

COMMONS ACT 2006, Section 15

**CARMARTHENSHIRE COUNTY COUNCIL
(Registration Authority)**

**RE: LAND KNOWN AS LLANERCH RECREATION
OR PLAYING FIELD,
LLANERCH,
LLANELLI**

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

into

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

as

TOWN OR VILLAGE GREEN

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1. INTRODUCTION

- 1.1. I have been appointed by Carmarthenshire County Council (“the Council”), in its capacity as Registration Authority under the *Commons Act 2006*, to consider and report on an application, received by the Council on 1st March 2017, for the registration of an area of land known locally as the Llanerch Recreation or Playing Field, at Llanerch, in Llanelli, as a Town or Village Green under *Section 15* of that Act. The site is within the administrative area for which the Council is responsible, and is also, I understand, entirely within the freehold ownership of the Council.
- 1.2. The Council, in its capacity as owner of the site concerned, was the principal and by the time of the Inquiry the only active objector to the application. It is important to record that my instructions in relation to this matter have come from the Council solely and exclusively in its capacity as Registration Authority under the *Commons Act*. I have had no involvement with the Council in its capacity as landowner or objector, or as local education authority, or in any other capacity, apart from in the context of receiving evidence and submissions from the Council in one or more of those capacities, as one of the parties to the disputed issues relating to this application.
- 1.3. I was in particular appointed to hold a non-statutory Public Local Inquiry into the application, and to hear and consider evidence and submissions in support of it, and on behalf of the Objector(s). Hence I was provided with copies of the original application and the material which had been produced in support of it, the objections duly made to it, and such further correspondence and exchanges as had taken place in writing from the parties. Save to the extent that any aspects of that early material may have been modified by the relevant parties in the context of the Public Inquiry, I have had regard to all of it in compiling my Report and recommendations.

2. THE APPLICANT AND APPLICATION

- 2.1. The Application Form was itself dated 1st February 2017, but was stamped as validly received by the Council on 1st March 2017; I shall therefore take this latter date as the date of the Application. It was made by Mrs Sharon Burdess, of 76 James Street, Llanelli. Mrs Burdess is therefore “the Applicant” for the purposes of this Report. The application form indicated that the application was based on *subsection (2) of Section 15* of the *Commons Act 2006*. It was supported by a number of letters, statements, completed evidence questionnaires, photographs, etc.
- 2.2. On the question of the relevant ‘neighbourhood’ and ‘locality’, the form as submitted referred proposed ‘Llanelli’ rather than any smaller subdivision of the town.
- 2.3. As far as the application site itself was concerned, the original application form had been accompanied by two plans, at different scales, purporting to show the

proposed site. However neither of them was entirely clear as to the precise boundaries of the intended site, or indeed as to their scale. However Mrs Burdess later produced a further plan, exhibited to a Statutory Declaration of hers dated 15th December 2017, which showed the intended boundaries of the site very clearly, on an Ordnance Survey map base, said to be at a scale of 1:1000. All of the parties who participated actively in these proceedings agreed that this latter plan should be regarded as the application plan, and I shall do likewise.

- 2.4. The application site as thus defined is currently (as I was able to see it) a reasonably well maintained area consisting mostly of mown grass (albeit muddy in some places). Its shape is very roughly a parallelogram; its long northern side abuts the street called Heol Nant-y-Felin, and its eastern side Heol Goffa. The southern boundary runs along the bank of the river known as the Afon Lliedi; the western boundary is quite obvious on the ground, and abuts other land and property including a small housing estate of more recent date than most of the other housing in the surrounding area. The sides facing Heol Goffa and Heol Nant-y-Felin are fenced, with relatively low fencing, but with open ways through at a small number of points. There are also some lengths of wooden fencing, but with easy ways around them, from what appears to be a publicly accessible area, along the southern part of the western boundary. It should be noted however that these observations relate to the times I saw the site, in April 2018, rather than necessarily to the period(s) prior to the application date which the statutory criteria require to be considered. The site generally slopes down somewhat from north to south, although a large part of it is relatively flat.

3. **THE OBJECTOR(S)**

- 3.1. Two objections were initially received to the Application. One was from Carmarthenshire County Council itself, in its capacity as landowner. The second was anonymous, and in any event did not raise any points relevant to the statutory criteria under *Section 15* of the *Commons Act 2006*. I shall therefore ignore that objection, and the Registration Authority may safely do likewise.
- 3.2. Later on (but still before the date of the clarification of the precise boundaries of the intended application site, as mentioned above) a further objection was received from Ms Ann Clwyd Davies, the Head Teacher of the Ysgol Gymraeg Dewi Sant, Llanelli. Although very briefly stated, this objection did appear to raise points of potential relevance under the *Commons Act*. Ms Clwyd Davies was accordingly given the opportunity of participating in the public inquiry which was subsequently held, but did not choose to do so, and did not add anything further in writing. Her briefly stated objection letter however added nothing to the points taken in any event by the Council as landowner.
- 3.3. Thus, by the time of the Inquiry, it had become clear that the only substantive, active objector to the application is the County Council itself, as the owner of the area of land covered by the application. The Council in that capacity 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 issued Directions to the parties, drafted by me, as to procedural matters in December 2017. Matters raised included the exchange before the Inquiry of additional written and documentary material, such as any further statements of evidence, case summaries, legal authorities, etc. The spirit of these Directions was broadly speaking observed by the parties, and no material issues arose from them, so it is unnecessary to comment on them any further.

5. **SITE VISITS**

- 5.1. As I informed parties at the Inquiry, I had the opportunity on the day before the Inquiry commenced to see the application site, unaccompanied. I also observed the surrounding area generally.
- 5.2. After all the evidence to the Inquiry had been heard, on the afternoon of 12th April 2018, 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 parts of the surrounding area more generally.

6. **THE INQUIRY**

- 6.1. The Inquiry was held at the Town Hall, Llanelli, over four days, on 10th, 11th, 12th and 13th April 2018.
- 6.2. At the Inquiry submissions were made on behalf of both the Applicant and the Principal Objector, and oral evidence was heard from witnesses on behalf of both sides, and subjected to cross-examination, and questions from me as appropriate. With the agreement of the parties participating in the Inquiry, all of the oral evidence was heard on oath, or solemn affirmation.

Post-Inquiry exchanges

- 6.3. While the Inquiry in this case was sitting in Llanelli, it transpired that on 12th April 2018 the Court of Appeal in London had handed down a highly significant judgment in relation to two other (conjoined) English cases concerning ‘village green’ claims on land owned by public authorities: *R (Lancashire County Council) v Secretary of State; R (NHS Property Services) v Surrey County Council*. Then, within less than a month after that, but still before I had prepared my Report into this present case, a High Court decision was handed down in a yet further case, specifically concerning some land which had been used for sport-related purposes, and which was (apparently) wanted for exclusive use in conjunction with a school: *R (Cotham School) v Bristol City Council*.

- 6.4. The conjoined cases from *Lancashire* and *Surrey* had turned to a considerable extent on a concept known as ‘statutory incompatibility’, which had not in fact been raised as an argument by any party in this present (Llanerch) case; however the judgment did deal with other important topics as well. The *Cotham School, Bristol* case had also dealt with ‘statutory incompatibility’ arguments, along with several other topics.
- 6.5. My own immediate professional view was that neither of these new judgments advanced the understanding of the law in this field in ways which were obviously relevant to the decision in the Llanerch case. However they are undoubtedly important judgments. I therefore took the view, and the Registration Authority agreed with me, that in the circumstances, and on balance, it was best for the parties in the present case to be given the opportunity, even though the Inquiry had concluded, to make in writing any representations or submissions which they might wish to, as to the relevance to the Llanerch case of anything which was said by the courts in either of those judgments.
- 6.6. A fair, even-handed procedure was therefore arranged for the principal parties in this Llanerch case to make any such submissions/representations, while giving the final word on the exchanges to the Applicant, as is correct procedurally. Both the Applicant and the Principal Objector did indeed respond to this opportunity. I consider the submissions/representations received in this context at the appropriate later points in this Report.
- 6.7. As well as the oral evidence, and matters specifically raised at the Inquiry, and the post- Inquiry exchanges to which I have just referred, I have also 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 in earlier paragraphs. I report on the evidence given to the inquiry, and the submissions of the parties, in the following sections of this Report, before setting out my conclusions and recommendation.

7. **THE CASE FOR THE APPLICANT – EVIDENCE**

Approach to the Evidence

- 7.1. As I have already noted above, the original Application in this case was supported and supplemented by a number of documents; these included letters, statements, completed evidence questionnaires, photographs, and other supporting material.
- 7.2. Other written or documentary material was submitted on behalf of the Applicant [and also the Principal Objector] in the run-up to the Inquiry, in accordance with the Directions which had been issued. Some of this consisted of written statements from witnesses who would in due course give evidence at the Inquiry itself.

- 7.3. I have read all of this written material, and also looked at and considered the photographs and other documentary items with which I was provided, and have taken it all into account in forming the views which I have come to on the totality of the evidence.
- 7.4. However, as is to be expected, and as indeed was mentioned in the pre-Inquiry Directions, and at the Inquiry itself, more weight will inevitably be accorded (where matters are in dispute) to evidence which is given in person by a witness, who is then subject to cross-examination and questions from me, than will be the case for mere written statements, etc., where there is no opportunity for challenge or questioning of the author.
- 7.5. With these considerations in mind, I do not think it is generally necessary for me specifically to summarise in this Report such evidence as was contained in the statements, completed questionnaires, letters, etc. by individuals who gave no oral evidence. In general terms it was broadly consistent with the tenor of the evidence given by the oral witnesses, and nothing stands out as particularly needing to have special, individual attention drawn to it by me.
- 7.6. In any event all of the written and documentary material I have referred to is available to the Registration Authority as supplementary background material to this Report, and may be referred to as necessary.

The Oral Evidence for the Applicant

- 7.7. *Mrs Sharon Burdess*, the Applicant, lives at 76 James Street, Llanelli. She said that the land of the application site (the accurate boundaries of which are shown clearly on the revised application plan which she had submitted) has always been known as the Llanerch Recreation Field, for over 60 years, and a significant number of local people have indulged in lawful sports and pastimes there as of right for over 20 years.
- 7.8. From 1996 she lived in Prospect Place, Llanelli; both of her children went to Penywaer Primary School, so they would walk to school and use Llanerch Field for recreation on the way home most days of the week, and at weekends. They would play games, as it is a safe environment for children to play and be creative. Daisy-chains was a favourite, as well as just running around playing “*you’re it*”. They also played ball games if they could find enough school friends to join in. Seasonal blackberry picking was something her children had enjoyed on the land. They would spend hours in and by the river, rain or shine, looking for interesting animals and other creatures that they saw on the river or on the field. A resident heron had lived there for many years, and a duck family could be seen every spring and summer.

- 7.9. Over the years communities have been created on Llanerch Field. Regardless of where they live now or how old they are, Llanerch Field is highly valued by people throughout Llanelli, whether it was through playing on the field as children, creating lifelong friendships, or having a kick-about with their friends for hours. Recreational rugby, football or cricket have all been played on this green space since the 1940s, and bonds were formed creating a unique community where there is a sense of belonging. This is very much a local custom, and the presumption is that the local inhabitants have established recreational rights over the land. She had never asked permission to use the land or been asked to leave it.
- 7.10. There is also a very large dog walking community, where residents walk their dogs on the land with their families. She now lives in James Street and uses Llanerch Field in the same way as she did when she lived in Prospect Place, with a few additions to her family. Their dogs love the freedom of the river, their furry friends, and children who play on Llanerch for hours. It would have a devastating effect on the whole community to lose this recreation field. The loss of Llanerch Field would hit the poorest area in Llanelli the hardest, making it impossible to access free open space.
- 7.11. *In cross-examination* Mrs Burdess confirmed that the application is made under **sub-section 2** of **Section 15** of the **Commons Act**. She agreed that the question of local need or lack of need for this green space is irrelevant to the statutory tests under the **Commons Act**. She agreed also that it is irrelevant whether it would be beneficial locally for the land to be registered as a town or village green, or not. It is also irrelevant that the local community support the land being so registered. Likewise the quality or standard of maintenance of the land by the Council is irrelevant.
- 7.12. Mrs Burdess confirmed that she understood the two main grounds of objection to her application which were being pursued by the Principal Objector, namely the argument that use by local people had been “*by right*” instead of “*as of right*”; and further that use by local people of Llanerch Field for lawful sports and pastimes had been interrupted at least once, for a substantial time (about 4 years), during the relevant period of 20 years. Mrs Burdess disagreed with those objections. Her view was that local people had used the land as of right; she did not think that the use had been permissive. Further, although she accepted that there had been an interruption to use of the land for some 4 years, her understanding was that this had been a statutory closure.
- 7.13. She understood that Carmarthenshire County Council is the freehold owner of the field constituting the application site. She noted that the 1925 conveyance by which the land was conveyed to the Council’s predecessor had not been conditional on any park use being made of the land. There had been no express legal restriction on the way the Council or its predecessors could use the field. She also understood that the land had been *purchased* by the Council’s predecessor, the then Borough of Llanelli; it had not been given as a gift to the people of Llanelli, as some people had claimed.

- 7.14. The land purchased in 1925 had been significantly larger than the present application site, and some of that wider area of land had been sold or leased off to others over the years.
- 7.15. Mrs Burdess's belief was that this land had always been recreational land. It was identified in the local development plan as recreational land. Games have been played on this land since the 1940s, at least.
- 7.16. The land can be seen marked as a recreation ground on Ordnance Survey maps going back at least to the 1970s. She accepted that that was some evidence that the landowner had been happy that its land should be used as a recreation ground. There was no dispute that the Council and its predecessors had been responsible for the maintenance of the land, and had done things there such as grass cutting, weed spraying and litter collection etc., as well as ad-hoc works of maintenance on the site.
- 7.17. She accepted that the whole area of the application site had been closed off by Welsh Water for a substantial period, for the purpose of carrying out works on the land.
- 7.18. In relation to a sign saying "*No Golfing*", which a photograph showed had stood near the south-east corner of the site, she thought that it would have been the County Council who had put that sign up.
- 7.19. ***Mrs Heather Peters*** lives at 15 Heol Nant-y-Felin, Llanerch, Llanelli. She has lived there since 1990. She wished to explain how she had used the land south of that road (the application site) for recreational purposes over the years.
- 7.20. When they moved to Nant-y-Felin she had two young sons aged 7 and 2, and two dogs. Her children played on the field every day with the other children who lived in the area. They would form informal teams and play football, rugby, tag etc, and would normally end up soaking wet from playing on the edge of the River Lliedi. Another favourite pastime was finding slow worms on the field.
- 7.21. She herself would walk her two dogs on the field at least twice every day, normally early morning and evening. That had continued over the years as they had always had two dogs who need to be exercised regularly.
- 7.22. Her kitchen window overlooks the field, and she would observe others using the field on a daily basis to play with their children, jog, walk their dogs, fly kites etc, and there have even been model plane enthusiasts using it to fly their models there on a regular basis. Her husband's family have lived in Llanerch since the houses in

Brynmelyn Avenue were built about 1920. Her husband had been born there in 1956, and also grew up playing on the field with his friends on a daily basis.

- 7.23. Now her grandchildren use the field when they are over, and enjoy kicking a football or rugby ball or riding their bikes on there, and picking daisies as gifts for her. She still observes others using the field on a regular basis from her kitchen window. Now there are people who come there to fly drones.
- 7.24. She had never had to ask permission to use the field, and there had never been signs saying it was private or trespassers will be prosecuted, etc. The only time they were unable to use the field was during the installation of the huge sewage storage tanks under the field, and also a period much more recently when the gates had been locked, and the Council had said that there had been animal damage to the field, which prompted them to close the gates as a health and safety issue. That situation was swiftly resolved and the gates re-opened.
- 7.25. Tractors are used to maintain the river bank area of the land. Those tractors pull some kind of cutting equipment.
- 7.26. *In cross-examination* Mrs Peters agreed that she had completed one of the evidence questionnaires lodged as part of the Applicant's papers.
- 7.27. She confirmed that she had complained by letter in 2007 about some fencing which had been put around the site. That complaint was to the County Council. It was all related to the Welsh Water sewer works, she thought. She had been concerned at the time that a 6ft fence was unacceptable, although the actual fences put in are not in fact that high. She had believed that the field had been given to the people of Llanelli. That is what local people had believed.
- 7.28. In her evidence questionnaire she had accepted that her use of the land had been restricted for a time. That had been when the Welsh Water tanks were put in, and also in 2015 when animal damage on the field had taken place, and she was told that the land was closed for a short while because of health and safety concerns. However on that occasion the gates into the field were promptly opened when the local County Councillor took the matter up. Gates into the land had in fact been erected by the Council. She understood that these were what are known as 'safer highways' gates.
- 7.29. ***Mrs Camilla Lynch*** lives at 133 James Street, Llanelli. She was born in 1966, and brought home to 4 Corporation Avenue, Llanerch. She had grown up in the Llanerch area, and it had had an impact on her life up to the present day. Llanerch Field may be small, but it is a huge piece of history which had been not only the hub of her own life, but also to many others in and out of the immediate area.

