which (it seems) was carried

out with a view to to appropriating the relevant land to educational purposes (in order to build the proposed school) from the purposes for which it had been held by the Council beforehand. July 2015 was of course within (even if only by a few months) the 20 year period to which the Applicants' claim under ***Section 15(2)*** relates.

11.93. However, having considered the evidence and arguments put forward by the Principal Objector, I remain entirely unsatisfied that the purported appropriation was carried out properly or effectively; the apparent wording of the Cabinet resolution concerned did not even mention the purposes to which (or indeed from which) the land was being purportedly appropriated from one 'Director' (of Place) to another one (of People). I have very strong reservations about the effectiveness of that as an appropriation at all.

11.94. The appropriation of land by a local authority from one purpose to another authorised one is subject to a certain amount of formality, prescribed by ***Section 122*** of the ***Local Government Act 1972***, including a clear requirement for a conclusion that the land *"is no longer required for the purpose for which it was held immediately before the appropriation"*. There are further formalities required as to advertising in relation to land 'forming part of an open space' (which both sides agree were applicable to the circumstances at Parc y Werin).

11.95. I have carefully considered what actually happened here, from the documentation produced to the Inquiry both by the Principal Objector Swansea Council, and for the Applicants' side. It may very well be that the Council's officer responsible for the fuller Report attached to the 'Report of the Cabinet Member for Education' to the Council's Cabinet of 16th July 2015 had some understanding that, in order for it to be lawful to build school buildings on part of the parkland at Parc y Werin, the *"land use had to be altered from recreation to Education purposes and hence the requirement for appropriation"*. Indeed she said as much in paragraph 8.1 of that Report, under the heading 'Legal Implications'.

11.96. However I can see no sign at all in that Report (and none was drawn to my attention) that its author had any appreciation that a decision needed to be consciously made that the land concerned was *"no longer required"* for its immediately previous (recreational) purpose. The relevant *"recommendation"* in the report merely said *"As no objections to the appropriation have been received, the Appropriation of the land at Parc y Werin from the Director of Place to the Director of People is approved which will enable the building of the proposed Gorseinon Primary School"*. The subsequent Cabinet 'decision' of 16th July 2015, as recorded, is in effectively identical wording. There was therefore no wording in the relevant resolution which made any reference at all to the actual purpose or use from which the land was being purportedly appropriated, and only a rather oblique one to the use for which the land was being purportedly appropriated *"to the Director of People"*.

11.97. Furthermore, both the Cabinet Report and the record of the decision made reference to the wrong statutory provision, ***Section 123*** instead of ***Section 122*** of the ***1972 Act***. The actual statutory notices, required under ***Section 122(2A)*** to invite objections to a proposed appropriation, had also referred to the wrong section, as well as both making no reference to the use or purpose *from* which an appropriation was being proposed, and describing the new purpose as *"property development"*. These notices also, in two places, said that what was being proposed was a 'disposal' of the land, rather than an appropriation.

11.98. To be frank, it would be difficult to conceive a more inadequate or unsatisfactory handling of the procedural requirements associated with seeking to bring about such a potentially contentious appropriation as one from long-established parkland to use of the land for building on it (albeit for a publicly useful purpose such as a school).

11.99. I do however need to state at this point that as an Inspector appointed to assist the Council in its role as Registration Authority in making a determination under ***Section 15*** of the ***Commons Act***, it is not at all my role or within my 'jurisdiction' to make any kind of formally binding finding or decision as to the legal validity of an act carried out by the Council in another capacity entirely. All I can do is weigh up the soundness of the point being argued on behalf of the Council as Principal Objector, that because of the purported July 2015 'appropriation', the relevant part of Parc y Werin ***cannot*** be registered under the ***Commons Act***, by reason of 'statutory incompatibility'.

11.100. In this context therefore, I conclude that it seems to me that aggrieved local people, in any relevant legal context, would have a very high chance of establishing that the purported appropriation of July 2015 was completely ineffective – i.e. no valid appropriation took place at all, because of the manifest and multiple defects in the procedure which I have referred to above.

11.101. I should say that I accept in a general sense the argument advanced by Mr Blohm QC for the Principal Objector that in principle a formally recorded decision of a public authority will be presumed to be effective, even if (for example) there was some underlying defect rendering the decision liable to judicial review, unless and until it has been successfully challenged in a court of competent jurisdiction. However in this particular case, it seems to me on the facts, the purported decision made was so ill-considered and ill-expressed that it did not succeed even on its face, in carrying the appearance of being a proper and valid appropriation.

