IN THE MATTER OF AN APPLICATION TO REGISTER LAND KNOWN AS LLANTARNAM PLAYING FIELD, LLANTARNAM ROAD, CWMBRAN, TORFAEN AS A TOWN OR VILLAGE GREEN

REPORT

of Miss Ruth Stockley

21 October 2017

Torfaen County Borough Council

Civic Centre

Pontypool,

Torfaen

NP4 6YB

Ref: MAJ/20036

IN THE MATTER OF AN APPLICATION TO REGISTER LAND KNOWN AS LLANTARNAM PLAYING FIELD, LLANTARNAM ROAD, CWMBRAN, TORFAEN AS A TOWN OR VILLAGE GREEN

REPORT

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1. INTRODUCTION

1.1 This Report relates to an Application ("the Application") made under section 15(1) of the Commons Act 2006 ("the 2006 Act") to register land known as Llantarnam Playing Field, Llantarnam Road, Cwmbran, Torfaen ("the Land") as a town or village green. Under the 2006 Act, Torfaen County Borough Council, as the Registration Authority, is required to register land as a town or village green where the relevant statutory requirements have been met. The Registration Authority instructed me to hold a non-statutory public inquiry into the Application, to consider all the evidence and submissions, and then to prepare a Report containing my findings and recommendations for consideration by the Authority.

1.2 I held such an Inquiry over 3 days, namely on 13, 14 and 17 July 2017. I also undertook an accompanied site visit on 14 July 2017, which included the outfields of Cwmbran Stadium, Oakfield Flower Garden and the Boating Lake, together with an unaccompanied visit around the area comprising the claimed neighbourhood.

1.3 Prior to the Inquiry, I was invited to make directions as to the exchange of evidence and of other documents. Pursuant to my directions, those documents were duly provided to me by each of the Parties which significantly assisted my preparation for the Inquiry. The Applicant produced a bundle of documents containing the Application, supporting witness statements, a petition, a response to the Objection and other documentary evidence in support of the Application upon which she wished to rely. I shall refer to that bundle as "AB *" with * representing the page number of the bundle. Torfaen County Borough Council in its capacity as Landowner ("the Objector") produced a bundle of documents containing its Objection to the Application, witness statements and other documentary evidence in support of its Objection and upon which it wished to rely, which I shall refer to as "OB *" with * representing the page number of the bundle. In addition, both Parties provided a skeleton argument setting out an outline of their respective cases. I have read all those documents and taken their contents into account in this Report.

1.4 I emphasise at the outset that this Report can only be a set of recommendations to the Registration Authority as I have no power to determine the Application or any substantive matters relating thereto. Therefore, provided it acted lawfully, the Registration Authority would be free to accept or to reject any of my recommendations contained in this Report.

2. THE APPLICATION

2.1 The Application was made by Mrs Lynn Denise Morgan of 260, Llantarnam Road, Cwmbran, Torfaen NP44 3BW ("the Applicant") and is dated 28 April 2016.[1] Part 5

[1] The Application is contained at AB 1 onwards.

of the Application Form states that the Land sought to be registered is usually known as "*Llantarnam playing field*", and its location is stated to be "*Attached to what was previously Llantarnam High School. Adjacent to Llantarnam Road, CWMBRAN*". A map was submitted with the Application marked "EXHIBIT 1" which shows the Land outlined.[2] In part 6 of the Application Form, the "locality or neighbourhood within a locality" in respect of which the Application is made is identified as "*Llantarnam – Field behind Llantarnam Road and John Fielding Estate*".

2.2 The Application is made on the basis that section 15(2) of the 2006 Act applies, which provision contains the relevant qualifying criteria. The justification for the registration of the Land is set out in Part 7 of the Form and was supported by witness statements, emails, a map and a petition. The Application is verified by a statutory declaration in support made on 8 May 2016.

2.3 The Application was duly advertised by the Registration Authority as a result of which an objection dated 14 September 2016 was received on behalf of the Objector ("the Objection").[3] The Applicant was given an opportunity to respond to the Objection which she duly did.[4]

2.4 I have been provided with copies of all the above documents in support of and objecting to the Application which I have read and the contents of which I have taken into account in this Report.

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[2] At AB 10.
[3] At OB A1 onwards.
[4] Her Response is at AB 49 onwards.

2.5 Having received such representations, the Registration Authority determined to arrange a non-statutory inquiry prior to determining the Application which I duly held.

2.6 At the Inquiry, the Applicant appeared in person, and the Objector was represented by Mr Leslie Blohm QC. Any third parties who were not being called as witnesses by the Applicant or the Objector and wished to make any representations were invited to speak, but no additional persons chose to do so.

3. THE APPLICATION LAND

3.1 The Application Land is identified on the map marked "EXHIBIT 1" submitted with the Application on which it is clearly outlined.[5]

3.2 The Land comprises an irregular shaped, flat, grassed area within the village of Llantarnam. Save for a relatively small part, it is no longer well maintained. To the north is the site of the former Llantarnam Secondary School ("the School") and the Leisure Centre. Llantarnam Road runs along the eastern boundary with the rear gardens of residential properties abutting the Land. To the south is the residential development of John Fielding Gardens with Newport Road beyond, and to the west is sparser residential development with the industrial park beyond. The main access to the Land is via Llantarnam Road from which there is open pedestrian access to the Land.