- 7.30. She had had numerous experiences, much fun, excitement and sometimes scary or sad moments in and around that beautiful field.
- 7.31. Her mother is almost 93, and had introduced her to the field as a baby by pushing her around it in her pram or by carrying her. Although she could not consciously remember this she certainly remembered the field as she grew up. Her own three siblings had very similar experiences of the field. Her mother took her sister and herself to the field every day as babies and toddlers. Mrs Lynch's first steps had been taken on the field. They picnicked regularly there, and when she started school the picnics became much longed for weekend treats.
- 7.32. When she was five years old she was allowed to go to the field with her oldest sister and her older friend. It was very pleasing to be allowed there unaccompanied by her mother. She was becoming independent, and the field was the place where she was allowed to blossom and come into her own. They had great fun on the field, they paddled in the river, they walked all the local dogs there, and so forth. She had flown her kite on the field, played Frisbee there, built snowmen and thrown snowballs, and constantly played and swung on the bars that surrounded the field. They also sat in groups on the seats, and hung out there with other local children. She had watched her brother play football matches on the field. She and her friends used to follow the football boys training, and mimic that training. She had learned to ride her bicycle on the field.
- 7.33. She and her friends loved to watch the wildlife on or near the field. When her cousins came to stay they spent every hour until dark talking and playing on the field. She had pushed her own son there daily in his pushchair, in order to exercise her figure back to shape after giving birth. She had picnicked there with her son. She had also jogged on the field. All the very many dogs that they had owned as a family had been walked on the field. School sports days and numerous events were held there. She had many memories of bonfire nights on the field in the days before rigorous health and safety rules. The field truly was the hub of the community.
- 7.34. There had always been some seats on the field; they were there before the current railings were put in, and before the water tanks were put in. They were not properly replaced after those tanks were put in. People used to sit on them and chat there. As for the bonfire preparations, there had been no prohibitions ever placed on that, in her recollection. She and others had never been locked out of the field.
- 7.35. *In cross-examination* Mrs Lynch said that she herself had not completed an evidence questionnaire.
- 7.36. She accepted that during the Welsh Water works the entire site had been enclosed and all access was restricted. She lived opposite at the time, but had not been aware beforehand that this was going to happen. She had talked to the men to find

out what was happening. Nobody could access the field during that time because of all the machinery. It was a building site, and dangerous.

- 7.37. She was not sure why the gates into the field had also been closed for a while in 2015. She accepted that the gates facing the street had been closed then, but there had been other ways into the land at that time. Locking those gates had made no practical difference. It obviously was not pleasant for those whose access was prevented at that time, and it did prevent some people from accessing the land. Her own personal use however had continued unimpeded; there was plenty of other access available into the land.
- 7.38. She would not say that use of the land had been specifically *encouraged* by the Council and its predecessors. She assumed that the football teams who played there would have had permission. Other people however just used the land. Golf had been prohibited on the land, as people's balls had been hitting houses. There were complaints, and the Council were forced into putting up a sign prohibiting golfing. She did not think that this was really inconsistent with encouraging recreational use of the field.
- 7.39. *In re-examination* Mrs Lynch explained that one of the locations where it was possible easily to get onto the land, during the period when gates were locked in 2015, was in the south-western part of the site boundary, where there are large open gaps within the wooden fencing; this can be clearly seen on some of the photographs which had been produced. That was also approximately the area where there had been a Japanese knotweed problem on the land, which had been treated recently. However no signs had been put up about dangerous chemicals which were used on it. There were some dogs, including one belonging to her sister, which had gone onto that land at that time had subsequently died.
- 7.40. In the past the field had always been well maintained. Since the water tanks had been put in, the field is constantly sodden, and not regularly cut; it is not what it used to be, in her opinion.
- 7.41. **Mr W Maurice Jones** lives at 10 Rhydrafon, Llanelli, and has done so since 1995. He has used the Llanerch playing field for recreational purposes over all the years that he has lived in the area.
- 7.42. When he first came to Llanelli his wife had a dog which he used to walk regularly on both the Llanerch and the Penygaer playing fields. In addition his step-grandson, who was 18 in February 2018, used to play football with him on Llanerch playing field. Initially it was just the two of them kicking a ball around, but later when he got older Mr Jones used to watch him playing mini and junior football for the Camford team on this field.

- 7.43. At no time did Mr Jones have to force entry to the field; although employees of the Council saw him on the playing field he was never asked to leave. Nor had he ever had to ask permission to use it. He had never seen any signs or notices such as private or trespassers will be prosecuted displayed on the field. The only time use of this land was prevented or restricted was when the sewage tanks were being constructed. He had frequently seen many other people using the field for various activities. He had completed one of the evidence questionnaires lodged in support of the application.
- 7.44. *In cross-examination* Mr Jones agreed that the application site had been closed between 2004 and 2008 because of the Welsh Water works.
- 7.45. He and his family have used the land regularly for informal recreation. He had never had to ask permission. He did not personally know anything about the maintenance regime on the land.
- 7.46. **Mr Geoffrey Mahoney** lives at 41 Havard Road, Llanelli. He had used the application site at Llanerch playing field for recreational purposes over many years.
- 7.47. As a young lad from the age of 10 and throughout his teens he would regularly use the field, carrying out many different activities and having a wonderful time there, meeting new friends. During that time they would spend many hours playing on the field, and would make dens, play by the riverbank, as well as sitting on the benches around the field for hours talking about various things. The playing area also allowed them to take part in sporting activities including cricket, football and touch rugby. This was an excellent opportunity to socialise and have fun. There would regularly be at least 20 to 30 boys and girls meeting up on the playing field. He had made many lifelong friends on that field.
- 7.48. As he grew older and became a father of two children he would take his own sons on Llanerch Field, where they would learn to ride their bikes, walk their dog and take part in sporting activities very similar to what he had done.
- 7.49. He had never been asked to leave the field. He had never seen a sign asking people not to use the land. He and his friends would play there for as long as they wished.
- 7.50. *In cross-examination* Mr Mahoney explained that he got married and moved away from the local area in 1983. However his mother had carried on living in Llanerch and still did at the age of 91. He does stay there with his mother. His mother's address is 17 Heol Goffa. In relation to the Welsh Water closure of the field, he remembered being told that the football pitch on the land would be needed, in order to carry out the works. There was a statutory notice about laying pipes etc., on the land over a two year period, he recalled. As a temporary measure use of the field was going to be relocated to Penygaer. The land at Llanerch would then be

restored at least as good as before. People were certainly not told at the time that the land would be closed for four years. Users of the Llanerch Field were stopped from using it as a result of a statutory notice, until the work by Welsh Water was completed. It was closed for four years. No recreational use of the field was possible during that period.

- 7.51. In his evidence questionnaire he had referred to organisations using the land for sports and pastimes, such as the Carmarthenshire football junior and league teams. The land had been used for that purpose mainly on Saturdays. It was his understanding that mini football users had not had to pay any fees for using the field. However he understood that a pitch fee had been paid by the junior and senior teams.
- 7.52. *In re-examination* Mr Mahoney said that the organised football use had been predominantly in winter, between about 2pm and 4.30pm on Saturdays. There could also be a mini team or teams on a Sunday, for 2 or 3 hours. There was a bit more use for football in spring evenings. When soccer was going on, obviously other people were not allowed on the pitch because the game was going on. Weekday evening use of the field for football would usually be on a Tuesday or Wednesday. When those games were played, no-one had stopped him or others from going there to watch.
- 7.53. **Mr Philip Warlow** lives at 38 Andrew Street, Llanelli, and has done since 1977. He has used Llanerch playing field for recreational purposes over the years.
- 7.54. He had lived in Andrew Street for over 40 years. There had been a number of green play areas within the locality. Residents could choose where to take their children, pets or relatives. One could go for a walk along the river, with views overlooking Llanerch playing field. His daughters had the benefit of fresh air and safe play on the field, with no risk from traffic hazards. Both his daughters attended Penywaer Primary School, and on many afternoons after school had finished they would walk home with the dogs and throw balls and play catch on the application site.
- 7.55. Llanerch Field was used as a venue for teams that played in the Carmarthenshire Football League. These were teams like Pengelli, Llanelli Steel, Pressed Steel Fisher, Seaside and the Evans and Williams Sports Club. He himself had been the Chair of the Evans and Williams Sports Club, and had fond recollections of helping to carry the football posts out for the Saturday afternoon game, which was a weekly occurrence, with training on the field during the week.
- 7.56. The field had served the Lliedi Ward greatly over the years, even further back than he himself could remember.

- 7.57. The football posts had been stored in the buildings on the Penygaer field. Players or committee members would carry them out. Pitches on Llanerch Field had been marked out by the Council. Fees would be paid for the use of the pitch, although his recollection was vague as to how much the fees were. All of this had happened since 1990, but in the period well before the Welsh Water works took place. That was the period when he was involved with the football club.
- 7.58. *In cross-examination* Mr Warlow said that he had eventually ceased to be the chair of the football club. He went to work in the North Sea in 1990, so he withdrew his personal support for the Evans and Williams Football Club.
- 7.59. He is a Town Councillor in the Lliedi Ward. He had sent an email to the Applicant in the present case, expressing his support for the application. He had also sent a piece about it to the local press.
- 7.60. His wife of 40 years still lives with him at Andrew Street; she herself had lived there from the day she was born, which represented another 23 years' experience of the land.
- 7.61. ***Mrs Ruth Jewitt*** lives at 27 Lliedi Crescent, Llanelli. Her first memory of Llanerch Field was in 1961 when she was 3 years old. Her parents had moved to Llanerch when she was born, first to Brynmelyn Avenue and then to Lliedi Crescent. Her mother still lives in the same house.
- 7.62. Her father used to take them out to play on the nearest green open space, and she has photographs of them as far back as 1958, when she was less than 1 year old. While growing up in Llanerch they were always outdoors playing games like football, rugby, tennis and cricket. She had been very much a tomboy, and spent holidays and weekends playing with the children from her street and the wider area, on the application site. She always felt safe there, and learned how to ride a bike, the rules of games, how to be a team player, and many things about animals and nature. The Lliedi River was a source of fun and adventure. She learned much about local wildlife, and fell in a few times. It was the children's kingdom; grown-ups were not part of it. There were unspoken rules, and camaraderie. On Saturdays they watched their local football heroes for free. Because of this wonderful field they grew up happy and healthy with vivid imaginations.
- 7.63. As the years rolled by, successive generations of her family have grown up playing on that field. She moved away from the area when she was 25, but returned to live firstly in Heol Goffa in 2004, and then back to Lliedi Crescent in 2008. They have used the field since they returned, to walk by the river and take some outdoor exercise, but it has changed and has been allowed to deteriorate into a poor state since the Welsh Water works was carried out there. It would be a great shame to lose the use of this field.

- 7.64. She had witnessed the Welsh Water disruption. People had been told it would take 2 years, but it took much longer, and the field was never the same afterwards. The drainage is much worse now.
- 7.65. She had believed the field was both a football pitch and a playground for local children, with no restrictions on access. She had certainly never been told not to use it.
- 7.66. *In cross-examination* Mrs Jewitt said her understanding had been that the field belonged to the community and the town. Her belief is that it belongs to the community. She confirmed that her access to the land had been restricted during the Welsh Water period of works.
- 7.67. **Mr Jim Cleobury** lives at 42 Brynmelyn Avenue, Llanerch, Llanelli. He had completed an evidence questionnaire.
- 7.68. As a child he had lived with his parents opposite Brunel House on Corporation Avenue, Llanerch. That would have been about 1926, and along with all the local children he played on Llanerch Field, which was known locally then as the Dell. They played all sorts of games on the field, as back then there was no other area for the children to play on.
- 7.69. He used to play on the field daily for games of football, rugby and just general games over the years, until he joined the Army at 18 and went away to fight in World War II. He moved back to Llanelli in 1962, and since then has regularly witnessed children playing on the field, people walking their dogs and people jogging around the field.
- 7.70. He has never needed to ask permission to use the field, and never seen signs that prohibited use of the field. The only time that the community could not use the field was while the enormous sewage tanks were installed beneath the field, to alleviate the sewage problems being encountered in the area.
- 7.71. **Mr Mike Kreciala** lives in Gordon Road, Dafen, but had previously lived at 11 Heol Nantfelin, Llanelli, since the 1950s.
- 7.72. He moved to Llanerch when his parents bought his present house around 1957. That was his home until he married in the late 1970s, and even so he still frequents the house, as do his children and grandchildren; his mother still lives there. His childhood home therefore, and where his mother still lives, is opposite the Llanerch playing field. He and his friends met and played there every weekend and summer evenings. It was not only children from his road who played there. He recalled names of people from all over the town, and from Felinfoel. He could recall his friends and himself meeting early girlfriends on there and sitting on the benches.

They would sometimes meet up on bicycles, and even take them under the perimeter bars and play bicycle soccer on the field, because it was so flat and well maintained. On Saturdays the adults used the field for soccer matches and he was a fan, eventually playing as a junior goalkeeper in many games.

- 7.73. He recalled that in the summer there were enough children playing to form two cricket teams and regularly play friendly matches. He recalled playing with bows and arrows on the field, flying kites and model aeroplanes, and playing fetch with his dog. They would also go down to the river and catch eels, and camp in the field near the river bank. As he grew older and became a father himself, he continued to use the field with his children and their friends.
- 7.74. The perimeter of the field then consisted of just posts and bars which allowed access anywhere by simply ducking under the bar. There were many park benches which offered perimeter seating for anyone wishing to sit or watch a match. That changed when the field was altered to accommodate so-called water pumping tanks. He recalled everyone being assured that the field would be none-the-worse for the alterations, but after the work was completed the field was never quite the same, in terms of drainage, grass growth etc. The level of the field had to be raised, making it necessary apparently to replace the bar and post perimeter with a less inviting perimeter fence which is still there now. That fence only allowed access to the field at a few points, and in that way changed the entire dynamics there. Then about 2 years ago, and without any explanation, padlocks had been applied to all of the access points, which resulted in a number of months of redundancy for the playing field.
- 7.75. Going back to his childhood, he had lived in Heol Nantfelin from about 1957, and left in around the year 2000 to other places around Llanelli, but always within walking distance. Then he moved further away to Dafen in about 2002.
- 7.76. In the new fence the locked gates were two facing Heol Nantfelin and another two facing Heol Goffa. During the later closure period an official had said that the gates were locked for health and safety reasons. Nevertheless people could still get into the field, especially at the river end and at the Corporation Avenue end. There had been no signs to say that the field was dangerous or do not enter. It merely restricted taking things like football posts onto the site. No sensible reason was ever given as to why the field should not be used during that period.
- 7.77. *In cross-examination* Mr Kreciala said that access to the site had been entirely prevented during the Welsh Water works. As for the 'locked gates' period, the use of the field during that period did decline because casual access was interrupted. However it had been quite easy to get onto the field if one knew how to. He himself had no idea why the field was shut off, and there had been no explanation given for that. Nor was there any indication at the time of it just being a temporary thing. He himself had gone onto the field during that period, quite frequently. He

had no idea what the reference to ‘burrowing animals’ in relation to that period of closure had been about, because he had never seen any such animals.

- 7.78. *To me* Mr Kreciala confirmed that during that locked gates period there had in fact always been dog walkers using the field nevertheless. There had also been individuals running and training on the field, even if they were not doing it as groups during that time. There had also been children using the field; indeed a tent was seen there on a couple of occasions during that period. Some people just used the land to walk across, and some people still just do that.
- 7.79. Nevertheless some people were put off by the padlocks. His own children and grandchildren would have been among those put off by the locked gates on the convenient route, during that period.
- 7.80. ***Ms Karen Burchell*** lives at 30 Bryntirion, Llanelli. She has lived in Llanelli all her life, and has consistently used Llanerch playing field over many years, as many of her school classmates had lived in the Llanerch area.
- 7.81. Her sons both played mini-football on the field, which was widely regarded as the best in Llanelli, from about 1998 when they trained weekly in a mini-academy with a professional football scout. They also played matches against Camford AFC for many years, and for the Llanelli Radicals, so Llanerch Field was their home pitch. She had understood the field had belonged to a gentleman called Albie Williams, and was gifted to the Council to be used in perpetuity for sport and recreation for the people of Llanelli.
- 7.82. She personally had never asked anyone for permission to use the land, which her friends and she intermittently played on during the 1970s. Over the years the Llanerch Field has been used for training by many visiting football teams, who have come to play at Llanelli AFC, and she vividly remembered the Welsh Women’s Rugby team training there before an international match.
- 7.83. The field was fenced off for safety when Welsh Water carried out sewer improvement works, and tanks were buried under the field. A surrounding fence with gates was put in place after the work had been completed, and that is when she and her sister started walking their dogs there as it was a safe place to let them off the lead without having to worry about traffic.
- 7.84. She walks her dogs there daily, weather permitting, and regularly meets other dog owners. The only time she has been unable to do that was when the County Council put padlocks on the gates in 2015 or 2016. She phoned the Council at that time to query those locks as there was no notice on the gates, and was told that the field had been fenced off because of (non-existent) pot holes.

- 7.85. Her present back garden overlooks the River Lliedi and Llanerch Field. Every day there are a number of users of the field, walking dogs, playing games and just generally enjoying the land.
- 7.86. The locks on the gates were there for a few months. They appeared and then they disappeared. She had asked the Council about these locks, as did another lady, and was told that it was because of potholes. But one could get into the field anyway. Not all of the four gates had been locked at the same time. Some bins which had been on the site disappeared at around the same time.
- 7.87. *In cross-examination* Ms Burchell said that she had seen no documentary evidence as to the provenance of the land. She had just understood that it had been given for the benefit of the people of Llanelli. The gentleman she believed had donated the land was a business owner from the firm Evans and Williams.
- 7.88. She herself had not been using the land during the Welsh Water period. She did not use it immediately before the Welsh Water works either. There was no dispute from her that Welsh Water fenced the land off during their works.
- 7.89. **Mr Kevin Francis** lives in Pembrey, about 5 miles west of Llanelli. He is the Chair of the Carmarthenshire Unified Sports Committee. This committee was started after a meeting in January 2014, held after the County Council had proposed what were thought to be extortionate rises in fees for the use of outdoor sports facilities.
- 7.90. A campaign was started, and pressure was put on the County Council by the Unified Sports Committee. It was eventually agreed that the CUSC would work together with the County Council to come to a conclusion that suited all concerned. There was then a countywide consultation process, covering the four main sports played on sports grounds in the county, namely football, rugby, cricket and bowls. A potential solution for football in the county had been found by February 2015. Charges for using pitches for games were agreed. Pitch specifications were also agreed. Part of the solution was to restructure the county league, having fewer divisions with more teams per division. All of this required a rationalisation of the number of pitches required, based on location, or number of clubs, number of teams in clubs, the quality of the pitches etc. It was decided that 15 pitches would be retained, and one of those was Llanerch.
- 7.91. The County Council had been trying to offload its ownership of fields used for sport, and in most cases the option was given of Asset Transfer away from the County Council's ownership, either with the help of local community or town councils, or clubs standing alone. The indication was given by the County Council that if it was possible to get the maintenance of sports pitches down to a cost-neutral basis, then the areas concerned would be taken off the Asset Transfer programme.