11.102. I also agree with the point made by Mr Wilmshurst for the Applicants that, on the face of things, even though no attempt has been made to bring Judicial Review proceedings against the purported appropriation, it would be open to an aggrieved local person to argue, with some reasonable prospect of success, that there had been no effective appropriation at all, in (say) injunctive proceedings, upon the appearance in the park of diggers or construction work.

11.103. However, as I have foreshadowed above, the true relevance of these remarks in the present ***Commons Act*** context is to lead me to the conclusion that in my judgment the 'statutory incompatibility' argument put forward by the Principal Objector is unpersuasive as an additional ground for rejecting the present application.

11.104. Thus the conclusion on this particular point which I reach, and commend to the Registration Authority, is that in the circumstances of this particular case, 'statutory incompatibility' should *not* be regarded as a sound additional basis or ground for rejecting the Applicants' application.

11.105. I might also note (though this point was not followed through in argument by the parties before me) that where, as here, a 'statutory incompatibility' is only claimed to have come about in the last few months of the relevant 20 year period under ***Section 15(2)*** of the ***Commons Act***, the question might need to be considered whether in those circumstances an Applicant's application can be considered 'in the alternative' under ***Section 15(3)***, if 'as of right' use could be shown to have extended back well over 20 years before the application date. The application would have been made well within the 2 year period applicable in Wales to ***Section 15(3)*** cases, and it would seem arguably to be highly unjust to applicants (and not called for by the actual wording of ***Section 15***) to hold that they must lose their claim entirely if they have 'backed the wrong horse' as between ***subsections (2)*** and ***(3)***, in circumstances where a decision as to which would have been the more appropriate subsection can itself only be reached by resolving uncertain or contentious issues as between the parties.

11.106. However it will be appreciated, in view of what I have said above in relation to the statutory incompatibility argument, that the point I have made in the preceding paragraph is in reality something of a 'footnote', which does not have any effect on my overall conclusions and recommendation, based on the arguments as between 'by right' and 'as of right' use of this land by local people.

Some 'overview' points

11.107. Before formally expressing my final conclusions and recommendation to the Registration Authority, it seems to me that there are two rather wider points on which it might be appropriate to make some observations. The first is that, as the Principal Parties in this case are fully aware, when I was first asked to assist the Registration Authority in this case, I took the view based on the initial exchanges of representations from both sides that there appeared to be very little if any material disagreement as to the relevant factual history of what had happened at Parc y Werin over the years, and that therefore it might well be possible to decide this case 'on the law', based on the exchange of written representations, i.e. without the need for a local inquiry, or the hearing of oral evidence..

11.108. It subsequently transpired that various aspects of the factual history had become confused, or mis-stated or unclear, and the decision was taken by the Registration Authority, rightly in the circumstances (in my judgment), that a public local inquiry should be held, in order to seek to resolve the areas of uncertainty, and their legal consequences. Clearly, that might not have proved necessary, had the accurate historical facts been more fully established at an earlier date.

11.109. The second general observation which I feel can usefully be made is to note the point that it is not part of the role of Registration Authorities, in administering ***Section 15*** of the ***Commons Act 2006***, to seek to make up for arguable or perceived deficiencies in the general law as to the 'protection' from unpopular change of parks, recreation grounds and open spaces in the care and ownership of local authorities.

11.110. It is the case that, for several decades now, at least since Parliament enacted ***Section 122*** of the ***Local Government Act 1972*** in its present form (which is now significantly amended from the original), Parliament has left it to local authorities themselves to make decisions as to whether such open areas in their care can be 'appropriated' to other uses, including putting buildings and development on them. The only effective provisos are that the authority concerned must make a conscious decision that the land is *"no longer required*" for its previous purposes, and that it must advertise its intentions in accordance with ***Section 122(2A)***, and properly consider any objections received in response.

11.111. This undoubtedly means that land consisting of parks, recreation grounds and public open spaces, even long-established ones, has considerably less legal 'protection' from an owner bent on development, compared with land registered as a town or village green under the ***Commons Act***. It is therefore understandable that local people concerned about proposed developments on parks and recreation grounds should try to get them registered under the ***Commons Act***, especially when the courts up to the House of Lords/Supreme Court, have been consistently clear that there is no exemption from registration under that Act, simply because land belongs to a local authority. It is even more understandable in circumstances where it might be perceived that no proper weight has been given to the importance of preserving established parks and open spaces in their present use.