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[5] At AB 10.

3.3 There is a definitive right of way running across the north western part of the Land, namely Footpath 162, which runs from the access point on Llantarnam Road to the north of the Leisure Centre and across the Land to an access point on the Land's western boundary. It is marked on the aerial photograph at OB A41. There are no benches, bins or other equipment on the Land. There are two signs at the access to the Land from Llantarnam Road as shown on the photographs at OB A77 and A78. The former was erected by Gwent County Council and the latter by Torfaen Borough Council. The Land is fenced off from the site of the School by security fencing.

3.4 The Land is owned by the Objector having been acquired by its statutory predecessor, Monmouthshire County Council, as part of a larger parcel of land for the purposes of education. Llantarnam Secondary Modern School was built on that parcel of land and was opened in 1954, with the Land being part of the School's playing fields until its closure in 2015. Title to the Land passed to Gwent County Council in 1974, and then to the Objector in 1996.

4. THE EVIDENCE

4.1 Turning to the evidence presented to the Inquiry, I record at the outset that every witness from both Parties presented their evidence in an open, straightforward and helpful way. Further, I have no reason to doubt any of the evidence given by any witness, and I regard each and every witness as having given credible evidence to the best of their individual recollections.

4.2 The evidence was not taken on oath.

4.3 The following is not an exhaustive summary of the evidence given by every witness to the Inquiry. However, it purports to set out the flavour and main points of each witness's oral evidence. I assume that copies of all the written evidence will be made available to those members of the Registration Authority determining the Application and so I shall not rehearse its contents herein. I shall refer to the oral evidence in the order in which each witness was called at the Inquiry for each Party.

CASE FOR THE APPLICANT

Oral Evidence in Support of the Application

4.4 **Mrs Lynn Morgan**[6] is the Applicant. She has lived at 260, Llantarnam Road, Cwmbran since 1980, which is on the western side of Llantarnam Road and immediately adjacent to the Land. She has always known the Land as Llantarnam playing field which was attached to Llantarnam Secondary School. She was aware that it was owned by the Objector.

4.5 Between 1996 and 2016, she used the Land regularly. From 1996 until 2001, she was involved with Cwmbran Scorpions as a coach, a hockey team of 4 and 5 year olds. She was not involved with their administration, but she arranged their training. No permission was sought by them to use the Land. They used the Land for training once a month around 5pm throughout the summer. They did not use equipment. Their membership was drawn from Cwmbran. They held barbecues at the end of the season in her garden with her gate open, so the children would go onto the Land to play. Cwmbran Scorpions have not used the Land since 2001.

[6] Her witness statement was presented at the inquiry and is at AB 56.

4.6 Her family and herself have regularly held impromptu family football and rounders matches on the Land and had picnics there. She has 4 children and grandchildren. Her children were born in 1982, 1983, 1986 and 1990. They are currently all living outside Llantarnam. There tends to be a party at her house approximately once a month when her family gets together. If the weather is fine, the party will spill out onto the Land. Her children used the Land for kite flying and kite surfing. She has taken her grandchildren blackberry picking on the Land, and she regularly walks or runs around it herself most days. Her usual means of access would be via her private gate onto the Land. She has often seen other children playing games on the Land, and since the closure of the School, many people have exercised their dogs there. She has seen people using it with model aircraft. It is a very social area and well used by many people. The footpaths have been "extremely well used". The grass ceased to be cut by the Council in 2015 when the School closed, since when locals have cut parts of it themselves in order that they can still use it. She saw a lot of activity during the weekends, after school and during school holidays.

4.7 Access to the Land was gained from the entrance off Llantarnam Road,[7] from the footpath leading from John Fielding Gardens,[8] from the other footpath through the Land or from the School. The means of access from the School was fenced off in 2012. In addition, all the houses bordering the Land have gates onto the Land which are all in use. At the entrance to the Land from Llantarnam Road are the two notices shown on the photographs at OB A77 and A78. She understood the former to mean that there was only authorised use to be made of the Land and she acknowledged that she was not authorised to use it when she did so. She was aware that she was using

[7] Shown as point 2 at OB A41.
[8] Shown as point 3 at OB A41.

the Land contrary to the direction of Gwent County Council, and she agreed in cross examination that such would have been apparent to all users. She also understood the sign to mean that dog walkers were prohibited from using the Land. A letter was sent to residents of Llantarnam Road from the Objector around 4 years ago complaining about the exercising of dogs on the Land, and stating that such users would be prosecuted. She never used the Land to exercise her two dogs. The only people currently using the Land are dog walkers because it is no longer being maintained and it is no longer in use as a school playing field. People did use the Land for walking and exercising their dogs previously, but they were challenged by the School. Until the School closed, there was not much use of the Land with dogs. The perimeter of the Land was used during school hours by joggers. She was a Governor of the School between 2004 and 2008, and was aware of safeguarding requirements. The School challenged anyone on the Land during school hours if they were not on the footpaths, which occurred around a couple of times a month. It would have been apparent to teachers at the School if people were using the Land during school hours. She had challenged a dog walker on the Land herself. The fencing was erected due to the safeguarding issue.