- 7.92. However that changed in October 2016, when a County Council Officer told the clubs that any area that had not been asset-transferred by the end of March 2018 would cease to have maintenance performed by the County Council.
- 7.93. As for the Llanerch playing field in particular, it was decided at a meeting in June 2015 that, even though it had once been the best pitch in the league, it would be taken off the list of pitches required, in order to enable essential remedial works to be carried out. There had been a neglect of maintenance on this pitch. However Llanerch was never envisaged as being decommissioned permanently. At no time was it mentioned in any meeting that Llanerch would not be required in the future.
- 7.94. The County Council have claimed that Llanerch had not been used for many years, but that is not the case. It was last used for association football through to completion of the 2013/2014 season. Prior to that it had been used constantly, except for when the new sewage tanks were being installed, for over 60 years. Mr Francis gave some detail of the lengthy history of football being played at Llanerch.
- 7.95. In any event, the intention in more recent times was that Llanerch was to remain on a list of pitches, except that it was decided to take Llanerch off the system for essential maintenance in June 2016.
- 7.96. The overall position was that those involved in the game were trying to get fields down to zero subsidy being required. As far as the Asset Transfer programme was concerned, the idea was that the transfer would be to whoever wanted a field, for example a club or a town council or an association.
- 7.97. Reverting to Llanerch specifically, it was only ever taken out of use for maintenance work, until all of a sudden it was decommissioned. As far as Mr Francis was concerned, Carmarthenshire football was going to require this football pitch into the future. The use that had been made of the field was paid use; the clubs did not get it for nothing. The games were played as a result of a licence to do so. Mini-soccer was not charged after the consultation exercise had taken place, but it had been charged for prior to that. The idea was that training on the pitch would be free of charge.
- 7.98. *In cross-examination* Mr Francis said that there had been lots of meetings with officials of Carmarthenshire County Council about the future of football and other pitches in the county. He identified the main people who had been involved in those meetings. 2015 was an important year. His view was that there had been an agreement with the Executive Board of Carmarthenshire County Council for various pitches including Llanerch to be retained. The County Council broke that agreement; they had said that Llanerch was to be taken off for maintenance work, but they then would not let the footballers have it back. That pitch is vital for association football in Carmarthenshire.

- 7.99. The position before 2015 was that there had been a high degree of subsidy of the pitches used for football in the county.
- 7.100. It was true that at the start of the 2015/16 season the playing surface at Llanerch had been found to be affected by holes and divots. Mr Colin Jenkins, a football official, advised the County Council about the state of the pitch, and that he had advised a local team not to play there until remedial work had been done. When the County Council did not start the work required to get Llanerch up to a standard, that gentleman had advised them to decommission the pitch, otherwise the league would have had a bill for £2,500 for a pitch which was lying idle. That was distinct from permanent decommissioning. That was a decommissioning solely for the purpose of getting the pitch restored to a usable state. By that stage matters relating to use of pitches were close to zero subsidy (apart from in relation to bowls).
- 7.101. *In re-examination* Mr Francis explained that the County Council's preference in the discussions which had taken place was to have zero subsidy for pitches. The football authorities had worked out how much a pitch was costing, and had tried to find a different way of doing things. There are no longer many pitches left under the County Council's control. They have nearly all been transferred to others. However that is not the case for Llanerch and Penywaer.
- 7.102. *To me* Mr Francis explained that most of the Asset Transfers to be undertaken by the County Council have now been more or less completed.
- 7.103. **Mr Alan Thomas** lives at 16 Cae Cotton, Llanelli. He is a retired construction professional. He has lived in Llanelli since 1973, and in his present house for some 18 years. His two children and three grandchildren have played informal sports and pastimes on the application site.
- 7.104. His use of the field is to routinely walk and exercise his dog, and socially interact with other users of the field. His first involvement with the issues regarding the field was in early September 2016, when gates were padlocked and site investigation machinery was present. The locking of the gates did not appear to have any impact, as not all gates were padlocked, and entry could be achieved via the open entrances in the south-west and at the north-west corner of the site, where only a single tube and post fence exist. People were indeed observed being on the field in the presence of excavators.
- 7.105. No provision had been made for the protection from falls into open trenches which had been dug, or to exclude children from entering the general works area. A number of users of the field were perturbed by these un-notified works. Confusion reigned, despite enquiries being made of the Council, and workmen being on the site.

- 7.106. The community was incensed by the lack of communication. An open public meeting was arranged in October 2016, which was attended by about 100 people, including residents of the locality, the local MP, a Welsh Assembly member, and current and previous Mayors and Councillors. The press were also invited to attend. At that meeting there were numerous contributions from the floor, and it was agreed that a properly constituted action or pressure group should be formed to convey the reaction of the inhabitants of the locality to events which were perceived as being foisted upon them by the County Council in a non-transparent fashion.
- 7.107. Numerous hours of research were spent, resulting in the application for the Llanerch Recreational Field as a town or village green. The application was made based on local people's best understanding of what was required. It is strongly believed that the criteria of *Section 15* of the *Commons Act 2006* are met in this case.
- 7.108. *In cross-examination* Mr Thomas confirmed that he believed it had been in 2016 that he personally first became involved. His belief was that it was in August 2016 that there was machinery on the site. Gates had been padlocked prior to that. There would have been some talk about burrowing animals having damaged the site, but that had happened about a year before. Then in 2016 the Council locked the gates again, and the machinery was there in September 2016. There had been a JCB digger, with a banksman there wearing high-vis kit, safety helmet etc. The work that was being done was being done all over the field, and seemed to be part of pre-development investigation for development there.
- 7.109. The previous business with burrowing animals was something that had been explained to Mr Thomas by others. He saw small holes, not actually on the pitch, but the pitch had an air of redundancy. The Council had stated at that time that they required a period to correct damage to the field.
- 7.110. The second occasion when the field was closed, in 2016, was an occasion when big holes were being dug on the site. The field was not sufficiently closed (in his view) for a situation where construction work was being carried out. That happened on a couple of occasions starting in September 2016. The local public were incensed by this going on, and that is why a public meeting was called. That meeting was held in October 2016. It was that meeting that inaugurated the group supporting the village green application. The group concerned does have a written Constitution.
- 7.111. *To me* Mr Thomas explained that there was about one week's worth of work on the site in 2016, with a JCB digging the holes and then refilling them. That JCB was accompanied by a drilling rig, and did four boreholes; it was on site for one week. The work may itself have taken less than a week. Heras fencing was put around the drilling rig. Then about one month later the JCB came back to carry out water absorption tests. It would dig a trench which would then be filled with water, and

there would be monitoring of it soaking into the ground. He thought that about four trenches had been dug on the site. The Heras fencing, of which there was a photograph, was just around the drilling rig. People's use of the land for recreation had nevertheless continued on the land through 2016, in spite of these goings on.

- 7.112. **Mr Mark Caton** lives at 3 Y Lan, Llanelli. He said that Llanerch has been a second home to him over the last 30 years, since joining Leyland Sports in 1986 as a senior player in the team which played their home games at Llanerch. Over time the club changed its name to the name of the car part factory in Felinfoel. Thus the club was later named Pre Star, and finally Camford. That club is not associated with the factory any more, since it changed to Krupp, so the Camford Sports name was retained.
- 7.113. He became player/manager in 1994, and so ended up taking two training sessions a week and playing weekend games on Llanerch. It was the best pitch in the Carmarthenshire league, never waterlogged, and with a good surface for playing football.
- 7.114. He then re-started the club's junior section in 1998, as his son started playing, so more and more time and energy was spent on the pitch.
- 7.115. As the junior section got larger and larger, Llanerch became even more important; they ended up having 18 teams. Their job as a football club was to get children playing and enjoying football, as well as trying to be successful.
- 7.116. The Water Board rendered the pitch unplayable as they put a tank and pipes underneath it. It was not used as a football pitch for two seasons. As part of the agreement the Water Board had to put the pitch back to its original state, which they did. The Club started reusing the pitch in the new millennium, as the County Council retook control of it.
- 7.117. This pitch had then been used up until three seasons ago, when potholes made it dangerous for any player to play on. The Council promised to repair the potholes, but obviously knew about the plans to build a school on it, without letting people know.
- 7.118. The club would use Llanerch again if it was possible, due to the excellent drainage, and the club's association with that pitch throughout their history.
- 7.119. *In cross-examination* Mr Caton explained that it was the football season of 2015/16 which suffered interruption by reason of potholes. The County Council had said these would be repaired within 2 – 3 weeks, but this was not done, and the club has since then used a different pitch.

- 7.120. As for the closure caused by the Welsh Water sewage works, his understanding was that closure was between 2004 and 2007. The pitch was then reinstated back to a reasonable standard, but stones came through, so it was not in fact used for another season. It had been necessary at Llanerch to raise the level of the pitch. He had got the date of 2007 from the football club secretary. It was possible it could in reality have been 2007/8.
- 7.121. He had in his evidence questionnaire described this land as a designated recreation area. It was an area he had played on as a cub scout, and as a footballer. He had used it from his childhood.
- 7.122. *In re-examination* Mr Caton said that he had been the representative of his club on a committee with the County Council, in order to ensure the restoration of the pitch to its previous standard. The club had in fact asked if they could have some fencing by the river and also around the pitch. They visited the pitch often to check its state, and he knew that stones came through after its reinstatement following the Welsh Water works.
- 7.123. The fencing to the perimeter of the site was not done immediately when the club asked for it. Thus for the period between 2008 and 2012 there was no new fencing. The old barrier around the field remained, based on a steel pipe through concrete posts. That barrier was years old.
- 7.124. **Mr Roger Forsyth** lives at 4 Llanerch Terrace, Llanelli. He is currently aged 72 (at the time of the Inquiry).
- 7.125. He said that local people are mystified that a school is planned to be built on the Llanerch playing field, when another school is about to close in Heol Goffa which is just up the road.
- 7.126. He remembers many social activities on Llanerch Field, including Billy Graham's massive evangelical tent, which was there for several weeks in the 1960s. There had been very many sporting events there, with all the local sports teams playing every weekend, and some of them on week nights. The field is also hugely popular with many dog walkers, and is ideal for training dogs because it is enclosed.
- 7.127. It has been used constantly during Mr Forsyth's lifetime. It is unbelievable that this vital green space should have been thought of as being used for a school. Mr Forsyth had completed one of the evidence questionnaires supporting the application.
- 7.128. *In cross-examination* Mr Forsyth confirmed that he had known the site since 1959. He acknowledged that in his questionnaire he had not mentioned any restrictions on use of the field. However he had been aware of the Welsh Water works on the

site, somewhat over 10 years ago. He did not recall his use of the site with his dog being interrupted. He vaguely recalled what the site looked like while the works were being undertaken. He could remember it more clearly now, when he saw a photograph. He accepted that it had not been possible to walk his dog on the site at that time.

- 7.129. *Mr Phil Jones* lives at 74 Squirrel Walk, Fforest, Pontarddulais. He is a spokesman for the Carmarthenshire Football League.
- 7.130. There is greater need than ever before to recommission Llanerch playing field, in order to meet the growing demand for mini, junior and senior football by clubs in the Llanelli area. In the 2015/16 season the league lost around 10 teams (senior and junior) that played on Penywaer and Llanerch, mainly due to the massive increase in pitch fees imposed on clubs by the County Council. Now that Penywaer is being asset-transferred to the Penywaer Management Committee and Llanelli Town Council, these financial restrictions are being relaxed, and clubs are now queuing up to return to play at Penywaer.
- 7.131. The league is also having requests from clubs in the Carmarthen area to use Penywaer. As a result of this increase, the Carmarthenshire League is convinced that there is now a huge need to recommission Llanerch, in order to meet the growing demand.
- 7.132. There have been some misleading comments made, suggesting that the Carmarthenshire League's general secretary, Mr Colin Jenkins, had stated that the League did not require the use of Llanerch ever again. That was never the case. The land was only decommissioned in the 2015/16 season for financial reasons, and for ongoing maintenance in season 2016/17. It was Mr Jenkins's understanding that this would be a temporary arrangement, and would be constantly under review. There is now an overwhelming need for this pitch to be used, so it should be recommissioned as a football pitch.
- 7.133. The Llanerch football pitch was the jewel in the crown of the Carmarthenshire League, with a first class playing surface. It became a good pitch again after the Welsh Water works, and was used as such.
- 7.134. *In cross-examination* Mr Jones said that he had been in one or more official capacities with the Carmarthenshire League ever since 2010/11. One aspect of his work as an officer is that he records all players' details to the relevant database. Before 2010, for 15 years he was club secretary of the Pontlliw Club. Earlier in his life he had played himself.
- 7.135. *In re-examination* Mr Jones said that Mr Colin Jenkins, who had been referred to, could be regarded as the 'Supremo' of the Carmarthenshire Football League.

- 7.136. **Mr Robert Simmonite** lives at Aweldon, 13 St Margaret's Drive, Llanelli. He has been a Llanerch resident for 23 years. He wished to explain how he had used the Llanerch playing field for recreational purposes over the years. He could not believe that this land was going to be built on. It had been one of the most used parks in the County, which before it was dug up was one of the best playing surfaces in South Wales.
- 7.137. This park has had football played on it since the early '50s. Llanelli AFC used to train on it, cricket was played on it; but the most important games of all were early evening and Sunday mornings when boys and girls from all over Llanerch would come and play games of football, with coats as goalposts and up to 20 a side. The community in Llanerch was built around this field. Parents would know their children were safe, because the residents of Nant y Felin would keep an eye on them and enjoy watching them play.
- 7.138. From a boy he himself has used the playing field. The whole community used it for all sorts of games.
- 7.139. **Mr Dennis Morgan** lives at 17 Uppercross Road, Llanelli. This address is not in the Llanerch area. He has lived there since 1972.
- 7.140. He is an ex-serviceman, having served in both the Royal Navy and the Royal Engineers. At present he is the Chairman of the Royal Naval Association, and on the committee of the Royal Naval Association Club in the town.
- 7.141. He had used the land of the application site for recreational purposes over some 22 years. He had been scout leader with the First Llanelli Scout Group. He was responsible for running the Thursday pack of cub scouts, with a former Mayor of the town. He was also leader of the Venture Scouts. The field in question was of major importance to them as they used it for sporting activities, learning to put up tents, learning how to set up camp etc., as the hall did not have room for these activities. The Cubs used to go tracking all around the fields, learning how to read signs, both human and animal. That was a major part of children growing up. The area was safe and clean and well kept.
- 7.142. Over the years, with cars on the increase and parking outside houses, children who used to play outside their own homes now have nowhere to play and develop. This field should be retained as it has been for the last 100 or so years.
- 7.143. *In cross-examination* Mr Morgan said he had not been actively involved with the scouts for the last 6 or 7 years. The local scout hall is about 5 minutes away from the application site. They used the recreation field with no need to contact the Council. The scouts own their own hall on a 99 year lease. They had moved there from the centre of Llanelli just before World War II.

- 7.144. **Mr Denley Morgan** lives at 28 Spowart Avenue, Llanelli, which is in the centre of the town (not in Llanerch). He had felt sad and emotional when he heard that Llanerch playing field is going to be built on. It had been an excellent local football pitch that all local players loved to play on. His first memory of Llanerch playing field was playing there as a 9 year old, along with about a dozen other boys of his age. They had gone there to play a game of cricket against the boys from the Llanerch area. It turned out to be a great game, played on a lovely surface.
- 7.145. Later, as a 13 year old he had played football there regularly for St David's in the Carmarthenshire Junior League. They always loved playing there because it was the best pitch in the town. Then as a 15 year old he had progressed to play for Llanelli Steel in the Carmarthenshire League. Llanerch was their home pitch, and they all knew how lucky they were to be able to play there regularly. In those days there could be a couple of hundred people watching some of the games played there.
- 7.146. He then found himself playing for Llanelli AFC, eventually playing more than 500 times for them, and again Llanerch playing field played a big part of his sporting life. He was training there twice a week for a number of years. He was also involved in management. After finishing playing, he used to go and watch junior football being played there every Saturday morning. Some of those players eventually progressed to football league football.
- 7.147. **Mr Peter Probert** now lives in Burry Port, but had lived in Llanerch between 1970 and 1979. Having lived in Llanerch during his 20s and 30s, he had very fond memories of the playing field where he used to play with both of his children.
- 7.148. He believed that this field had been left to the children of Llanelli to enjoy for generations to come. He had played an awful lot of football, most of it on this lovely field with the Evans and Williams team. They, along with countless other teams, would be devastated by the loss of this field.
- 7.149. He had played football on this land until the age of 37. He was currently 68. Even when he played for the Burry Port team, that team would play away on the Llanerch Field.
- 7.150. *In cross-examination* Mr Probert acknowledged that he was aware that the field is owned by Carmarthenshire County Council. Nevertheless he believed that it was left to the future generations of the people of Llanelli. He had understood that there was some legacy to the people of Llanelli. However he now accepted that it had been bought by the previous Council.
- 7.151. He remembered his daughter running on the site with her school. The site had been marked with white lines etc., for that event. That would have been in about 1981.