11.112. However it has been equally and consistently clear from case-law for some time now that land which actually is held or allocated by local authorities for parks, recreation grounds, or open space use ***cannot*** be registered as a town or village green, because its use by the (local) public is 'by right', or 'with permission', not 'as of right'. Concerned local people therefore do need to understand that the only 'remedy' for these concerns in such cases is a 'political' one, both in a local sense by actively pursuing opportunities to object to proposed appropriations and disposals, and in a 'national' sense by seeking to persuade the Westminster Parliament or the Welsh Assembly, as appropriate, to consider changing the relevant statutory provisions.

11.113. What cannot be a satisfactory mode of proceeding is to seek to persuade Commons Act Registration Authorities, (perhaps especially when they are also, at a corporate level, the landowner concerned) and those assisting them in making decisions, to determine matters in a way manifestly in defiance of the present state of the law.

11.114. I do not say any of these things by way of implicit criticism of the principal parties in the present case, both of whose contributions I have found helpful in pointing the way towards a resolution of this dispute. These latter remarks of mine are intended more as general observations which (although they arise out of the factual circumstances of this case) might I hope be of at least some wider assistance to those who might come to read them.

Final conclusion and recommendation

11.115. As will be apparent from what I have set out at some length in this section of my Report, my conclusion is that the Applicants have ***not*** succeeded in making out a case that the application site, or any part of it, should be registered pursuant to ***Section 15*** of the ***Commons Act 2006***. In particular they have failed to establish that the land, or any part of it, had been used *"as of right"* during the relevant period, within the legal meaning of that expression.

11.116. Accordingly my recommendation to the Council as Registration Authority is that ***no part*** of the land of the application site at Parc y Werin should be added to the Register of Town or Village Greens maintained under the ***Commons Act 2006***, pursuant to the Applicant's application, for the reasons given in my Report.

ALUN ALESBURY
8th May 2017

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

APPENDIX I

APPEARANCES AT THE INQUIRY

FOR THE APPLICANTS (although technically he was instructed only on behalf of the one Applicant Cllr. James Dunckley):

Mr Paul Wilmshurst, Counsel

- Instructed by Messrs Edward Harris, Solicitors

He called:

Cllr. David Cole of 209 Frampton Road, Penyrheol, Gorseinon
Mr Crispian Huggill, of 19 Pencaecrwn Road, Gorseinon
Mr Andrew Thomas, of 13 Brynawel Road, Gorseinon
Mr Ivor Cole, of 3 Bryn Close, Gorseinon
Cllr. Claire Lewis (joint Applicant), of 16 Brynhyfryd Road, Gorseinon
Ms Anne-Marie Rees, of 30 Llanerch Crescent, Gorseinon
Mrs Beatrice Jones, of 48 Brighton Road, Gorseinon

FOR THE PRINCIPAL OBJECTOR (The City and County of Swansea as landowner and Local Education Authority):

Mr Leslie Blohm, Queen's Counsel

He called:

Mr Alex O'Brien, Chartered Surveyor, Property Manager,
Corporate Building and Property Services Dept, City & County of Swansea

Mrs Louise Herbert-Evans, Head of Capital Planning and Delivery Unit,
Education Department, City & County of Swansea.

APPENDIX II

LIST OF NEW DOCUMENTS PRODUCED TO THE INQUIRY

NB. This (intentionally fairly brief) list does ***not*** include the original application and supporting documentation, the original objections, or any of the considerable quantity of further representations or material submitted by the parties (or others) prior to the issue of Directions for the Inquiry. It also excludes the material contained in the prepared, mainly paginated bundles of documents produced for the purpose of the Inquiry on behalf of the Applicants and the Principal Objector, all of which were provided to the Registration Authority (and me) as complete bundles.

FOR THE APPLICANTS:

'Summary of the Case of the Applicant'

Bundle of 'Supplementary Information' produced by Mr Crispian Huggill, to be filed as Appendix to his personal statement

Written submissions of Mr Edward Bailey in the 'Newhaven' case (Supreme Court)

Applicants' 'Further Evidence in Response to Objector', in response particularly to Mr O'Brien's statement of 17th January 2017

Regulation 41 of the Local Government Area Changes Regulations 1976 S.I. No.246

FOR THE PRINCIPAL OBJECTOR:

Halsbury's Laws extract on 'Presumption of correctness'

Written Note of Closing Submissions