4.8 During the winter months, the Land was marked out for football and rugby pitches which covered a substantial part of the Land. During the summer months, the Land was marked out for athletics facilities. There was a permanent cricket strip, and a permanent sand pit for the long jump and high jump. During school hours, the School made use of various pitches on the Land. It was obvious to anyone that the Land was not available for public use during those times. Outside school hours, the School sometimes used the Land for after school clubs and matches, such as for football,

rugby and netball, and the public would not use the Land at those times. There were also athletics days when the School used all the Land, but it was never closed to the public and no one ever stated that the public could not walk through the Land.

4.9 Clubs and Societies used the Land pursuant to permissions granted to them by the School. She was aware that the pitches were used by clubs such as Newport County and Cwmbran Town. They would book the pitch at the Leisure Centre for a specified period. She confirmed that she accepted the written evidence of Mr Bateman and Mr Case in relation to such use of the Land and the times of such use. It was used for rugby and football, and also for archery by Llantarnam archery club which was carried out north-south towards John Fielding Gardens. That had taken place for many years and throughout the period she had lived on Llantarnam Road. During their use, the archery club roped off the far side of the Land for safety reasons. She recalled Bron Afon Housing having an annual fete on the Land when they roped part of it off for that purpose. No fee was payable. However, the public would use the Land when the School and none of its licensees were using it.

4.10 The claimed neighbourhood is shown shaded on the Objector's Plan at OB E264 which is the area she calls Llantarnam. The nearest post office was shut approximately 10 years ago and is now in Oakfield; the nearest shops are in Oakfield. There is a newsagents and a dental practice on Llantarnam Road. Llantarnam Parish Church is next to the Greenhouse public house on Newport Road. There are 3 parts to the neighbourhood. The first is the area to the north which is part of the original development of Cwmbran New Town and is part of Oakfield. The housing is late 1940's and early 1950's. The second is the area either side of Llantarnam Road which

consists of broadly Edwardian housing. The third is John Fielding Gardens which is relatively new housing from the 1980's onwards. She accepted that they are three different areas in character. She also acknowledged that it was people from the areas around the Land that wished to see it registered as a village green. They had the common aim of keeping the Land undeveloped and available for their recreational use. She pointed out that the claimed neighbourhood was selected because it was the area surrounding the Land. All the user evidence obtained was from people living within the neighbourhood apart from Mrs Keeling. Other areas of open space in the vicinity and within easy walking distance of the neighbourhood as shown on the plan at OB E6 are available for public recreation. However, there is a charge to enter Cwmbran Stadium; the Flower Garden is not an area in which to play football as there are no large grassed areas and it is a conservation area; Southfields is too far away; and the Boating Lake is not for general recreational use. Moreover, unlike the Land, they are not available for local use and for events such as village fetes, and they cannot be accessed without crossing roads to ensure unaccompanied children can visit safely.

4.11 **Mrs Cheryl Keeling**[9] lives in Pontypool and has not lived within the claimed neighbourhood. However, she has very good friends who have lived on Llantarnam Road for many years. Whilst visiting them over the last 35 years, she has used the Land together with her three children who have played on the Land with their friends. There are people who use the Land who come from outside the area of the claimed neighbourhood.

[9] Her witness statement is at AB 31.

4.12 **Councillor Dave Thomas**[10] is a Llantarnam Ward Councillor, having been first elected as a Councillor in May 2017. He used the Land both as a child and as an adult and for many different purposes. He was born in 1977. His eldest child was born in 1994 and his youngest in 2014. As a child, he played on the Land with his parents and siblings. As an adult, he has played on the Land with his children and exercised the family dog there. They have used the Land for football, cricket, kite flying, camping and flying drones. Historically, anyone from Llantarnam village used the Land as a village green. Llantarnam is a village and always has been. It had 2 churches, a police station, doctor's surgery, 2 pubs, 2 schools, shops and a post office all within the village. The heart of the village is where the Church and The Greenhouse Pub are located. He had acquired his knowledge of the history of the area from talking to people, in particular "Ten O'Clock John", and from reading.

4.13 He initially used the Land between 1987 and 1993 when he lived in Hollybush which is just outside Llantarnam Ward. He helped his brother who was a youth leader at Llantarnam Youth Club at the Leisure Centre. The majority of members were children from Llantarnam and Oakfield. In 1993, he moved to Oakfield until 2008. His use of the Land was less heavy during that period. He used the Land more frequently again from 2008 onwards with his children when he moved to his current address at 361, Llantarnam Road. He has lived in the claimed neighbourhood since 2008. He has used the Land most weekends over the last 3 months to teach his son to fly a drone. During the school term, he would use the Land every other weekend. He was familiar with the sign at the entrance to the Land at Llantarnam Road and shown at OB A77, and it was clear to him that the sign referred to the fields around the Leisure Centre. He

[10] His witness statement is at AB 30. He also produced at the Inquiry a document relating to Llantarnam Secondary Modern School which was opened in 1954.

acknowledged that his use of the Land was unauthorised, and that his use with his dog was prohibited by that notice but he nonetheless took his dog on the Land.