- 7.152. **Mrs Sue Jennings** lives at 5 Glasfryn Terrace, Llanerch. She had completed one of the evidence questionnaires.
- 7.153. Llanerch playing field was a wonderful place to take her two sons to play when they were growing up in the 1980s. She had used it for the best part of 36 years since living in Llanerch, and before that as a child herself she would play there with friends and cousins while she was growing up. They all lived in Llanerch, while she had lived in the town centre.
- 7.154. She used to go for walks along Penygaer and Llanerch playing fields with her grandmother, who used to teach her the names of wild flowers and birds etc. She used always to play football on Llanerch field with her cousins who lived in Penygaer Road. She had learned to ride a bike there. It was a safe place to play. Many other children used the field.
- 7.155. Her own children when they were young would spend time kicking a ball around on the field, having a picnic and learning to ride their bikes there too. As they grew older they would meet their friends there. It was somewhere safe for them to play locally without going too far from the house, and with no main road to cross.
- 7.156. She too would take her dogs for walks there on a regular basis, as it was nice and local to where she lives. She still takes her son's dog there for a walk, with her grandchildren who are now learning to ride their bikes, and who meet their friends there to play as well. Both her sons had been in the scouts, who would put their tents up in the field.
- 7.157. She very much liked walking along the river bank, taking photos of the wildlife. The field had always been full of clover until the bulldozers moved in and the sewage tanks were put there. It was out of bounds for a long time. Although the field was not restored to as good a state as it had been in, it was still used for sport and recreation as it always had been. She has often watched her grandson playing in one of the junior football teams there after school and at weekends. Five generations of her own family have used the field.
- 7.158. *In cross-examination* Mrs Jennings said that she always thought the land was public land, common land. There had been no public use when Welsh Water were carrying out their works, but that was understandable. She had felt that the land was closed to the public for too long, however.
- 7.159. **Mr David Phillips** lives at 27 Corporation Avenue, Llanelli. He had been born in Llanerch and had lived there all his life, apart from 7 years after he got married.

- 7.160. He has three sisters, and when they were young they all played on the Llanerch playing field. This was a fortunate experience to have so young in his life. Living so near the playing field meant he could enjoy the friendship of other children his age, who would all come onto the field as a meeting place. That applied to children who lived elsewhere, not only in Llanerch. As an adult he also had the pleasure of passing on his experience by coaching young children and teenagers as he took training sessions on the excellent playing surface there. Over the years he had met many people who he had coached on Llanerch; many still acknowledge him in the street.
- 7.161. In recent times he has strolled over to Llanerch and watched all ages of children training and playing on the field.
- 7.162. His first experience of Llanerch had been with his uncles, who introduced him to the field. They themselves had played there before World War II. The people who played there came from all parts of Llanelli, not just Llanerch.
- 7.163. *In cross-examination* Mr Phillips agreed that the Welsh Water works to install tanks under the field had been for the benefit of the town as a whole. That certainly did cause an interruption in the use of the field. He acknowledged that he had not mentioned that in his completed evidence questionnaire.
- 7.164. ***Ms Ellana Thomas*** was born in 1963, and lived at 21 Heol Nant y Felin, Llanerch until 1984 when she got married. She currently lives in Bynea.
- 7.165. Llanerch Field had been a major part of her life, from playing there with her sister who was born in her grandparents' nearby house, and also with her brother. They played on the field on a daily basis, coming home from school, having tea and rushing out there to go and meet up with other children, to make dens by the river, playing football girls versus boys etc. She remembered watching her father playing for local football teams on Saturday afternoons, and later sitting on the field benches with her parents, watching her brother play. During her childhood they had birthday parties on the field, picnics by the river etc.
- 7.166. The family would walk their dog on the field or play rounders or let off fireworks at New Year. They had spent many hours on Llanerch Field. Her own daughter had been born in 1988, and she has had the pleasure of seeing her experience the same joy and pleasure from using this field. This green space had been an integral part of her family's life.
- 7.167. Where she now lives in Bynea is not in the Llanerch area of Llanelli. But her mother who is currently ill still lives in the area. She is Mrs Ann Stuart Williams. She (Mrs Williams) had produced a witness statement and questionnaire. Ms Thomas had written out and signed the questionnaire on her mother's behalf. There was one error in that form, in that Ms Thomas in fact does herself work for

Carmarthenshire County Council. Ms Thomas's mother had said that the only time she and the local public had not used the field was during the Welsh Water holding tanks work. The initial impression had been that this work would only take 6 months or so. However in fact it took 2 years, and was never restored to as good a state as it had been in. The football pitch on the site had used to be marked out to the same dimensions as the Manchester United pitch.

7.168. **Mr Robert James** lives at 8 Old Road, Llanelli. He is also an elected member of Carmarthenshire County Council. His home is in the same electoral ward as Llanerch, but is not in Llanerch.

7.169. He gives his personal support to the village green application. He has been a regular user of the field, spending time dog walking with his family on a weekly basis, and playing football with his nephew occasionally. Llanerch has been a safe playing space, as of right, for his family for over 20 years, with his fiancée and her brother playing on the field as children. He very much hopes that the field can be retained for people to use in the future.

7.170. The use of this field has been both for organised games and for unorganised recreational use. The use had taken place for at least 20 years.

7.171. *In cross-examination* Mr James acknowledged that there had been organised activity on a section of this land. However the majority use of the land had been use made by local people, without any charge for it.

7.172. He is currently a County Councillor, and had been a County Councillor between 2012 and 2017 also. He has in fact been appointed to be a Governor of the school which is proposed to be built on the application site. However he personally understands that the wish of the school and the head to have the school set up on this land is because they were told there were no other options.

7.173. He acknowledged that Carmarthenshire County Council is the owner of the land, although he was aware of the local belief that it is some kind of common land. Thus for example the scouts did not ask the County Council if they could use the land. His view is that what people believe is the case is as important as the actual ownership. That is why in his view we have the commons legislation.

8. **THE SUBMISSIONS FOR THE APPLICANT**

8.1. Brief submissions in support of the application were included at the time of the original application itself. However these largely related to the case on the merits for this land being retained as a town or village green, rather than legal points. They also contained a good deal of description of the land and its surroundings.

The point was made that the land of the application site had been in recreational use since the at least the 1960s.

- 8.2. It is already noted earlier in this Report that the application as originally lodged was supported by a plan which was a little unclear as to the precise boundaries of the intended application site. However, in circumstances which have not led to any objection from the Principal Objector, a very clear plan of the intended application site was included later with a statutory declaration of the Applicant Mrs Burdess dated 16th December 2017. All parties have treated this revised plan as being the application plan for the purposes of the Inquiry, and the consideration which I and the Registration Authority need to give following the Inquiry.
- 8.3. In summary submissions produced in the run up to the Inquiry, it was pointed out on behalf of the Applicant that the Llanerch recreational playing field is situated in the Lliedi Ward of Llanelli, and its more detailed geographical location was explained. It is used by all the community, with a well-established dog walking and training fraternity. The local scouts have used the field up to four times a week, as it is a safe area to go with parties of up to 30 children. The local toddlers group uses the field on a daily basis in dry weather. The application is supported by many local people who indulge as of right in regular use of the field for a variety of recreational purposes. It is much more than just a soccer pitch for some people on Saturdays. The various types of activity indulged in on the land by local people were described.
- 8.4. Llanerch forms a large part of the Lliedi Ward, and is a close-knit community. The Ward population is 5,419. The Ward has the second highest population density in Carmarthenshire.
- 8.5. The Llanerch housing estate was largely built by the then Llanelly Borough Council as ‘Homes for Heroes’ after World War I, and to overcome deprivation within the town. The field was meant to be free open green space for the residents to indulge and enjoy. The land on which the houses were built (but not Llanerch Field) was acquired by the Council in 1920 under the *Housing of the Working Classes Act 1890*.
- 8.6. Llanerch Field (the Application Site) is part of a parcel of land acquired some 5 years later in 1925, and was not acquired for any particular purpose, or pursuant to some statutory power. The Council’s claim that they have maintained the field as a recreation ground under the Housing Acts is incorrect, because the land was not held pursuant to any statutory power. Use of the land by the public has been ‘as of right’.
- 8.7. Many local people believe that this land was given by a local landowner, Lady Stepney, for the benefit of the community. That feeling underpins the involvement by many in the community with the aim of registering and protecting this green space.

- 8.8. There is no doubt that a significant number of the inhabitants of the locality of Llanelli have regularly used the Llanerch recreational playing field; this does not appear to be in dispute. The application site is allocated in the Carmarthenshire Local Development Plan as open space which should be protected. The application is not intended to include any of the land belonging to the County Council to the south of the Lliedi River.
- 8.9. The County Council is wrong in arguing that use of the land here for recreation has been ‘by permission’. It is however accepted that between 2004 and 2008 the public were excluded from the land while Welsh Water installed sewage holding tanks and sewer pipes there. That period cannot count towards the requisite period of 20 years use for lawful sports and pastimes. As the installation of the sewage facilities was carried out under a statutory notice, it was incumbent on the County Council and the local community to accept that statutory work being carried out by Welsh Water. The community had been advised of the need to accept the construction of these works, in order to alleviate inundation of the area from combined sewer overflows in periods of heavy rainfall. A sufficient period needed to be allowed for the construction of the works, and two seasons for re-cultivation; this added up to a period of 4 years. In fact the period of at least 20 years has been satisfied from before 1926, i.e. since the acquisition of the land by the old Llanelli Borough Council. Other than during the Welsh Water works, the community have used the field as of right throughout. The interruption by Welsh Water should be disregarded under *Section 15* of the *Commons Act 2006*.
- 8.10. The application land has a ratio of amenity recreational land to the area used for the soccer pitch of approximately 60/40. A plan was provided which explained this ratio. When the amount of time the land was used for various purposes was computed as well, it is clear that the use for lawful sports and pastimes as of right far outweighs any permissive use for playing soccer.
- 8.11. The application site land has been made available and maintained for public recreational use by the Council and its predecessors. They had ample statutory power to do that under the *Public Health Act 1875, Section 164*.
- 8.12. An annoying feature of what happened with the Welsh Water works is that the restored playing surface failed, and no attempt was then made to rectify matters, which has allowed the County Council to claim redundancy of the pitch and the amenity grass land so that it could be earmarked for a proposal to site a school there. Because of that, Llanerch Field was consistently omitted from the County Council’s Asset Transfer programme, as it had been pre-determined to be earmarked for a proposed school. This has caused a great deal of grievance in the local community.
- 8.13. No by-laws exist in respect of this field, nor is it understood that there have ever been any. The only signage on the field is a small sign stating “*No Golfing*”, on a

pole located in the south-east corner of the field. The planning policies for the protection of recreational space had applied to this field.

- 8.14. The charging policy for the soccer pitch on the site was that charges were only made for arranged fixtures by the Carmarthenshire Association Football League. Other uses such as training were not charged, and the community have made a huge amount of use of the site for a whole variety of lawful sports and pastimes since the 1920s. The Council has regularly maintained the application site land, by cutting of the grass, line marking and installation of goal posts. After the Welsh Water works the pitch, or at least parts of it, have been subject to waterlogged conditions, especially in periods of inclement weather. There is a Japanese knotweed problem on part of the site.
- 8.15. The four year interruption by Welsh Water is not disputed. It affected everybody. The material submitted in support of the original objection by the County Council as landowner was considered and summarised at some length. It was noted in particular that the Welsh Water works were preceded by a Notice of Entry dated 6th August 2003. That confirmed that statutory powers allow Welsh Water to enter to construct a sewer and occupy the areas shown on a plan which was attached. It was mentioned that the owner of the affected land was potentially entitled to compensation. A formal notice under the *Water Industry Act 1991* was served on the County Council.
- 8.16. In submissions at the start of the Inquiry, Mr Alan Thomas acted as spokesman or lay advocate on behalf of the Applicant. Although the Applicant is nominally Mrs Burdess, in reality there is a local committee which supports this application. There had been 23 witness statements which were all based on an understanding of what is required gained from the Open Spaces Society. Local people regard this as their field, and there has been a great deal of local usage. It was acknowledged that quite a lot of what the Applicant's side has to say about the history of the field is in common with what the Objectors themselves say. Various other points which had been made previously were further emphasised. In particular it was repeated that there had been a 4 year break in usage within the last 20 years. However that was under statutory powers to lay pipes etc., and statutory powers of entry.
- 8.17. During the course of the Inquiry, a written note was submitted to myself as Inspector, signed by three members of the Applicant's team, the Applicant herself (Mrs Burdess), Mr Thomas and Mrs Peters. Their letter raised considerable concern about the fact that the County Council announced during the course of the Inquiry that a planning application had already been submitted to build a school on the application site at Llanerch. It was acknowledged that the planning application has no relevance to the *Commons Act* inquiry, but it was suggested that its gratuitous disclosure was a matter of considerable consternation and upset. It was suggested that this had been a deliberate act calculated to sow doubt in the minds of participants about the value and integrity of the proceedings, as though an outcome in favour of the County Council was inevitable.

- 8.18. In closing submissions it was stated clearly that the Applicant does not accept the legal arguments advanced on behalf of the Principal Objector. The Applicant had demonstrated that the Llanerch recreational field had been used by a significant number of the local inhabitants for a period of at least 20 years, which period continued at the time of the application. That use had been for lawful sports and pastimes, and had been “*as of right*”. Evidence had been given by numerous oral witnesses to support this, as well as a number of written letters etc. Even the Objector’s witness Mr Murray had stated under oath that he had witnessed local inhabitants indulging in lawful sports and pastimes there.
- 8.19. The landowner had not restricted local inhabitants from using the land for informal recreation, and nor did its predecessor, the Llanelli Borough Council. The Council have never objected to the local inhabitants indulging in lawful sports and pastimes on the land, and accepted that use without protest.
- 8.20. The fees paid for football can only be accounted for since 2004, and that was only for the football pitch area, which is about 100 x 60 yards, about 38% of the total land. The rest of the land is amenity grassland. The percentage of paid use for the football pitch area is minimal in comparison to the overall use of the land. Football clubs that had paid for the use of the pitch on the site are senior and junior, but not mini teams, so there had been no consistency imposed by the Council. During the times when paid formal football games were going on, a significant number of local inhabitants still continued to indulge in lawful sports and pastimes on the amenity grassland. That informal recreation during matches was without interruption.
- 8.21. The fees paid by football clubs covered such matters as seeding, aeration, line marking and cutting of the pitch area only. The application however is based on the whole application site.
- 8.22. While the statutory closure for the Welsh Water works was enforced on the County Council and local inhabitants, access was restricted for the period 2004 to 2008. That however by was reason of enactment. The fact that there was a four year break in usage within the last 20 years can be disregarded. Welsh Water had invoked **Sections 159 and 168** of the **Water Industry Act**. There were statutory notices under that legislation giving them powers to lay pipes, and a power of entry. That was a circumstance to which **Section 15(6)** of the **Commons Act 2006** applied. That was a period when access to the land was prohibited to members of the public by reason of an enactment.
- 8.23. All fencing that there had ever been around Llanerch Field, other than the Welsh Water fencing of its works, was erected merely to keep the people using the field safe, and not to keep the local inhabitants out. That had been confirmed by the Objector’s witness Mr Murray at the Inquiry.

- 8.24. A second temporary closure of the application site for essential maintenance work after damage by burrowing animals did not restrict public access, as the land remained open on the south-west and north-west perimeters. That had also been confirmed by Mr Murray, one of the Principal Objector's witnesses.
- 8.25. The County Council has never encouraged the use of the application site at Llanerch, and they have not produced any evidence to suggest that. Local inhabitants have used the land effectively as a matter of custom, which creates the presumption that the local inhabitants have established recreational rights there. The field at Llanerch was not acquired for a designated purpose, and this supports the Applicant's argument in this respect.

9. **THE CASE FOR THE PRINCIPAL OBJECTOR – EVIDENCE**

- 9.1. Written and documentary material of an evidential nature was lodged by the Principal Objector. However, in general the references which need to be made to this will be sufficiently picked up as I go through the evidence given by the Principal Objector's oral witnesses in the following paragraphs.
- 9.2. *Mr Jonathan Fearn* is a Chartered Surveyor, and the Head of Property with Carmarthenshire County Council. He has had responsibility for the County Council's Estates since March 2004. In his current role he has corporate overview of the management of the Council's land and property assets, including Llanerch Field. His evidence was based (he said) on his own personal knowledge of the application site, and from information gathered by himself and other officers of the Council from the Council's records, and from discussions with colleagues with direct knowledge of the site prior to his joining the Council.
- 9.3. The Council wishes to build a new school on the Llanerch Field site, although Mr Fearn noted that this is not strictly relevant to the determination of the present application under the *Commons Act*.
- 9.4. The land was acquired by the Council's predecessor under an Indenture dated 2nd March 1925. A copy of the original Indenture was produced. That Indenture makes it clear that the land was transferred to the Borough of Llanelli [as it was then officially spelt] for a payment of £1,900, and was not, as some people had suggested, a gift either to the Borough or the people of Llanelli. It is clear from correspondence surrounding the acquisition that the consideration paid was market value for the land. The land acquired at that time was however larger than the current Llanerch Field site.
- 9.5. Part of the 1925 land was leased by the then Borough to the Llanelli Co-operative Society for retail purposes in 1931. That lease was later assigned to Llanelli Town Council and the property became a community centre. That property is outside the

scope of the village green application. In 1965 a further part of the 1925 land, at its western end was sold to the then County Council for the purpose of constructing a new fire station. That land also falls outside the village green application.