4.14 He is a former pupil of the School, having left around 1993. His children all attended Llantarnam Primary School. He has not used the Land during the school day. He has witnessed formal groups using the Land, but not any conflict between those using a booked pitch and local people using it. He has seen archery taking place on a different part of the Land.

4.15 **Mrs Kathleen Dennehy**[11] has lived at 270, Llantarnam Road with her family since 1990. When she first moved to Llantarnam, her use of the Land was how she got to know her neighbours. Her house borders the Land and she has a gate at the rear of her garden leading onto the Land. Her and her family mainly accessed the Land via their garden gate. She is passionate about sport and outdoor activities. Her and her family used the Land extensively between 1990 and 2010 to play all types of sports, including football, cricket, rounders and baseball, and to carry out activities such as blackberry picking and walking. Other children joined in who lived on Llantarnam Road or very close to the Land. She and her family used the Land informally during the evenings and at weekends. They have also used the footpaths across the Land, which are very well used particularly by young children. Her children have used the Land to play cricket for a local club, namely Cwmbran Cricket Club, as have she and her husband. The Club had permission to use the Land. Their use was arranged and paid for in advance. She was a cricketer, hockey and tennis player. She had played one cricket match on the Land for a Club. Since 2010 when her four children have

[11] Her witness statement is at AB 37.

been older, she has used the Land less frequently, but still uses it with her grandchildren. After the closing of the footpath at John Fielding Gardens in 2010 and the erection of the security fencing, the use of the Land declined generally.

4.16 She was away from the house during the working day as she worked. She had seen people walking on the Land along the footpaths during the school day, but not using it for any other activities. During the summer, the Land was mainly used by local people rather than clubs. When clubs were playing, the locals would come along to watch. The Land was used by various teams at weekends and evenings, and her children were probably involved with most of them. The teams hired the pitches and paid for them. It was generally known by clubs that they needed to seek permission to use the Land. Locals would not use the pitches at those times other than to watch. She acknowledged that it was apparent that the Landowner was permitting the use of the Land by those teams and that the public were then to stay off the pitches. The public used the Land when there were no other activities taking place there. If the Landowner was using all the Land, the public would not then be entitled to use it. Bron Afon had an open day on the Land which involved around 75% of the Land; the Welsh Gurkhas had activities and stalls on around 50% of the Land; Newport Ghent Dragons used the Land, as did the Cwmbran Scorpions. She never used the Land informally when it was being used by the School or local clubs.

4.17 **Mr Iqbal Chowdhury**[12] lives at 313, Llantarnam Road. He has used the Land over the past 50 years for walking, photography and fruit picking. His evidence primarily

[12] His witness statement is at AB 40.

related to his concerns over the loss of the Land for residential development rather than to the use of the Land.

4.18 **Mrs Joanna McCarthy**[13] has lived at 13 Court Farm Road in Llantarnam since 1993. The Land was effectively her back garden and used as such by her two daughters all the time who played games there, including rounders, cricket and football, had picnics and birthday parties there, and other families joined in, including the Applicant's children. Her daughters were born in 1986 and 1987, and moved away from home around 2010. They remained sporty into their teenage years and continued to use the Land then for running and to play rounders. She also used the Land herself to walk on. Her children attended the School and played sports on the Land whilst at school. Others from Court Farm Road use the Land, which is used all the time by many families. She had seen others using the footpaths across the Land. It was always quite a busy field.

4.19 Her access to the Land was via the School until it was shut in 2015 when her use ceased. However, when it was pointed out that the security fencing was erected in 2012 in the positions marked on the aerial photograph at OB A41 which would have precluded access from the School and the Leisure Centre, she accepted in cross examination that she probably did not use the Land after 2012. She further acknowledged that she probably did not use the Land much on her own after her children had got older and no longer used it. They continued to use it after 2010 when they visited friends in Llantarnam, but she did not use the Land with them then.

[13] Her witness statement is at AB 48.

Written Evidence in Support of the Application

4.20 In addition to the evidence of the witnesses who appeared at the Inquiry, I have also considered and had regard to all the written evidence submitted in support of the Application in the form of additional witness statements, letters, a petition, photographs and other documents. However, whilst the Registration Authority must also take into account all such written evidence, I and the Authority must bear in mind that it has not been tested by cross examination. Hence, particularly where it is in conflict with oral evidence given to the Inquiry, I have attributed such evidence less weight as it was not subject to such cross examination.