- 9.6. Under the 1974 local government reorganisation a number of previous local authorities were merged into the new Llanelli Borough Council, and that Council became the owner of Llanerch Field. In about 1981 a further part of the 1925 land was used by Llanelli BC for the construction of a small housing estate known as Corporation Close. Again that falls outside the village green application site, but abuts its western boundary.
- 9.7. In 1996 Llanelli Borough Council was merged into the new unitary authority of Carmarthenshire County Council, and all its land assets transferred to the new authority. The community centre which had been referred to however was transferred to Llanelli Town Council in 2010.
- 9.8. Thus from 1925 through to the date of the village green application, ownership of the application site had been vested in the present council or its predecessor authorities. Investigation had been undertaken into various other deed packets in the possession of the County Council which could conceivably have had relevance to the present case, but it had transpired that they contained no information relevant to the present application.
- 9.9. The Council's legal file relating to the grant of an easement to Welsh Water following the construction of the underground storage tanks on the application site had also been examined. That contained correspondence regarding the grant of an easement, and the compensation payable to the Council, together with copies of drafts and a copy of the executed Easement.
- 9.10. No restriction on the use of the land of the application site was imposed in the indenture by which it was acquired by the Council's predecessor in 1925, other than a restriction with reference to mines and mineral rights.
- 9.11. The County Council now has computerised records of its land assets. There are no changes or unusual features recorded for this land in the electronic records kept by the County Council.
- 9.12. Not only is the 1925 Indenture silent as to the purpose for which the Borough of Llanelly purchased the land; the correspondence passing between the parties' lawyers at the time is also silent as to the purpose behind the purchase.
- 9.13. A Deed of Easement of December 1958 between the Borough of Llanelly and the Minister of Health, in relation to the grant of a right of light in favour of the then Bryntirion Hospital, refers to the Corporation's land being a recreation ground near

Bryntirion Hospital. That suggests that by 1958 at least the Borough of Llanelli maintained at least part of the 1925 land as a recreation ground.

- 9.14. The County Council also owns the large area of playing fields to the north east known as the Penygaer playing field. Since 1996 the Council has continued to recognise Llanerch Field as a recreational/sports ground, as part of the wider Penygaer sport and recreational facilities provided by the Council for use by the public. Thus since it came to the present Council in 1996 Llanerch Field has continued to be held by the Council for recreational purposes. However it had not been possible to find any record of a formal appropriation of the land by the Council to any particular use.
- 9.15. As local planning authority the Council has in various contexts identified Llanerch Field and Penygaer fields as protected playing fields. The 2006 Carmarthenshire Unitary Development Plan identified those fields as being for recreation use. The 2014 Carmarthenshire Local Development Plan also identified those fields as recreational/open spaces.
- 9.16. The Council has maintained Llanerch Field for sports and recreational purposes. Financial records confirm that the Council has invoiced sports clubs for their use of the football pitch on Llanerch Field. From colleagues Mr Fearn understood that organised football matches were taking place on Llanerch Field as far back as 1974, and that the Borough of Llanelli and their successor Council were providing facilities in the form of a marked pitch, and suitably maintaining the site by grass cutting etc., to facilitate such use. It seems clear that organised football matches were taking place there from 1996 until 2004. In Mr Fearn's view the evidence overall shows that since at least 1958 if not earlier Llanerch Field was being formally provided by the owning local authority as a recreation space for the public, and this provision has been continuous, apart from periods when those authorities exercised their right as landowner to prevent public access.
- 9.17. As far as the interruption to use of the field by the Welsh Water works was concerned, the process leading to that seemed to have begun with an approach on behalf of Welsh Water in 2003. Mr Fearn himself joined the Council one year later. From the property files however, he was able to confirm that on 16th July 2003 the Council received a letter from surveyors acting on behalf of Welsh Water in relation to a planned programme of improvement to the sewage infrastructure in the Llanelli area. That letter informed the Council that, as part of the proposed scheme, the application site had been identified for construction of underground storage. The County Council's general position was to be in support of these works, as they were important for the town.
- 9.18. On 6th August 2003 Welsh Water served two formal notices of entry on the Council, pursuant to *Sections 159 and 168* of the *Water Industry Act 1991*, one to carry out surveys and tests on the Llanerch Field site, and the other to lay a pipe across the land. He produced copies of those notices and the accompanying letters.

The notices were not a surprise to the County Council; they were welcome. There had been much co-operative work with Welsh Water.

- 9.19. There is no further statutory Notice of Entry from Welsh Water in the files. However the file does contain a copy letter from the Council to Welsh Water's surveyors on 16th June 2004, saying it encloses a signed copy of a Notice of Entry. That Notice could not be found in the records. An amended Notice plan was also referred to in a letter from Welsh Water's surveyors to the County Council dated 25th June 2004. That plan showed the location of the underground storage tanks, pipes and accessories, as well as the overall working area. That plan in fact included an area outside the scope of the village green application, extending into the present housing estate at Corporation Close.
- 9.20. On 13th July 2004 a further letter was sent by Welsh Water's surveyors, which again referred to a statutory land entry notice.
- 9.21. Mr Fearn was aware both from his own personal knowledge, and from contemporary photographs, that by mid-June 2004 Welsh Water's contractors were in possession of Llanerch Field, and construction works were well underway. However there is nothing in the file which confirms the precise date when the contractors took possession of the site.
- 9.22. As a result of Welsh Water having deprived the Council of its use of the land on 22nd June 2004, Welsh Water paid the Council the sum of £10,000 statutory compensation.
- 9.23. In November 2005 instructions were sent to the Council's legal department for the grant of a formal easement to Welsh Water in respect of the works. That was concluded in October 2008, and allowed Welsh Water to have future access to maintain its works.
- 9.24. Following construction of the underground storage tanks by the main contractors on behalf of Welsh Water, the site passed to different contractors for the restoration of the site, including the football pitch. That restoration took longer than expected, and it was not until August 2008 that boundary security fencing was removed by the contractors, and control of the site returned to the Council. Once site control had been returned to the Council, it was again made available to the public for the use of the recreational area.
- 9.25. Mr Fearn produced some maps and documents from the Council's records, which showed that the entirety of the present application site, together with considerable additional areas of other land, is recorded as held by the Council's Environment Department.

- 9.26. In the period since 2008 local authorities have in general seen their budgets reduced by central government. In Carmarthenshire as elsewhere the focus has been on protecting core statutory duties of the Council. This has had a great effect on the provision of discretionary services such as recreational and sports facilities. Rather than close those facilities outright, the Council adopted in 2013 a Community Asset Transfer Policy, the aim of which was to protect those facilities from the worst of the expenditure cuts, by transferring them to community management. Llanerch Field was included as one of the facilities available for transfer. Expressions of interest were sought from town and community councils and other groups. A large number of such facilities have been successfully transferred, but Llanerch Field has subsequently been removed from the list of available sites.
- 9.27. The question of the level of charges made for use of sports facilities has also been up for consideration. It emerged from an examination of the costs that maintenance was costing the Council more than the income generated, so the Council was subsidising their use. A consultation about remedying this situation was undertaken in August 2014.
- 9.28. In 2015, following damage to the surface of the football field by burrowing animals, the Council sought to prevent public access to the field for several months for remedial works to be undertaken. During that period the Council did not authorise any formal football matches on the site. Following the re-opening of the site to the public in spring 2016, Mr Fearn himself had met with representatives of sports groups in the County on several occasions, to discuss issues relating to sports pitches. In July 2016 it was agreed at a meeting that a number of pitches previously used would no longer be utilised, including the one on Llanerch Field, which would not be brought back into commission following the remedial works in 2015/16. Since that point the Council has not authorised Llanerch Field for organised football matches. However since the site was re-opened to the public in March 2016, the Council has once again allowed the public to use the site for informal recreational activities.
- 9.29. In Mr Fearn's view the records and information showed that the Council and its predecessors had made Llanerch Field available as a recreation ground and playing field, such that its use has been permissive, or by right. It is clear (he said) that use of the field has been prevented at least once during the relevant period, itself for a period in excess of four years.
- 9.30. *In cross-examination* Mr Fearn agreed that he is currently the Council's Asset Register Holder, with responsibility for various aspects in relation to the Council's property. Some County Council land is managed by service departments. Grounds maintenance on a day to day basis is managed by the Waste and Environmental Services Section within the Environmental Department. Mr Fearn is not himself responsible for the day to day maintenance of the field. His responsibility is more in an overall sense.

- 9.31. He joined the Council in April 2004. He has been the Head of Property, with responsibility for property maintenance, since 2016. Prior to that he had not had overall responsibility for maintenance. Initially in 2016 grounds maintenance was included in his brief, but in August of that same year that responsibility was transferred to another team within the Council.
- 9.32. Because this land had not over the years been transferred, but merely passed on a succession of local government reorganisations, there had not been any requirement for compulsory land registration. However in 2005 Mr Fearn had instigated a programme of voluntary registration of the County's land, and the Council had negotiated a reduction in Land Registry fees to do this, along with various other large landowners.
- 9.33. As for the acquisition in 1925, Mr Fearn had not himself undertaken a valuation, and nothing in the papers specifically says that it was a market value transaction at that time. However that seemed to him the correct view to take of it. There were other transactions on nearby land from the 1920s where it was clear that acquisitions had been for housing purposes under the relevant legislation at that time.
- 9.34. It is possible that there may be some missing documents or packets which ought to be in the Council's records; searches had been done for everything referring to Llanerch Field, as conscientiously as could be achieved. All relevant property records ought to have come through to the County Council as a result of the various local government reorganisations.
- 9.35. £10,000 by way of statutory compensation was paid by Welsh Water to the County Council as compensation for Welsh Water's occupation of the land, or more accurately to reflect the County Council being deprived of the use of the land for a period. The Council was the owner of the land, and therefore the compensation went into supporting the Council's revenue budget, i.e. for general purposes.
- 9.36. There had been discussions with the football community about the possibility of an additional pitch at Penygaer during the disruption period.
- 9.37. It was documentation from 1958 that contained the first reference Mr Fearn had been able to find which related to recreational use of the land at Llanerch Field. That suggested that this land was at that time laid out as a recreation ground. The land referred to in the 1958 easement documentation clearly was Llanerch Field.
- 9.38. Since the present County Council came into existence in 1996, and has therefore been the owner of the land, it has carried on recognising Llanerch Field as a recreational/sports ground.

- 9.39. It was much later on that the Council had decided not to continue the availability of this field for football. However there has been no appropriation of the land to any new purpose in connection with any of this.
- 9.40. As for the Council's 'Asset Transfer' programme, in August 2014 playing fields owned by the County were made available for groups to take over local management. There were discussions with football clubs about continuing the maintenance of Llanerch Field for football. The Clubs at the time accepted that they did not wish this to continue.
- 9.41. In 2014 Llanelli Town Council had asked for Llanerch and Penygaer fields to be transferred by them. There were discussions with the Town Council. Although the Town Council said it was interested in taking over Llanerch Field, the County Council eventually said that it was no longer available as it was wanted for school use.
- 9.42. *In re-examination* Mr Fearn made clear that when the discussions took place in 2014 about possible asset transfer, it had been envisaged that the County Council would have offered some additional funds to the Town Council or a sports club, if one or other of those bodies took over a 99 year lease on the land, and with it management responsibility for the land. There were discussions with the football interests about which pitches they needed, and in 2016 records showed it had been agreed that the Llanerch Field would not be brought back into football use.
- 9.43. **Mr Jonathan Davis** was between 2001 and 2016 a Joint Managing Director of Spencer Environmental Care Limited ("SECA"). SECA were subcontracted by the main contractors to reinstate the recreation/sports field above the sewage storage tanks which had been built for Welsh Water on Llanerch Field, Llanelli. SECA also installed the Heras security fencing around the site in May 2004, and provided some plant and labour resource during the next 12 months. However their main work began in 2006, once the main contractors had finished the construction of the storage tanks and levelled off the site. That involved working to a specification prepared by a firm of professional sports turf designers, who also visited the site every two weeks to view progress.
- 9.44. The work began with the installation of drainage runs, followed by a base layer which was then spread and levelled, and then by the import and laying of topsoil. The field was seeded in early autumn 2006 and allowed to germinate until the following spring. However after unfavourable winter conditions it was decided to over-seed again in early spring.
- 9.45. During summer 2007 works carried on as per the specification. The establishment of the grass was slow but acceptable. However, it became apparent that the surface was not going to be in an acceptable condition for handover in 2007, and therefore a joint decision was taken to postpone until summer 2008.

- 9.46. Final establishment and maintenance operations were completed during spring/summer 2008, and handover to the County Council took place on 11th August 2008, when the final operation on site was the removal of the Heras security panels.
- 9.47. *In cross-examination* Mr Davis said that his firm had installed the full drainage run for the new football pitch on top of the sewage tanks. That included both laterals and main carriers, certainly at the lower end. These runs collect water picked up in the stone layer. They then get the water to an outfall in the riverbank. His firm had installed all the drainage above the subsoil level. The main contractors dealt with matters below that. His firm had had written specifications for its work.
- 9.48. It is normal to allow for two seedings on the provision of a new grass surface. The first seeding here had been at a bad time, very late in the season. Hence establishment of the grass was poor. Mr Davis himself had not thought that the land was fit to hand back, and the County Council agreed. The final inspection leading to the handback took place in the summer of 2008. Mr Davis was not part of the formal handover meeting. That would have been between the County Council and the main contractors. Mr Davis's firm had however satisfied the main contractors. The Heras fencing was then removed within a couple of days.
- 9.49. Grass cutting had been part of the work undertaken by Mr Davis's firm, until they handed back and the fencing was taken down. He believed that would have been done fortnightly throughout the relevant growing season. SECA's work was then completed on the handover and the removal of the fencing. The original post and rail fencing around the site was however left.
- 9.50. ***Mr Hadley Hands*** is currently employed by a construction and civil engineering company based in Swansea called Dawnus Construction Holdings Limited. That firm specialises in large commercial projects. He has worked for Dawnus since May 2005.
- 9.51. However in 2004 he was employed by Morrison Construction Limited (the main contractor for the Welsh Water works on the application site) as a sub-agent to manage construction works on Llanerch Field.
- 9.52. As part of his duties Mr Hands was responsible for the day to day management of the construction site, where large underground storage tanks were being installed. Those works involved the complete removal of the surface of the playing field area, and further excavation to a considerable depth. The excavation was subsequently filled with a large concrete structure. Photographs were produced relating to these works. These works and their ancillary facilities occupied the entirety of the Llanerch Field site.
- 9.53. Given the scale of the works and the presence of heavy plant and machinery, there was a clear and obvious risk to the public should they enter onto the site. A

boundary fence was installed around the entire perimeter in May 2004, made up of Heras fencing panels covered by green netting. Notices were fixed to the fencing at regular intervals warning the public not to enter.

- 9.54. Access to the site was via a gateway off Heol Nant y Felin. That gate was kept secured when not in use, and no public access was permitted through it onto the land. The fencing was not only along the land boundaries of the site but also on the river boundary as well, to ensure that the public were unable to gain access to the site from that direction also. A guard was employed to ensure the security of the site outside working hours.
- 9.55. Mr Hands' involvement with the site ended in May 2005 when he changed jobs, so he did not witness the reopening of the site or the resumption of use. During his time on the site, throughout the year from May 2004 until May 2005, he could not recall any occasion when members of the public gained or attempted to gain access to the site for recreational purposes.
- 9.56. *In cross-examination* Mr Hands confirmed that he was a sub-agent managing the execution of the works on the site. When he left the site in 2005, the tanks had been installed and backfilling had commenced. There was definitely no other access or egress to the site during the works than the one he had described in the north-west corner. The only other breaches of the fencing were where pipes were taken into the site across Heol Goffa.
- 9.57. A crawler jib crane was used on the site.
- 9.58. *In re-examination* Mr Hands explained that the backfilling of the site had involved using selected fill to fill voids around the built structure. That filling was up to sub-soil level, and came from the material excavated on the site.
- 9.59. *To me* Mr Hands said that the notices which had been placed around the Heras fencing would have been typical standard contractors' signs saying something along the lines of "*Keep Out – Construction Site*".
- 9.60. **Mr Paul Murray** is employed by Carmarthenshire County Council as its Asset Transfer Project Manager, a post within the Environment Department. He had held this post from the start of 2018. Prior to that he had been the Grounds Maintenance Manager employed by the same department, and had held that role from 2002 to 2018. His main duties were to maintain the Council's grounds maintenance assets, for which he was responsible. That included responsibility for the maintenance of Llanerch Field. Prior to 2002 he had been employed by the Council from 1996 to 2002 as Lead Agent with responsibility for co-ordination of grounds maintenance contracts for Council land across the County. Again that included Llanerch Field, Llanelli.

- 9.61. Prior to 1996 he had been employed by a different council and had no involvement with the Llanerch Field site.
- 9.62. However, from 1974 to 1986 he personally had played football once or twice a year on Llanerch Field as part of organised league matches. From 1986 onwards he still regularly attended organised football matches on the field, either as a coach or a supporter. He therefore had first-hand knowledge of the site, its use and interruptions to that use. He had also been able to speak to colleagues who were familiar with the management of the site prior to 1996, and had examined the Council's relevant grounds maintenance files.
- 9.63. As well as his proof of evidence prepared for the Inquiry, he had earlier provided a written statement which was submitted with the Council's original objection to the present application.
- 9.64. Since February 2017 he had spent most of his time on asset transfer matters. Since that time other people had been dealing with grounds maintenance.
- 9.65. He himself had played junior and senior football, including games on Llanerch Field, as have his sons. He was also a coach for many years.
- 9.66. Prior to May 2004 the site consisted of a flat grassed area, sloping on its southern boundary down towards the river Lliedi. The eastern and northern boundaries face onto the adjacent roads, and the western boundary is with a small housing estate. The revised application site being considered under this application does not contain the whole of the area which had been managed by the Council as Llanerch Field. There is an additional small area to the south-west, between the river and the housing estate, which the Council regards as part of Llanerch Field.
- 9.67. From speaking to colleagues familiar with the management and maintenance of the site before 1996, Mr Murray understood that the site had then consisted of a single football pitch, together with amenity and grassland. No seating or litter bins had been provided. During the football season the then District Council provided portable goal posts for use during matches, and also marked appropriate lines on the pitch. Mr Murray was unaware of any changes to the location or orientation of the football pitch during that period.
- 9.68. Those colleagues had also confirmed that prior to 1996 the boundaries with Heol Goffa and Heol Nant y Felin had been fenced using concrete posts and a single scaffold pole type of rail. This kind of fencing would not have prevented public access to the site. It had not been possible to ascertain exactly when that fence was erected. People could easily go under or over the rail. Mr Murray could not remember if there had been a gate through that fencing as well.

- 9.69. Another relevant physical feature of the site is the presence of a “*No Golfing*” sign adjacent to the boundary with Heol Goffa. It appeared from discussion with colleagues that this sign was erected prior to 1996. He did not believe it had been erected by the present council. Another park in the town has a similar “*No Golfing*” notice, in the name of the old Llanelli Borough Council.
- 9.70. In Mr Murray’s view the presence of the sign suggests that at the time it was erected the then owner was seeking to exercise effective management of the site, to prevent damage to the playing surface of the football pitch, and danger to other site users and passers-by on the adjoining highways.
- 9.71. From his own knowledge of the site from 1996 to 2004, he confirmed that the appearance and operation of the site continued largely as before 1996; there were no changes to the orientation of the football pitch. The portable goal posts were replaced by the Council with aluminium goal posts after 2008. They would be erected at the start of the football season by council grounds maintenance staff. Pitch marking would also be done on the playing surface.
- 9.72. To the north-east of Llanerch Field is a much larger recreation ground known as Penygaer Fields, which accommodates multiple sports pitches. Although the Llanerch and Penygaer sites are physically separate, for management and grounds maintenance purposes they were on occasion dealt with together.
- 9.73. Both from discussion with colleagues and from his own personal knowledge of the site since 1974, it appeared that the site had been used during the football season for organised football matches, as part or of one or more local leagues since at least the early 1970s. In addition to the players themselves, coaches, supporters and general members of the public would have access to the site for that purpose. The Council’s Debtor Records do not extend further back than 2004, so it is not possible to say whether any teams were required to pay for use of the pitch prior to that date.
- 9.74. In addition to those organised football matches he and his colleagues are aware that the site was also used as a general amenity area by local residents. That would have included informal games and sports by local children, dog walking, and the usual range of leisure activities associated with open spaces of this nature. Such informal usage would have covered the entirety of the site, only being restricted when a formal football match was taking place.
- 9.75. The only evidence he had been able to uncover of any restriction on public use of the site prior to 1996 was the fencing and notice he had referred to. That fencing also served to restrict vehicle and bicycle access to the site, although its main purpose may have been more to prevent people using the site from inadvertently running out onto the road.

- 9.76. Between 1996 and 2004, public use of the site continued largely as it had done prior to 1996. The site also continued to be used for organised football matches as part of the Carmarthenshire Association Football League. It was the designated home ground of Camford Sports AFC.
- 9.77. Prior to each football season council officers would meet with representative of the league to identify how many football pitches would be required for the forthcoming season, and which ones. That would then determine which pitches had to be got ready to host organised matches, and thereafter maintained during the season to a standard suitable for football.
- 9.78. As the designated home team, Camford and more recently the Carmarthenshire Association Football League, would have been invoiced for use of the football pitch on Llanerch Field. The Council's records in this respect go back only as far as 2004. Those records clearly show that Camford Sports AFC, and more recently the League, were invoiced for the use of Llanerch Field for organised football matches, and paid those invoices.
- 9.79. In July 2003 the Council was contacted by land agents acting on behalf of Welsh Water, who advised that the latter wished to carry out significant works to the sewage system in the vicinity of Llanerch Field. On 7th August 2003 Welsh Water served a formal Notice of Entry on the Council to carry out ground investigation works. During the week of 15th August 2003 trial bore holes were dug on behalf of Welsh Water, outside the pitch area, as the football season had just started. Subsequently it appears that a further Notice of Entry was received from Welsh Water regarding the substantive construction works.
- 9.80. Mr Murray was not directly involved with maintenance of the site during the works period, because it was fully occupied by Welsh Water. However he was involved in work relating to the restoration of the site after the construction works had finished. It had been decided at a meeting in March 2004 that it would be the contractors who would restore the site after the works had been undertaken, rather than the Council. Mr Murray in fact recommended a firm specialising in sporting surfaces to Welsh Water for the purpose of carrying out that work. That firm produced a report with a site description and an assessment of the soil structure, and considered the options for restoration of the site. Mr Murray's own main concern at the time had been that he wanted to ensure that an adequate growing medium would be reinstalled above the tank.
- 9.81. Prior to the works, the state of the ground at Llanerch was very good. Matters were then of course disrupted. Neither the Council nor the general public had access to the site during the period while the construction and restoration works were being undertaken.
- 9.82. The restoration of the football pitch took far longer than originally expected. It involved the drainage of the main football pitch. Essentially the construction took

from 2004 to 2006, and the restoration took from 2006 to 2008. A further report was commissioned about the state of the site in October 2007, which recommended that additional work was needed to restore the football pitch to the required condition.

- 9.83. The records show that the work of restoration was completed by August 2008, when security fencing was removed from around the site. There were a number of complaints received during that period regarding the delay in restoring the site and reopening it for public use, particularly for organised football matches. Complaints were also received after the public were again allowed access. These concerned insufficient drainage outside the actual playing surface of the football pitch.
- 9.84. It is unclear from surviving records when organised football matches restarted on the ground. Financial records held by the county suggest that by 2011 Camford Sports AFC were using Llanerch Field as their home ground, but it is possible they were doing so before then. In March 2010 Mr Murray wrote to local clubs about ground conditions and use of pitches, including Llanerch.
- 9.85. Following completion of the works the only visible physical changes to the site compared to pre-2004 were the re-profiling of the ground levels, which meant that they were higher than in 2004, and the erection of a kiosk on the boundary with Heol Goffa containing equipment for the operation of the underground tanks. As before 2004, the only fencing around the site was the concrete post and tubular steel fencing previously referred to.
- 9.86. Once organised football resumed on the pitch, Council officers would meet with league representatives to agree pitch requirements, and grounds maintenance work programmes would be based on that. As well as Camford Sports using Llanerch Field as their home pitch, it was also agreed informally with the league that where there was a backlog of fixtures the league could arrange for other clubs to use that pitch.
- 9.87. Aside from the use of Llanerch Field for organised football matches, since 2008 it has also been used by local residents for a wide range of informal recreational activities, using the entirety of the site – the only physical restriction on the use was when organised football matches were taking place.
- 9.88. In 2012, in conjunction with traffic calming measures on adjoining roads, a scheme was proposed which involved the replacement of the post and tube fencing around the site with modern 1.1 metre Heras fencing. This included potentially lockable pedestrian gates at several points. That fencing is still in place. The purpose was to ensure highway safety for pedestrians and cyclists. It had nothing to do with the security of Llanerch Field itself.

- 9.89. Use of the site for the organised football matches and informal activities continued until July 2015, when owing to extensive damage to the surface of the football pitch by burrowing animals it was necessary to close off the site temporarily to all public access, so that remedial works could be carried out and the playing surface given a chance to recover. By March 2016 public access to the site had been restored. Mr Murray believed that the gates were locked on 17th August 2015 and had reopened by 10th March 2016. Pitches do get damaged by animal scrapings, for example by rabbits.
- 9.90. During the period the site was closed to the public, there were a number of occasions when padlocks on the gates were broken off. Those were immediately replaced once the damage became known. Mr Murray did not know how much use was in fact made of the site during that period. He accepted that during that period there was practical access to the site via Corporation Close.
- 9.91. Following the reopening of the site to the public the Council did not authorise the use of the site for organised football matches for the 2016/17 and 2017/18 seasons.
- 9.92. Since 1996 the maintenance activities undertaken by or on behalf of the Council at Llanerch included grass cutting, weed spraying, Japanese Knotweed spraying, litter collection, and various other ad-hoc works such as maintenance of the trees and boundary fencing of the site etc. The annual combined maintenance cost to keep Penygaer Field and Llanerch Field in a suitable condition for organised football was established in 2014 as being £18,640. That would have taken into account all of the maintenance operations he had mentioned. There are no specific maintenance figures available for Llanerch Field by itself. He did not believe that there were any by-laws applicable to Llanerch Field. The only by-laws he was aware of in any local park or open space were at a park called Parc Howard.
- 9.93. *In cross-examination* Mr Murray agreed that some of the old post and tube fencing had been in a damaged state before it was replaced. There were photographs which showed some of that damage. It was in 2012 that the new fencing was installed. He believed that there had been some Heras fencing put up where there had been damage to the old fencing. The new fencing was put up on a slightly different line to the old fencing.
- 9.94. Weed spraying is usually done on a three year cycle, as recommended. The Council only uses chemicals which are approved by MAFF. There is an 80% chance of killing the weeds if done at the right time of year. Trimming trees is not a major feature of the work which has to be done at Llanerch.
- 9.95. He was not aware of the earlier existence of a changing shed in the vicinity of the golf sign in the south-eastern corner of the site, though he had seen earlier references to a shed being on the site.

- 9.96. The maintenance carried out on the Council's behalf at Llanerch in the pre-works period had been on the whole area of the site. The position now is that just the grass is cut. The land is no longer maintained as a football pitch. The grass is cut in the way which is appropriate to amenity areas. Mr Murray does not currently deal with this matter.
- 9.97. Fees had only ever been raised from users in respect of use of the football pitch, and not for leisure use on the land.

10. THE SUBMISSIONS FOR THE PRINCIPAL OBJECTOR

- 10.1. The original objection on behalf of the County Council as landowner made a number of submissions, some of which were significantly modified as the case progressed further. Nevertheless it is appropriate to take brief note of some of the contents of that original objection.
- 10.2. Concern was expressed at that stage about the inadequacy of the original plan accompanying the application as lodged. That matter was subsequently resolved in the way I have referred to earlier, so it is not necessary for me to take any further note of that point.
- 10.3. The ownership status of the County Council in respect of the land was established, and it was indicated that the Council's Principal Objectors were based on three grounds:
- (1) use of the land for public recreation had been permissive, not 'as of right';
 - (2) between 2004 and 2008 the public were excluded from the application site while Welsh Water installed holding tanks in the land. That period cannot count towards the requisite 20 years period of use for lawful sports and pastimes;
 - (3) (related to land not in the event included within the amended application site).
- 10.4. On the question of permissive use, the application cannot succeed (it was argued) unless the Applicant can show that there has been use for lawful sports and pastimes 'as of right' for at least 20 years. This issue was clarified in the well-known House of Lords decision in the *Barkas* case. That case has particular relevance to land owned and maintained by local authorities for public recreation. Where a local authority landowner has lawfully allocated the land in question for the purpose of public recreation for an indefinite period, public recreational use is *by right*, not as of right. As Lord Carnwath made clear in that case, where land has been made available to the public in such circumstances, there is no reason to attribute subsequent public use to the assertion of a distinct village green right.

- 10.5. Where the owner of land is a public authority, no adverse inference can sensibly be drawn from its failure to warn off the users of the land as trespassers, if it has validly and visibly committed the land for public recreation, under powers which have nothing to do with the acquisition of village green rights.
- 10.6. In the present case the land was acquired by the Council's predecessor in title, Llanelly Borough Council under an Indenture of March 1925. It appears that the land was not acquired for any specific statutory purpose that would have prevented it from being put to recreational use. For many years the application site was made available and maintained for public recreational use. The Council and its predecessors had ample statutory power to do that, under enactments including the *Public Health Act 1875, Section 164*; the *Open Spaces Act 1906, Sections 9 and 10*; the *Public Health Act 1925, Section 69*; the *Physical Training and Recreation Act 1937, Section 4*; and the *Local Government (Miscellaneous Provisions) Act 1976, Section 19*.
- 10.7. The land has also been allocated for public recreation in public planning policy documents for many years. A number of the statements submitted in support of the application in fact reflect the position that the land has been set aside by the Council and its predecessors for public recreational use. The Council has maintained the land principally by regularly cutting the grass, painting the lines of the football pitch, and installing and maintaining goal posts etc. Football clubs were charged for their use of the pitch on the site.
- 10.8. In the circumstances the land had clearly been allocated for public recreational use for many years, and had been maintained for that use by the Council. Use both for formal sports and informal recreation had therefore been permissive, not as of right.
- 10.9. In July 2004, with the Council's consent, the site was fenced off by Welsh Water while it installed holding tanks there. The fencing was only removed after the works had all been completed, in August 2008. Between those dates the land was a fully enclosed construction site under the control of Welsh Water and its contractors. The public was excluded from the land during that whole period. Thus that period from July 2004 to August 2008 must be excluded when assessing whether inhabitants of any locality or neighbourhood could have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years.
- 10.10. In submissions made by the Principal Objector in preparation for the start of the Inquiry, it was indicated that the grounds of objection were now essentially two. First was that the use of the land had been permissive, "*by right*", and not as of right. This was because public use had been facilitated, encouraged and permitted by the owner, the Local Authority for the area. Second, the Council still relied on the interruption of use by local members of the public at least once, and for a period in excess of four years.

- 10.11. The relevant 20 year period in this case runs from early 1997 to early 2017. Use “*as of right*” is inconsistent with the use by right, or use with the landowner’s permission. Use by right or with permission may be inferred from the identity of the landowner, and all the surrounding facts including the landowner’s conduct. Here the use relied on is use of a playing field and/or recreation ground, owned by a public authority with statutory powers to provide such a facility on the land, and maintained as such. The overwhelming inference from the facts is that the use of the land has been permissive. This case is indistinguishable from that of ***Barkas v North Yorkshire County Council*** [2014] UKSC 31.
- 10.12. The phrase “*as of right*” is the antithesis of “*by right*”. Acquiescence and permission are fundamentally different. The latter gives the public the *right* to use the land, and does not justify registration under the ***Commons Act***. It was accepted, as it had been in the ***Barkas*** case, that there are some circumstances where the use of land held by a public authority can properly be held to be use ‘as of right’.
- 10.13. The case of ***Goodman v Secretary of State*** [2016] 1 P&CR 8 concerns land in Exeter which in the past had been formally appropriated and thereafter held for development purposes. Without a formal appropriation in reverse, and while the local development plan continued to retain the site as an employment allocation, the land was *de facto* made available for public use by the council. Upon an application for village green registration, an inspector had held that there had been an implied re-appropriation to Open Space purposes. That inspector’s decision was quashed, Dove J holding that the inspector was wrong to infer a re-appropriation to an open space or recreational use. Nothing like that situation applies in this present case at Llanerch.
- 10.14. Any substantial interruption to use, which is not *de minimis* or so temporary as to be of no significance, is sufficient to defeat a claim that there has been use for the period of 20 years. The case of ***Naylor v Essex County Council*** [2014] EWHC 2460 (Admin) was referred to. There the land had been maintained by the council for open space and recreation, save for a period of three months during the summer of 1993. During that period substantial civil engineering works took place relating to the construction of a sea wall. The use had therefore been held not to have been continuous and uninterrupted for lawful sports and pastimes for the necessary 20 years.
- 10.15. **Section 15(6)** of the ***Commons Act 2006*** was considered. If that subsection were to apply, the period during which Welsh Water occupied Llanerch Field would be disregarded, and the 20 year period would commence an equal period earlier. However that statutory provision covers statutory *prohibitions*, such as those imposed during an outbreak of foot and mouth disease. It does not extend to all those occasions on which use is prevented by virtue of the exercise of statutory powers. This much is clear from the judgment in the ***Naylor*** case. The interruption by Welsh Water in this present case was an example of works carried out by a public authority on the Principal Objector’s land under compulsory

powers. The powers used in this case were *Sections 159 and 168* of the *Water Industry Act 1991*. They do not engage *Section 15(6)* of the *2006 Act*.

- 10.16. The Principal Objector does not dispute that use has been made of Llanerch Field by the inhabitants of Llanelli and others for lawful sports and pastimes. The land has been owned by the local authority throughout the relevant period, and made available deliberately and overtly by them for public use. This is recognised in statements made in support of the application. The land has been referred to as a recreation ground since at least 1958. The use that has been made of the land is not inconsistent with any stated purpose for which it was acquired or has been held at any time during the relevant period. There is no record of any appropriation to another use. Use of the playing field by clubs and others has been charged for, and subject to controls and conditions.
- 10.17. In closing submissions on behalf of the Principal Objector, the two main grounds of objection were reiterated. The Inquiry in this present case was in no way concerned with the prospects of any new development proposals for school purposes on part of the land. Clearly such proposals could not proceed if this present application is successful, even if planning permission were granted.
- 10.18. It was accepted that 23 individual witnesses had given evidence about the use they had made of Llanerch Field, and what it means to them and others in the local community. The general picture painted by those witnesses is not only of a valued sporting facility, but of an equally valued place to play and meet people. It is accepted that these uses constituted lawful sports and pastimes. However that understanding of the use of the land underlines the case for the Principal Objector: this is a recreational playing field and amenity area, having been allocated for recreational use for many years. This Inquiry is not set up to assess the merits of retaining the recreation ground as it is. It is only concerned with looking back over the relevant period, and considering the legal and factual context of the application.
- 10.19. Although this might not have been clear previously, it was clear as a result of the exchanges at the Inquiry that all parties now acknowledge that the documentary evidence shows that the County Council owns the freehold of Llanerch Field, its predecessor having bought the land in 1925 for £1900. That appears to have been a price which had the characteristics of a commercial transaction at market value. This land was not bought for a specific purpose, and the new owner of the land at the time of purchase was free to use it as it saw fit. The belief that the land had been given to the people of Llanelli, or subject to some form of restriction, was erroneous, according to the research into the records which had been undertaken.
- 10.20. The County Council and its predecessor authorities have behaved throughout as owners of the land, and indeed had been treated as owner. They have charged for use of the pitch, maintained the land, granted an easement to Welsh Water; they have altered the northern boundary slightly in 2012. It appears they even permitted

Billy Graham to pitch his tent on the land for a week in the 1960s, for the purpose of an evangelical rally.