CASE FOR THE OBJECTOR

Oral Evidence Objecting to the Application

4.21 **Miss Karen Kerslake**[14] is a Lead Officer in Community Safety employed by the Objector in the Public Services Support Unit. She attended the School between 1971 and 1975, and took part in a number of after school activities at the School, such as playing netball. In addition, she had friends living close to the School whom she would sometimes visit in the evenings and at weekends. She always regarded the Land as being part of the School. It was used for school sports and for PE lessons. Part of the land was badly drained. When weather conditions permitted, school children would sit on the Land at lunchtime and break times. It was used for school teams playing football, possibly rugby and for PE lessons. During the school day, unless the Land was being used by pupils, it was generally empty. She did not recall local residents using it much. Outside of school hours, she was in the vicinity of the Land once or twice a week at evenings or weekends visiting friends when they would

[14] Her witness statement is at OB C6 onwards.

sometimes go onto the Land. She recalled some archery taking place on the Land by a properly organised archery club who arranged the use of the Land through the Leisure Centre. Otherwise, she did not recall any particular use of the Land outside school hours. She did not recall any community activities taking place on the Land, save for a fete organised by the School. She never regarded the Land as a village hub but, rather, as a mostly empty, boggy, school field.

4.22 More recently from her employment, she is aware that the Land may have been used by dog walkers as there have been complaints about dog fouling on the Land. In addition, during the summer of 2014 or 2015, she is aware that there have been complaints from local residents about young people camping, lighting fires and leaving litter on the Land. Her only material knowledge of the Land since 1975 has been in relation to such complaints.

4.23 **Mr Stephen Horseman**[15] is employed by the Objector as its Streetscene Manager. He joined the Council in 1996 when schools grounds maintenance had become part of the duties of the team he was part of. He recalled visiting the School on various occasions and carrying out work on the MUGA pitch, whilst some of his colleagues carried out grass cutting and pitch marking on the Land until the School started to use external contractors sometime after around 2000. Such grass cutting took place during the mornings. There were around 13 cuts a year. The School also had a lower field ("the Lower Field"), and there were around 5 pitches spread over the Land and the Lower Field. He recalled playing a couple of football matches on one of the pitches for his

[15] His witness statement is at OB C29 onwards.

team, Tranch, against one of the Cwmbran teams. The pitch was booked for those matches.

4.24 There are other recreational facilities in the area within a short walking distance of the Land, namely Oakfield Flower Garden, the outfields of Cwmbran Stadium, and the Boating Lake area. He has been involved in their grounds maintenance and continues to be so. Oakfield Flower Garden is a general recreational open area available for various leisure activities such as general play, dog walking, running and playing football informally. It does not have any football pitches. It has an equipped play area, and used to have a bandstand and many flower beds. It caters for young children between around 5 and 12 years of age. It is necessary to cross a main road to access it. The outfields of Cwmbran Stadium comprise a large area of open space with pitches laid out which are also available to the general public for general play, dog walking, running, playing football and general recreation. The Boating Lake is an extremely popular leisure area which has the best park facilities in the Borough. There are two lakes, an open football field, a boathouse, a large play area and open space. There is a bridge which leads into the Southfields area which contains six football pitches. They are cut and marked out and are available for general public use. People come from far and wide both from within the Borough and further afield to use the Boating Lake area. It sometimes gets very busy.

4.25 **Mr Christopher Bateman**[16] is a self-employed swimming instructor. He was previously the manager of the Llantarnam Leisure Centre where he worked for some 14 years between January 2001 and 31 May 2015 when it shut. The School took over

[16] His witness statement is at OB C10 onwards.

the Leisure Centre during 2001, and he was employed by the Objector through the School. There were 3 pitches laid out on the Land which were generally used from around August each year until the following April. They were initially used mostly for rugby, but then more for football subsequently. There was also a cricket square laid out. He had marked their approximate location on the plan at OB C16. In addition, during the summer term, the School marked out the Land for athletics. The marking out of the football pitches on the Land was logged in the inspection forms at OB E61 onwards.

4.26 From approximately 2011 onwards, the bookings for the use of the Land increased substantially. The facilities were specifically advertised in order to increase the revenue from the Land at weekends. For around two years between around 2008 and 2010, the Bristol Rovers Football Club Academy were using the Land three or four times a week during the summer. Thereafter, Newport County AFC first team used the Land for training every day for around three weeks a between 2010 and 2012. They generally used the middle of the three pitches. The Newport County Development Squad also trained on the Land three or four times a week for around six months during the summer between 2012 and 2013. There could be more than one Club using the Land at the same time. Llantarnam Archery Club used the Land three times a week for six months during the summer, namely from the beginning of April until the end of September, and then moved indoors to the Leisure Centre. They have been using the Land for over 20 years. There use would be on different days to the football. They shot away from the school buildings towards the cricket square end. When they held their four tournaments each year, they cordoned off the majority of the Land in order to exclude people. Cwmbran Town AFC played their fixtures on the

Land between 2012 and 2015, generally on a Saturday or Sunday, together with training one or two nights a week for 6 months during the summer. There were also a number of other local football clubs using the Land between 2011 and 2015 to play some of their fixtures. There were often two matches on the Land on a Saturday. As a general picture, the Land was used by Clubs 3, 4 or 5 times a week on weekdays, and virtually every weekend, mainly on Saturdays but also on quite a few Sundays. In addition, Bron Afon Community Housing used the Land for an annual open day for around four years. He also recalled the Welsh Gurkhas holding celebrations on the Land once or twice a year. Between around 2011 and 2014, Fairwater Runners Club hired the Land for an annual event, whilst an annual cycling event occurred there for around five years from 2009 onwards.