- 10.21. The land has been maintained by the Council, together with other nearby amenity land including Penygaer Playing Field, as a playing field and recreation area. It has never been used for a purpose which is inconsistent with that use. Naturally maintenance had focused on the needs of the pitch, which had indeed been the focus of much of the activity there, and has more demanding maintenance requirements. The Council had charged for but nevertheless subsidised the use of the pitch for many years. The use by football clubs had been subject to controls and conditions. There had been extensive evidence of negotiations over that question. Not all use of the pitch was subject to charge (e.g. use by mini teams). Nevertheless there had been the clear assertion of a landowner's right to control access to the land. This is highly relevant to the issues before the Inquiry. The reality of the compensation payment from Welsh Water reflected that fact. It was the Council who were compensated by Welsh Water, not the public.
- 10.22. The Council's padlocking of the gates to the field, when pot holes or holes made by burrowing animals made the surface of the pitch unsafe, is a further assertion of the right of the landowner to control access. The Principal Objector however does not need to go so far as to say that this would amount to an interruption for the purpose of the application. It was accepted that people had been able to get onto the land without difficulty at various points during that particular period.
- 10.23. The purpose for which the land is held is the very purpose for which it has in fact been used. It has been referred to as a recreation ground since at least 1958, and shown as such on Ordnance Survey maps from 1964 onwards. The use made of the land is not inconsistent with any stated purpose for which it was acquired or has been held at any time during the relevant period. There has been no record of any appropriation to another use. The use is controlled when the owner decides that is appropriate. Pitch use is subject to a fee, and golfing has been prohibited.
- 10.24. The County Council's predecessor in title, Llanelli Borough Council, recorded the use of the land as recreational in its Asset Register at the time of transfer to the County Council in 1996. The present Council's records show it recorded as being a park. That involves no change from the previous recreational categorisation. The land is also allocated in planning policy documents for recreational uses, and has been for many years, and throughout the relevant 20 year period.
- 10.25. As for the interruption of use by local members of the public, there has been no dispute that use of the field by local people for recreational purposes was prevented between May/June 2004 and August 2008. This happened following close working between the County Council and Welsh Water, and was entirely with the County Council's agreement. Thus in 2004 public use was interrupted, and access prevented. Llanerch Field effectively became a major construction site. It would have been entirely inappropriate to permit access.

- 10.26. The statutory notices dated 6th August 2003, served by Welsh Water, entitled them to enter the land in order to carry out investigatory works, and to enter the land in order to exercise statutory powers to construct a relevant pipe under the land. The construction phase, combined with the restoration phase, meant the land was out of use by local members of the public between 2004 and 2008.
- 10.27. The case of *Lewis v Redcar and Cleveland Borough Council* [2010] UKSC 11 considered a fundamentally different situation from the present one. This was most obviously because the evidence of use there was by walkers across a golf course, which had involved a finding by the inspector that the two uses were in conflict. It had been held by the inspector that use which would otherwise have been ‘as of right’ by the local public was affected by the fact that walkers deferred to golfers on occasions of conflict. However at Llanerch Field the two recreational uses are different sides of the same coin, and both were permitted and intended by the landowner. Although there are occasions when use of the pitch for informal recreation is not possible without disturbing play, it is not this which prevents the use of both being use as of right. The use is not as of right because it is the use to which the landowner has desired its land to be put.
- 10.28. The landowner’s permission can be inferred from the surrounding facts, and need not be express, or explicitly conveyed to the individuals making use of the land. In other words, even if the users of the land did not know that their use was permitted, that makes no difference to the legal implications of the fact that use by all and sundry was permitted by the Council.
- 10.29. This case is indistinguishable from that of *Barkas*. That had been a 2 hectare playing field owned by a local authority. The council there, or its predecessor, had acquired the field as part of a larger area under *Housing Act* powers. Most of the acquired land had been developed for housing, but the field concerned was laid out and maintained as a recreation ground, in accordance with powers under the housing legislation, with housing all around. It had been used as a playing field and for dog walking etc., and maintained by the council, for some 50 years. The Supreme Court held that the use there had clearly been ‘by right’ and not as of right.
- 10.30. Ultimately the conclusion as to whether use was by right, by permission or as of right is one of fact, provided the correct approach is taken to the evidence. In this present case there is no contra-indication at all to the view that the land was used by right. Local authority landowners must be viewed in a different way from private landowners, as was made clear by the Supreme Court in that case. This present case is (it was argued) if anything even stronger than *Barkas*, in that the land was not acquired for any particular purpose. If the County Council held this land for public recreational use, it follows automatically that the public had permission to use it. It would have been positively inconsistent for the Council to refuse access to the land without good reason.

- 10.31. Neither the *Oxford 'Trap Grounds'* case nor the *Goodman* case (both of which considered situations where local authority land *could* be registered as a town or village green) was relevant to the circumstances of the present case. In the *Trap Grounds* case (*Oxfordshire County Council v Oxford City Council* [2006] UKHL 25) the landowner had not claimed that there had been an implied licence to use the land for recreational purposes. It had related to 9 acres of undeveloped land in North Oxford. Much of the land was fairly impenetrable scrubland.
- 10.32. Those cases give an indication as to the sort of circumstance where land owned by a local authority might in fact be susceptible to claims of as of right use. One such situation is where an authority has appropriated land for a purpose which is inconsistent with recreational use, but then fails to develop the land for that purpose, so that a 20 year period of use for lawful sports and pastimes can be proven. In such circumstances a local authority owner would face difficulties arguing that there had been an implicit permission to use the land. Similarly, if it is clear from the evidence that throughout the relevant period the authority as a matter of fact did *not* consent to public use for lawful sports and pastimes, that could reasonably lead to a conclusion that use which had taken place was as of right, even if there had not been any formal appropriation. This case is completely different from any such circumstance.
- 10.33. In this case there is only one rational conclusion from the evidence. The recreation ground here was indeed used for lawful sports and pastimes, but either by right or with the permission of the County Council or its predecessors.
- 10.34. As for the *interruption* of use for 4 years between 2004 and 2008, the precise wording of *Section 15(6)* of the *Commons Act* needed to be considered. The interruption of use by Welsh Water was an example of works carried out by a public authority on the County Council's land under statutory powers. The public were excluded as a consequence of the desire of the two public authorities to improve Llanelli's sewage infrastructure. Welsh Water had powers of entry under the *Water Industry Act*. Nevertheless it was argued that the interruption here did not engage *Section 15(6)* of the *2006 Act*.
- 10.35. The question which arises is whether access to the land was *prohibited* to members of the public *by reason of any enactment*. Why did members of the public cease using the land in this case? They were prevented by a fence, and by the existence of a construction site. Access was physically impossible because of the Heras fencing and the security presence on site. Indeed access for an extended period would have been unsafe.
- 10.36. In these circumstances, was the access prevented or prohibited? There is a difference, and here access was prevented by the presence of a major construction site which had been fenced off for security. In other words the loss of access here is more properly understood as having been caused by physical prevention rather

than prohibition. The reason for preventing access was to provide a safe and proper environment for the physical works required, not because of an enactment requiring prohibition.

10.37. Since both the landowner and Welsh Water are public bodies, all their lawful actions are in some way traceable to the exercise of statutory power. In a sense therefore Welsh Waters are the root cause of the project which made access inappropriate. Does that however mean that every time the consequence of the exercise of a statutory power is the exclusion of members of the public, the period of exclusion should be disregarded? That would engage **Section 15(6)** every time a public body carried out construction on land, or every time a public body chose to exert its right as owner to exclude members of the public. **Section 15(6)** should be interpreted more narrowly than that.

10.38. The source of the requirement to exclude members of the public was not it seems the **Water Industry Act** at all. As far as can be seen, it was the **Construction Design and Management Regulations**. Welsh Water were exercising statutory powers to lay pipes, and the fact that the site became a major construction site imposed on the contractors a legal duty to prevent access by unauthorised persons. The source of that duty at the time was the **Construction Design and Management Regulations 2007**. **Regulation 13(6)** of the **2007 Regulations** had stated:

"No contractor shall begin work on a construction site unless reasonable steps have been taken to prevent access by unauthorised persons to that site."

10.39. Thus it would be right to recognise that the reason access was physically prevented may be traced to a statutory duty, although the underlying statutory purpose for which Welsh Water entered the land is not a prohibition at all. If the prevention of access under those Regulations engages the statutory disregard within **Section 5(6)**, then construction sites would be caught in every case. The Principal Objector argues that this provision was designed to cover express statutory prohibitions, such as those imposed during an outbreak of foot and mouth disease, and does not extend to all those occasions in which a landowner prevents use of its land in the exercise of statutory powers, or where access is prevented pursuant to a statutory duty. Paragraphs 81 and 82 of the Judgment of the Learned Deputy High Court Judge in the **Naylor v Essex** case were quoted. The Judge in that case did not appear to have been asked to consider whether the **Construction Design and Management Regulations** meant that members of the public had been prohibited from access to the construction site 'by reason of any enactment'.

10.40. The present Objector's argument is that to rely on those regulations as representing a statutory prohibition would draw the category of interruptions to use inexplicably wide, and lead to complexity and confusion in the registration process. The only tenable interpretation is that one must look at the root cause of the exclusion of the

public, and ascertain whether or not that root cause is itself a statutory prohibition on access.

- 10.41. In this case the root causes were first a construction site and then a restoration project. The construction work was authorised by statutory powers which are not concerned with prohibition of access by the public. The restoration works were undertaken in lieu of compensation to the County Council, and were therefore arguably similar to any local authority development project. Therefore in neither phase of the project in this case was access prohibited to members of the public by reason of any enactment.
- 10.42. As noted earlier, provision was made for the parties to make further representations in the light of the appearance in the public domain, shortly after the Inquiry had concluded, of the Court of Appeal's long awaited judgment in *R (Lancashire CC) v Secretary of State; R (NHS Property Services Limited) v Surrey CC* [2018] EWCA Civ 721. Shortly after that judgment was handed down, a further potentially relevant judgment of the High Court emerged in *R (Cotham School) v Bristol City Council* [2018] EWHC 1022 (Admin).
- 10.43. As noted earlier, both main parties were invited (if they wished to) to make written submissions in the light of the emergence of these two new judgments.
- 10.44. The Principal Objector's view is that neither of these two judgments materially affects the decision required in this present case. Both cases had turned to a large degree around the concept of "*statutory incompatibility*". On that point the Court of Appeal applied principles established by the Supreme Court in the *Newhaven Port & Properties* case. No reliance on those principles has been placed by any party involved in this present application.
- 10.45. Although the question of "*as of right*" use was also discussed in the Court of Appeal's judgment, that was not in any context relevant to the circumstances at Llanerch.
- 10.46. The *Cotham School* case concerned an application to register some playing fields as a town or village green. Those playing fields had been used as such since the 1940s, and were owned by Bristol City Council. However that case turned upon the very particular factual circumstances of what had happened in relation to the Registration Authority's decision, and its manner of reaching it. The judgment therefore raises no point of principle relevant to the Llanerch case, and need not be referred to in the determination of the Llanerch application.

11. **DISCUSSION AND RECOMMENDATION**

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

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

and

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

In this particular case, the wording of **Subsection (6)** of **Section 15** is also relevant:

"In determining the period of 20 years referred to in subsection[s] (2)(a)..., there is to be disregarded any period during which access to the land was prohibited to members of the public by reason of any enactment"

The application in this case was stamped as received by the Council as Registration Authority on 1st March 2017, so that date represents the ‘time of the application’, from which the relevant 20 year period needs to be measured (backwards), subject to the question whether **subsection 15(6)** of the Act has any relevance to this case. Any such relevance would (potentially) relate principally to the period of approximately 4 years, between 2004 and 2008, when access to the application site was prevented, during the civil engineering works being carried out on behalf of Welsh Water, and the time taken for the restoration of the site thereafter.

Assessing the Facts

11.2. In this case there was some (albeit not very much) dispute in relation to elements of the underlying factual background as to the history and extent of the use of this site over the relevant years. The law in this area puts the onus on an applicant to prove and therefore justify his/her case that all of the various aspects of the statutory criteria set out in **Section 15(2)** have in reality been met on the piece of land concerned.

11.3. To the extent that any of the facts in the case were in dispute, it is necessary to reach a judgment as to the disputed aspects of the evidence given, insofar as that evidence was relevant to the determination whether the statutory criteria for registration have been met or not [and as to the applicability or not of **subsection 15(6)**, if relevant].

11.4. Where there were any material differences, or questions over points of fact, the legal position is quite clear that they must be resolved by myself and the Registration Authority on the balance of probabilities from the totality of the

evidence available. In doing this one must also bear in mind the point canvassed briefly at the Inquiry itself (and mentioned by me earlier in this Report) that more weight will (in principle) generally be accorded to evidence given in person by witnesses who have been subjected to cross-examination, and questioning by me, than would necessarily be the case for written statements, completed ‘evidence questionnaire’ forms and the like, which have not been subjected to any such opportunity for challenge.

- 11.5. I do not think that the nature of the evidence given to me in this case necessitates my setting out in my Report, in a formal, preliminary way, a series of ‘findings of fact’. Rather, what I propose to do, before expressing my overall conclusions, is to consider in turn the various particular aspects of the statutory test under **Section 15(2)** of the **2006 Act**, and to comment on how my conclusions (on the balance of probabilities) on the facts of this case relate to those aspects. It should not however be assumed that any facts I mention under one heading are only relevant to that heading. I have taken into account the totality of the underlying facts in reaching my conclusions under all the headings, and (of course) in reaching my overall conclusions as well.
- 11.6. I shall then consider the question whether **Section 15(6)** of the **2006 Act** has any bearing on the circumstances of what happened in this case (particularly with reference to the period 2004 to 2008), and if so whether it affects my overall conclusions and recommendations in respect of how the matter should be determined.

“Locality” or “Neighbourhood within a locality”

- 11.7. The application form in this case, as accepted and validated by the County Council as Registration Authority, put forward Llanelli as the relevant locality or neighbourhood. Llanelli is a historic borough and currently a lower tier local authority area with a Town Council. There is no doubt at all, it seems to me, that Llanelli is a ‘locality’ in the sense the courts have given to that term, when it appears in the **Commons Act**.
- 11.8. No points were taken by the Principal or any other Objector on this topic. Llanelli is therefore the relevant locality for this application.

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

- 11.9. Subject to the question of interruptions to this use (the key one being Summer 2004 to Summer 2008), which I discuss later, there is no essential dispute that large numbers of local people have used the application site for ‘lawful sports and pastimes’ of various kinds over several decades, going back at least to the 1950s,

and quite possibly to the 1920s. These aspects of the statutory criteria were not in contention at the Inquiry.

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

- 11.10. Likewise, there was no dispute that ‘lawful sports and pastimes’ use of the application site continued to be made by local people at the time of the application in early 2017, and indeed this was still the case at the time of the Inquiry in April 2018.

“As of right”

- 11.11. This aspect of the statutory criteria is, it seems to me, the major issue which has been in dispute in this case. The courts, including the Supreme Court on a number of occasions, have made it clear that there is no general legal principle which prevents the registration as a town or village green of open land which belongs to public authorities, and in particular local authorities. The land in the well-known “*Trap Grounds*” case in the House of Lords [*Oxfordshire County Council v Oxford City Council* [2006] UKHL: 25], where it was held that the land *could* be registered, was (by way of example) in the ownership of Oxford City Council.
- 11.12. The ‘*as of right*’ test in **Section 15** of the **Commons Act** is often discussed by reference to the Latin maxim *nec vi, nec clam, nec precario*. This means that, to meet the test, use of the land concerned by local people has to have been ‘*without force*’ (e.g. not by breaking down fences to get in, or by ignoring clearly visible ‘Keep out – no trespassing’ signs), ‘*without secrecy*’ (e.g. not by sneaking into land at night), and ‘*without permission*’.
- 11.13. There is not the slightest real suggestion in this case that regular use of Llanerch Field has been ‘by force’, or by sneaking onto the land in secret. Indeed quite the contrary has clearly been the case.
- 11.14. Thus the part of the test we are concerned with in this case is the ‘*nec precario*’ aspect. Case law has clearly established that what this means is that use of a piece of land cannot be ‘as of right’ if it was with the *permission* of the landowner (express or implied), or where for some reason members of the (local) public have enjoyed an actual *right* to be on the land concerned.
- 11.15. Use of land is only ‘as of right’ where local people have behaved ***as if*** they had the right to use the land, when in reality they did not have any such right or permission. In other words, there is something of a ‘trespassory’ element to ‘as of right’ use.
- 11.16. It is important however to note that there is distinction between, on the one hand, *implied* permission, and on the other hand *acquiescence* or tolerance on the part of

a landowner. Where a landowner is aware (or should be aware) that local people are using his/its land for recreational purposes, and merely acquiesces, taking no steps to do anything about it, or warn people off, such use *would* be ‘as of right’ and not by implied permission.

- 11.17. It is clear, in the light of all these considerations, that the use which has been made over many years of the football pitch on Llanerch Field by organised football teams, generally paying a ‘rent’ or pitch fee to the owning local authority (the present County Council or its predecessors), could not possibly ‘count’ towards any assessment of ‘as of right’ use by local people. Such use would undoubtedly have been ‘by permission’.
- 11.18. This would have been just as true for games played by mini-teams and the like, when they were the result of arrangements made between teams or leagues and the Council’s ground management staff, even if no pitch fees were levied for those categories of user.
- 11.19. Nevertheless it seems to me, in the light of the important Supreme Court decision in *R (Lewis) v Redcar & Cleveland Borough Council* [2010] UKSC 11 (one of the cases referred to on behalf of the Applicant at the Inquiry), that it is still necessary to consider whether the other informal use of Llanerch Field by local people, which was compatible with the regular ‘formal’ football matches, was itself ‘as of right’ use. Indeed in this case the Principal Objector accepted that local people had continuously (subject to the interruption discussed later) used the parts of Llanerch Field off the football pitch for informal recreation, and had so used the football pitch area itself at all times when they could reasonably do so without interfering with ‘formal’ football matches. In other words, there was the sort of ‘give and take’ which one would expect in a civilised community.
- 11.20. It has however been reasonably clear for more than a century, from case law unrelated to town or village greens, that there are certain categories of open land, owned or managed by local authorities, where members of the public have an actual statutory *right* to be on the land concerned, subject only to compliance with any applicable byelaws. The most obvious example of this is land held by local authorities as parks and pleasure grounds, or recreation grounds, under *Section 164* of the *Public Health Act 1875*, as amended. This principle logically also applies to land held as Public Open Space under the *Open Spaces Act 1906*.
- 11.21. It took some time for it to become clear to what extent this principle would be applied in ‘town or village green’ cases, but that clarification eventually came in the very important Supreme Court decision in *R (Barkas) v North Yorkshire County Council* [2014] UKSC 31. The land in the *Barkas* case had been a recreation ground originally provided by the local authority under statutory powers contained in the housing legislation, and situated within what had originally been a municipal housing estate.