4.27 In the earlier years, the Land was less well used in terms of formal bookings. Rugby or football took place around once a week and the Archery Club was using it. The rugby use seemed to decrease whilst the football use increased over the years. The rugby pitches were moved to the Lower Field whilst the football pitches were brought onto the Land in around 2010. In addition, the School used the Land for an annual cross country race, for their PE lessons, for football and rugby matches and for after school activities. Before the School site became fully fenced in 2013, the school children would go onto the Land at lunch and break times.

4.28 As to informal uses of the Land, he recalled an occasional dog walker, quad bikes and motor bikes using it around once a month, the odd person having a kick about with a football or rugby ball, and children flying kites or cycling on the Land. Such informal uses would sometimes interfere with the more formal Club use of the Land.

Occasionally, people would camp on the Land. He would see dog walkers virtually every day. As Leisure Centre Manager, he was generally on site from 3.00pm until 10.30pm every weekday and until 9.30pm at the weekends for on average 2 or 3 weekends a month. He would walk round the Land every 3 hours when he was working. He did not have any knowledge of the Land prior to 2001. Once the School fencing was erected in 2013, the informal uses reduced "*massively*". Thereafter, he merely saw the odd walker and some dog walkers. The footpath near the School was used fairly well both before and after the School site was fenced. Before the new houses at John Fielding Gardens were built, many people cut across the Land on the other footpath from the Oakfield area as a shortcut to The Greenhouse pub. That use decreased once the new housing was built, and stopped completely when the footpath was shut off. He had walked around the Land many times as part of his job. He could not recall seeing any fruit bushes there or anyone fruit picking. The users he saw on the Land using it informally primarily came from Llantarnam Road.

4.29 **Mr Scott Case**[17] has been employed by the Objector in the Property Services Department since September 2015. Prior to that, he was a Site Manager at the School for 5 years, and previously a Site Supervisor there for one year, and so was employed at the School for 6 years between 2009 and September 2015. He also sat on the School's Governing Body. When he first started working at the School, they worked in shifts up until 10.00pm each evening, namely 6am to 2pm and 2pm to 10pm. That subsequently changed to 7.00pm, namely 7am to 3pm and 11am to 7pm. He was fully aware of what was taking place on the Land when he was working at the School. Some of the children walked to the School, but a lot of them got to the School by bus.

[17] His witness statement is at OB C23 onwards.

4.30 From his knowledge of the Land from 2009 onwards, any organisation using the Land on a formal basis had to hire it and pay for it via the Leisure Centre, which was attached to the School and run by the School. Funds raised from hiring out the Land came back to the School to contribute to the running of the Leisure Centre and the School. Part of the Land was used by the Llantarnam Archery Club between April and October each year every Wednesday and Thursday evenings and Saturday afternoon. The Archery Club paid rental for the use of the Land via the Leisure Centre. They set up at the School's end of the Land and shot their arrows towards the John Fielding Gardens end. When the Archery Club were using the Land, it was not possible for anyone else to be on the Land safely. A number of football clubs rented the Land at various times throughout the year, having paid for its use via the Leisure Centre. He recalled that one summer Newport County Football Club used the Land all summer for training purposes. Bron Afon Community Housing held a fun day on the Land in both 2011 and 2014, having rented the whole Land for that purpose. A cycling club held an annual cycle race on the Land on occasions. There were many formal uses of the Land taking place outside normal school hours. All the clubs concerned used the Land with the permission of the School and paid for it via the Leisure Centre.

4.31 As to unauthorised informal uses of the Land, that was more prevalent when he first started working at the School. Such uses tended to be mostly during the summer months. Such informal uses he recalled taking place on the Land included camping, dog walking and the Police exercising their dogs on the Land. There was no formal agreement for such use between the School and the Police, but the School were content to have the Police use the Land as their presence avoided thefts and other

criminal activities. The Land was used as a short cut to The Greenhouse pub. He had no recollection of seeing anyone fruit picking or kite flying on the Land. He occasionally saw children playing on the Land. Some were children from the School who came back after school. It would have been difficult for anyone to be on the Land without permission during the evenings because it was so heavily rented, although they could still walk round the Land. Archery took place there three times a week for over 20 years. There were also various football teams and other organisations using it. During the school day, he did not recall seeing many people on the Land other than school children. It was used for PE lessons, weather permitting. After the School site was fenced following an Estyn Inspection, access onto the Land was far more difficult and the unauthorised uses greatly reduced. There was a marked difference in the unauthorised informal of the Land after the school fencing went up after which there was very little use. It was then very rare that he would see anyone save the odd dog walker. If he saw people on the Land outside of school hours using it in a reasonable manner, such as walking across it, he would not challenge them. However, he has challenged various people who appeared to be causing a nuisance.

4.32 **Mr Gavin Williams**[18] has been employed as a Caretaker at Cwmbran High School since August 2015. Prior to that, he worked as a Caretaker at the School for 12 months. Before that, he worked at the Llantarnam Leisure Centre for some four years. He also used to work for a private swimming school who used the Leisure Centre. Therefore, he has been involved at the School site in various capacities for some 10 years. From August 2012, he resided at the School Caretaker's bungalow for some

[18] His witness statement is at OB C18 onwards.

three years which was at the main exit to the School on Llantarnam Road at the point marked 1a on the plan at OB A41.

4.33 Throughout the time he knew the Land, it was used by an Archery Club. The Club used the entire Land between approximately 9:00am and 2:00pm on a Saturday afternoon and also two evenings during the summer months from approximately April until October from around 5:00pm until sunset. No part of the Land was roped off other than during competitions. When the Archery Club was using the Land, it was not practically possible for anyone else to use it for safety reasons. He recalled that the Newport football teams used the Land from 2011 onwards. From around the same time, Cwmbran Town AFC also used it for their home matches every other weekend during the season, and then for pre-season training one or two evenings a week during the summer months. They would be on the Land for around 2 hours. On most Saturdays and Sundays the Land was being used by football teams. Generally one or two pitches were used, but sometimes three and, on occasions, up to four. The fourth pitch was located on the Lower Field. The layout of the pitches on the Land was shown on the plan at OB C21 which was marked out with football pitches. He recalled that Bron Afon Community Housing used the Land for fun days when they used the entire Land about twice a year. The Welsh Gurkhas used it around four times a year. A Running Club used it once or twice a year. A Mountain Biking Club used it a few times a year. All such uses were booked through the Leisure Centre. During the winter months, the primary organised use of the Land was for football.

4.34 As to the informal use of the Land, he recalled a number of activities taking place. They included children picnicking, children playing team games, dog walking,

photography, neighbouring property owners using it for family events, fireworks being set off on the Land, and model aeroplanes being flown from it. He also recalled people flying kites on the Land and possibly fruit picking on the southwestern boundary. Walkers used the two footpaths through the Land throughout the day. The Land was heavily used by local people whenever there was not any organised team using the Land and the School was shut. The Land was not used much during the school day except by walkers using the footpaths. As Caretaker and Leisure Centre Duty Officer, he locked up the School around 7.00pm and the Leisure Centre at either 9.00pm or 10.00pm. He recalled that at those times there would quite often be someone on the Land, such as walking with or without a dog. He was unaware whether or not they were on or off the footpaths, but they were walking in the direction of the footpaths. He did not recall any particular disputes arising between the formal uses of the Land by the School or other organisations and the informal uses by local people. The uses were "self-policing" based on common sense in that it was obvious to local people when the Land was in use by the School or teams or organisations who had booked it and they appreciated that they could not then use the Land apart from the footpaths.

4.35 The School site was fenced around 2013. The fencing did not substantially affect the informal use of the Land as it could still be accessed from the footpaths. The Land was heavily used either by the School, or outside of school hours by organised teams who had booked it through the Leisure Centre, and at other times by locals carrying out informal uses. During the school day, prior to the School site being fenced, the Land was used at break times and lunchtimes by pupils, and it was also used by pupils for their PE lessons even after it was fenced. Around six months after the School's

perimeter fencing was erected, the footpath across the Land leading into John Fielding Gardens was shut. Prior to that, the footpath was used by school children and also by the general public to access the Land.

4.36 **Mrs Donna Edwards-John**[19] is a GIS Officer employed by the Objector in the Public Services Support Unit. She attended the School between 1983 and 1989 when she was aged 11-16 years. She was living at that time in Fields Road in Oakfield and continues to live in Oakfield where she has lived for most of her life. She knew the Land as the School Sports and Playing Field. The Lower Field was often very muddy, and so the School's rugby and football teams would have to use the Land which was known as the Top Field. She recalled having PE lessons on the Land, doing cross-country running around its perimeter and playing rounders there. It had a running track, and in the spring and summer a sand pit used for the long-jump. It was also used by the pupils at break and lunch times. Her Son was born in 1994 and he attended the School between 2005 and 2012.

4.37 Outside of school hours, she recalled the Land being used as an area of general recreation by residents from both the Oakfield and Llantarnam areas. There were always a number of dog walkers using the Land, and people using it as a short cut through to The Greenhouse pub on Newport Road. Children after school kicked a football there. People also used the Lower Field as there was no physical barrier between the two fields. The Land was used mainly by dog walkers, but it was not heavily used. She had used the Land as a cut through to The Greenhouse until the John Fielding Gardens development, mainly in the early evenings during the summer

[19] Her witness statement is at OB C1 onwards.

months. She followed the line of the footpath. Whenever she had cut across it, there were not many people there and there was always plenty of space. Generally, she only saw dog walkers and a few others walking; it was not very often that she saw children playing on the Land informally. Her Son played football, but usually on the Lower Field. Other children played informally on the Lower Field. During the school day, the Land was not used by people from outside the School save for the occasional dog walker. The sign at the entrance to the Land from Llantarnam Road shown at OB A77 has been in place since she was at the School in the 1980's. There are a number of other sports facilities and open areas in the neighbouring area which people could use, such as the Boating Lake and Oakfield Flower Gardens.