- 11.22. It was eventually held that such land could be (and had been) used by members of the public generally, not just residents of the local estate, as a matter of right, so that the recreational use of the land which had taken place over many years had been ‘*by right*’, or ‘*with permission*’. It was not therefore ‘*as of right*’.
- 11.23. Those were the facts of the case in *Barkas*, but their Lordships in the Supreme Court ranged more widely in their discussion of local authority land which is deliberately provided by authorities for public recreational use. A marked distinction was noted between private landowners, who do not generally have any functions or duties in terms of providing land for the public to use freely for recreational purposes, and local authorities, who have many statutory powers and functions which enable them to do just that. Many of these statutory powers were indeed referred to in the submissions for the Principal Objector in this present case.
- 11.24. What is clear from the *Barkas* decision is that the principle applied in that case will also be applied to any land deliberately allocated or provided by a local authority (possessing such powers and duties) for public recreational purposes, whether or not there has been a recorded formal acquisition or appropriation of the land concerned under specifically relevant statutory powers. It just does not make sense (their Lordships in effect say) to treat local people using land, deliberately provided by an authority as a recreation ground, as being ‘trespassers’ who the owning authority must ‘warn off’, if they are to avoid town or village green rights being asserted ‘as of right’.
- 11.25. This is highly relevant to the present case, because it is clear that the land at Llanerch Field was not originally acquired by the old Llanelly Borough Council (in the 1920s) for the express purpose of laying out a park or recreation ground. Nor does the present County Council suggest that records show any formal later ‘appropriation’ to public recreation ground or park use.
- 11.26. However it is clear from the evidence (from both sides) that this land has in fact been provided and maintained by the succession of owning local authorities as a public recreation field or ground, with a football pitch on it, over many decades, at least since the 1960s and quite possibly for significantly longer than that.
- 11.27. In these circumstances I do not see how this land at Llanerch Field can possibly be seen, in the light of the *Barkas* judgment, as having been used ‘as of right’ by local people over the years. They have used the land ‘by right’, or at least with implicit permission. This application must therefore fail, in my judgment.
- 11.28. I do not agree with the assertion made on behalf of the Principal Objector that this case is “*even stronger than Barkas*”. That is not correct, in my view. *Barkas*, insofar as the facts can be discerned from the judgment, seems to have concerned land found to have been expressly provided under a specific power within the housing legislation. Nothing quite analogous with that seems to have occurred in this present case. Nevertheless the law as explained in *Barkas* does quite plainly

apply to the situation at Llanerch Field, which is in a category of deliberately provided, albeit informally ‘allocated’, public recreational land, which cannot be treated as having been used by the public as ‘trespassers’ [and thence ‘as of right’].

- 11.29. The view I have formed on this matter is not affected by the judgment of Dove J in **R (Goodman) v Secretary of State** [2016] 1 P&CR 8. That case concerned land which had in its past been formally appropriated for development purposes, but then, when no actual development materialised, appeared *de facto* to have been used recreationally by the local public. However there had been no new appropriation away from its formally recorded use, to (or back to) use for public recreation. In those particular circumstances Dove J held that the **Barkas** principle did not apply, and that the land (still formally allocated for development) had been used ‘*as of right*’ by local people, in spite of being owned by a local authority with powers to provide recreational land.
- 11.30. That particular situation has no parallel in the present case, which seems to me to fall fair and square within the scope of the **Barkas** principles. It should be stressed, not least for the benefit of the understanding of the Applicant and her supporters, that those principles would not prevent the registration as a town or village green of (say) a piece of local authority owned land originally acquired for a highway scheme, which never got built. They would not even prevent registration of land acquired for no particular purpose, which had been left unused by a local authority, and just happened to be used by local people ‘*as of right*’ over a period of 20 years. What the **Barkas** principles *do* prevent is the registration under the **Commons Act** of public parks or recreation grounds, or of open land like that at Llanerch Field, which has been deliberately allocated or provided, and maintained, for public recreation. Local people using such land are in no sense trespassers, using the land ‘*as of right*’.
- 11.31. I recognise that it will be extremely frustrating to the Applicant and her supporters that a well-loved area of public open land, which has been openly used by local people over many decades, can be proposed for the purpose of having some form of built development placed upon it, without there being any possibility of protection of the land under **Section 15** of the **Commons Act 2006**. However that is the current state of the law in Wales (and in England), and no change to this position can realistically come about, other than through new legislation.
- 11.32. It is not for me to express any view, one way or the other, as to whether such legislation would be desirable. I merely mention this in order to make the point that changing the law is essentially a *political* matter, not something which could be brought about by a person in my position, holding an Inquiry under **Section 15** of the **Commons Act 2006**.
- 11.33. It is not inappropriate that I should mention, for the benefit of the parties on both sides, that there are in fact some protections for open land held by local authorities, where it is proposed that the land should be appropriated to some other use, to be

found in *Section 122* of the *Local Government Act 1972* (as amended). Certain formal steps, including statutory public announcements and consultation, are required before such a change of use can take place. My mentioning this however merely reinforces the point that it is not something which falls within the scope of an Inquiry set up under the *Commons Act*.

- 11.34. My conclusions expressed above on the ‘as of right’ issue, if accepted by the Registration Authority, are sufficient in themselves to dispose of the present application. However some time and argument was devoted by both sides at the Inquiry to consideration of the question of the interruption(s) there had been to continuous use of Llanerch Field, so it is appropriate that I should also set out the views which I have reached about that topic.

“For a period of at least 20 years”
Subsection 15(6)

- 11.35. It is quite clear from the case law, and was not in issue in this case, that the basic requirement under *Section 15* of the *Commons Act* is for there to have been a *continuous* period of at least 20 years use of land by local people, in order to justify a successful claim. This is subject only to the proviso under *subsection (6)* [which needs to be read with subsection (7)] that there should be disregarded any period when access to the land was prohibited “*by reason of any enactment*”.
- 11.36. The evidence in this case (which was not essentially in dispute) disclosed that there were two periods, falling within the 20 years before the application, when access to Llanerch Field was prevented to some degree or other. The more recent of these is the easier to deal with. It seems that between August 2015 and March 2016 some attempt was made by the County Council to close off the field to public access, because of damage by ‘burrowing animals’. This seems (unsurprisingly) to have been locally controversial, but in any event it is clear from the evidence, and not disputed by the Objectors, that the ‘closure’ was implemented in a half-hearted way, which did not prevent access to the land through the open parts of its western boundary, and that access was still taken to the land for informal ‘sports and pastimes’ during that period. The Principal Objectors did not in the event argue that this represented a material ‘interruption’ to the continuous use required under *Section 15(2)* of the *Act*.
- 11.37. The closure of the entire site at the behest of Welsh Water, between May 2004 and August 2008, is a different matter. This was for the purpose of carrying out the major civil engineering project of installing enormous sewage retention tanks underneath the field, and for the subsequent period of site restoration.
- 11.38. There was no evidential dispute between the parties that the entire site was securely fenced off during that entire period, and no ‘lawful sports and pastimes’ use was made of the land by local people. It seems clear (and was not in dispute) that at

least one security guard was employed at the site, to make sure that there was no unauthorised access.

- 11.39. The question is whether access by the local ‘public’ to the land during that period of just over 4 years was prohibited “*by virtue of any enactment*”.
- 11.40. There is very limited judicial authority on the meaning of **Section 15(6)** of the **2006 Act**, which includes those quoted words. In fact there seems to be only one reported case, which as it happens was one where I myself had been the Inspector who had held an Inquiry into the matter, on behalf of the relevant Registration Authority: **R (Naylor) v Essex County Council** [2014] EWHC 2560 (Admin). I am therefore (again as it happens) somewhat more familiar with that case than I would be just from reading the transcript of the judgment of the learned Deputy Judge.
- 11.41. As will be readily apparent to anyone who reads the High Court judgment in **Naylor**, that case was principally determined, both following my own Inquiry and Report, and by the High Court, in relation to the distinction between ‘*by right*’ and ‘*as of right*’ use of the land concerned. The matter of a three month interruption to use by local people (cause by repair work to a sea wall) was only a relatively minor additional point at both stages, and the question of the applicability of **subsection 15(6)** was itself only a minor part of that minor additional point. Indeed, as can be seen from the High Court judgment (at paragraph 78), no party at the Inquiry into the matter had even raised any point about **subsection 15(6)**.
- 11.42. In any event, the learned Deputy Judge in **Naylor** found against the aggrieved Applicant on the **Section 15(6)** point (as well as on all the other points). He took the view that one should not conflate the *de facto* exclusion of members of the public during construction works with being a ‘prohibition’, by virtue of an enactment. He also took the view (e.g. at paragraph 82) that a public authority carrying out construction works (almost inevitably in pursuance of some statutory function or power enabling it to do so) should not be put in a worse position than a private landowner who closed off land for a material period to enable some construction project of his or her to take place, just because almost everything local authorities do is pursuant to some statutory power. The private landowner’s action of excluding people during building works (if it was for a material period) would almost certainly defeat a town or village green claim on the land concerned, if it occurred within the relevant 20 years.
- 11.43. In the present case, researches helpfully carried out by Counsel for the Principal Objector showed that there have been a series of **Construction, Design and Management Regulations**, re-enacted from time to time with various (in this context) minor amendments to the wording, which lay an obligation on contractors, or the ‘principal contractor’, to prevent access by unauthorised persons to a construction site. It would seem illogical for this to be treated as a ‘prohibition’ on public access ‘by virtue of an enactment’ [thus attracting the ‘benefit’ of

subsection 15(6)]. It would mean that a landowner (private or public) would be worse off, in terms of defeating a town or village green claim, if he had employed a contractor to do construction works which kept people off his land, than if he had simply fenced off the land and carried the work himself.

- 11.44. I am however somewhat troubled by the point that at Llanerch Field these were *not* works which the landowner itself (the County Council) chose to undertake, and in consequence to keep the (local) public off the land by secure fencing for over four years. If that had been the case, I can see force in the argument that this would have been a landowner asserting its right, as owner, to keep people off its land. This would clearly (in my view) have been sufficient to defeat a claim to 20 years ‘as of right’ use.
- 11.45. But in this case Dwr Cymru Welsh Water, as a statutory undertaking, had in 2013 sent to the County Council, “*AND TO ALL OTHERS who it may concern*” a statutory Notice of Entry under the *Water Industry Act 1991*, giving the company the statutory right to enter into Llanerch Field and (it seems to me) to take possession of it for as long as necessary, for its major construction project to be carried out. This (it is clear from the evidence) effectively kept the County Council, and anyone else concerned with the land, out of it for over four years. Indeed the County Council had been paid compensation by Welsh Water for being deprived of use and possession of the field during the period concerned. Furthermore, it was clear from Mr Fearn’s evidence that not all of the Statutory Notices and documents relevant to the Welsh Water take-over of the land had in fact been traced, even though correspondence referring to such documents showed that they had existed.
- 11.46. The process by which Welsh Water served it Notice of Entry and then took over the land for four years was certainly “*by virtue of an enactment*”. I accept that the provisions in the *Water Industry Act 1991* to which my attention was drawn by the Principal Objector are not exactly expressed in terms of a statutory prohibition on public access. However I can also see that the apparently relevant part of the *Water Industry Act 1991* seems to contain a variety of powers, some of which enable actions to be taken compulsorily by water undertakings. Because of the incomplete documentary record, it is not in this case entirely clear exactly what statutory powers were in reality being exercised by Welsh Water.
- 11.47. Undoubtedly the situation here was not precisely analogous to (say) the example quoted in DEFRA (England) Guidance on the Commons Act, of the statutory prohibition on public access to fields during an outbreak of foot and mouth disease.
- 11.48. Nevertheless it seems to me that there are some close parallels. By virtue of its Statutory Notices, it seems to me that Welsh Water was entitled to (and did) keep out of the field both the County Council, and anyone such as the local inhabitants who would have wished to use the field, over a prolonged period. This does not appear to me to be a situation which was dealt with (it did not need to be) in the

judgment of Mr Howell QC, the Deputy Judge in the *Naylor* case. Nor is it completely obvious how the courts, if required to, would view the application to such a situation of *Section 15(6)* of the *Commons Act*.

- 11.49. It certainly seems to me that the County Council and the public were at least *de facto* prohibited from entering Llanerch Field during Welsh Waters works, and that a court might quite conceivably (once the full facts were more clearly established than is possible for me, on the incomplete evidence I received) find that this was a ‘prohibition’ by virtue of an enactment.
- 11.50. It is perhaps fortunate that this case does not (in my judgment) turn upon this point, as it can be (and should be, in my judgment) determined on very clear grounds in any event, which lead to a refusal of the Applicant’s application. I would be reluctant, in the absence of any clear guidance from the courts on *Section 15(6)*, and more fully established underlying facts, to conclude definitively that the application here also fails because of Welsh Water’s four year interruption to ‘lawful sports and pastimes’ use. Use by local people had clearly begun well over four years before the commencement of the ‘normal’ 20 year period in this case, in March 1997 (20 years before the application). If *Section 15(6)* *did* apply to assist the Applicant, there would be well over 20 years of aggregate use demonstrated by the evidence, even with the Welsh Water period of about four years and three months disregarded.

FINAL CONCLUSION AND RECOMMENDATION

- 11.51. It follows from all that I have set out above that my conclusion is that the Applicant has not made out her case for registration of the amended application site under *Section 15(2)* of the *Commons Act*, primarily because use of the site by local people was ‘by right’ or ‘with permission’, as opposed to ‘as of right’.
- 11.52. My recommendation to the County Council as Registration Authority therefore is that *no part* of the land to which the application relates should be added to the statutory register of Town or Village Greens maintained under the *Commons Act 2006*, because on the evidence, and the applicable law, it does not meet the criteria required for such registration, for the reasons explained in this Report.

ALUN ALESBURY
26th July 2018

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 APPLICANT (Mrs Sharon Burdess):

Mr Alan Thomas, of 16 Cae Cotton, Llanelli

He gave evidence himself, and called:

Mrs Sharon Burdess (the Applicant) of 76 James St, Llanelli

Mrs Heather Peters, of 15 Heol Nant-y-Felin, Llanelli

Mrs Camilla Lynch, of 133 James Street, Llanelli

Mr W Maurice Jones, of 10 Rhdyrafon, Llanelli

Mr Geoffrey Mahoney, of 41 Havard Road, Llanelli

Mr Philip Warlow, of 38 Andrew Street, Llanelli

Mrs Ruth Jewitt, of 27 Lliedi Crescent, Llanelli

Mr Jim Cleobury, of 42 Brynmelyn Avenue, Llanelli

Mr Mike Kreciala, of 23 Gordon Road, Dafen, Llanelli

Ms Karen Burchell, of 30 Bryntirion, Llanelli,

Mr Kevin Francis, Chair, Carmarthenshire Unified Sports Committee (lives in Pembrey)

Mr Mark Caton, of 3 Y Lan, Llanelli

Mr Roger Forsyth, of 4 Llanerch Terrace, Llanelli

Mr Phil Jones, of 74 Squirrel Walk, Fforest, Pontarddulais

Mr Robert Simmonite, of Aweldon, 13 St Margaret's Drive, Llanelli

Mr Dennis Morgan, of 17 Uppercross Road, Llanelli

Mr Denley Morgan, of 28 Spowart Avenue, Llanelli

Mr Peter Probert, of 4 Parc Tyisha, Burry Port

Ms Sue Jennings, of 5 Glasfryn Terrace, Llanerch, Llanelli

Mr David Phillips, of 27 Corporation Avenue, Llanelli

Ms Ellana Thomas, of 26 Cwmfelin Road, Bynea, Llanelli

Mr Robert James, of 8 Old Road, Llanelli

FOR THE PRINCIPAL OBJECTOR (Carmarthenshire County Council, as landowner)

Mrs Harriet Townsend – of Counsel

– Instructed by Mr Robert Edgecombe, Solicitor,
Carmarthenshire County Council

She called:

Mr Jonathan Fearn, MRICS, Head of Property, Carmarthenshire County Council

Mr Jonathan Davis, (former) Joint Managing Director, Spencer
Environmental Care Ltd.

Mr Hadley Hands, Contracts Manager, Dawnus Construction Holdings
Ltd (formerly with Morrison Construction Ltd)

Mr Paul Murray, Asset Transfer Project Manager (formerly Grounds
Maintenance Manager), Carmarthenshire County
Council.

APPENDIX II

LIST OF NEW DOCUMENTS PRODUCED TO THE INQUIRY, AND POST-INQUIRY

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

FOR THE APPLICANT:

Revised List of Contents of Documentary Material submitted

Revised Index of Photographs submitted

Schedule of Applicant's witnesses

Statutory Declaration of Mrs Sharon Burdess, 15th December 2017, with scale plan of revised application site.

Written Statement of Mr Alan Thomas

Signed note (submitted 11.4.18) complaining about County Council's announcement of submission of planning application.

Written note of Closing Submissions for Applicant.

Post-Inquiry

Emailed response from Mrs Burdess re 'Statutory Incompatibility' (in response to opportunity to comment on recent case law on this topic).

FOR THE PRINCIPAL OBJECTOR:

Relevant print-outs and plans from County Council's electronic property records.

Reply (12.4.18) from Principal Objector's Counsel to Note from Applicant's side of 11.4.18

Extract, DEFRA Guidance on Part I of the Commons Act 2006

Written Note of Closing Submissions

Post-Inquiry

Further submissions (12.6.18) in light of recent case law on 'Statutory Incompatibility'.