4.38 She recalled an Archery Club using the Land, and Bron Afon Community Housing using it for a Community Day. She did not recall there being any activities on the Land organised by the village or by the Church. She had no recollection of any fruit bushes on the Land, and did not see anyone fruit picking, kite flying, picnicking, bird watching or taking photographs there. The Land was generally too soiled by dog waste to make it attractive for such activities. Some of the houses neighbouring the Land have gates leading onto it. The Land was a school field used for school sports and activities, and when the School was not open, the Land was used by some locals for dog walking and as a short cut through to Newport Road.

Written Evidence Objecting to the Application

4.39 In addition to the evidence of witnesses who appeared at the Inquiry, I have also considered and had regard to all the written evidence submitted in support of the Objection to the Application in the form of written statements and additional

documents which are contained in the Objector's Bundle. In relation to such written evidence, I refer to and repeat my observations in paragraph 4.20 above that whilst such written evidence must be taken into account, I and the Registration Authority must bear in mind that it has not been tested by cross examination. Hence, particularly where it is in conflict with any oral evidence given to the Inquiry, I have attributed such evidence less weight as it was not subject to cross examination.

4.40 Subsequent to the Inquiry, I received a full copy of the Dogs Exclusion (Torfaen) Order 2013 ("the Dog Control Order") which had been referred to, but not produced, on the closing day of the Inquiry by the Objector and to which representations the Applicant had responded to. The main issue raised related to the area to which such Order applied. I shall refer to that Order further below.

THIRD PARTY EVIDENCE

4.41 During the Inquiry, I invited any other persons who wished to give evidence to do so. There were no such other persons who gave additional evidence.

5. THE LEGAL FRAMEWORK

5.1 I shall set out below the relevant legal framework within which I have to form my conclusions and the Registration Authority has to reach its decision. I shall then proceed to apply the legal position to the facts I find based on the evidence that has been adduced as set out above.

Commons Act 2006

5.2 The Application was made pursuant to the Commons Act 2006. That Act requires each registration authority to maintain a register of town and village greens within its area. Section 15 provides for the registration of land as a town or village green where the relevant statutory criteria are established in relation to such land.

5.3 The Application seeks the registration of the Land by virtue of the operation of section 15(2) of the 2006 Act. Under that provision, land is to be registered as a town or village green 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.*"

5.4 Therefore, for the Application to succeed, it must be established that:-

(i) the Application Land comprises "land" within the meaning of the 2006 Act;

(ii) the Land has been used for lawful sports and pastimes;

(iii) such use has been for a period of not less than 20 years;

(iv) such use has been by a significant number of the inhabitants of a locality or of a neighbourhood within a locality;

(v) such use has been as of right; and

(vi) such use continued at the time of the Application.

Burden and Standard of Proof

5.5 The burden of proving that the Land has become a village green rests with the Applicant. The standard of proof is the balance of probabilities. That is the approach I have used.

5.6 Further, when considering whether or not the Applicant has discharged the evidential burden of proving that the Land has become a town or village green, it is important to have regard to the guidance given by Lord Bingham in ***R. v Sunderland City Council ex parte Beresford***[20] where, at paragraph 2, he noted as follows:-

> "*As Pill LJ. rightly pointed out in R v Suffolk County Council ex parte Steed (1996) 75 P&CR 102, 111 "it is no trivial matter for a landowner to have land, whether in public or private ownership, registered as a town green …". It is accordingly necessary that all ingredients of this definition should be met before land is registered, and decision makers must consider carefully whether the land in question has been used by inhabitants of a locality for indulgence in what are properly to be regarded as lawful sports and pastimes and whether the temporal limit of 20 years' indulgence or more is met.*"

Hence, all the elements required to establish that land has become a town or village green must be properly and strictly proved by an applicant on a balance of probabilities.

Statutory Criteria

[20] [2004] 1 AC 889. Although ***Beresford*** has been overruled by ***Barkas*** (see later), it was not done so on this point which remains good law.

5.7 Caselaw has provided helpful rulings and guidance on the various elements of the statutory criteria required to be established for land to be registered as a town or village green which I shall refer to below.

Land

5.8 Any land that is registered as a village green must be clearly defined so that it is clear what area of land is subject to the rights that flow from village green registration.

5.9 However, it was stated by way of *obiter dictum* by the majority of the House of Lords in ***Oxfordshire County Council v. Oxford City Council***[21] that there is no requirement that a piece of land must have any particular characteristics consistent with the concept of a village green in order to be registered.

Lawful Sports and Pastimes

5.10 It was made clear in ***R. v. Oxfordshire County Council ex parte Sunningwell Parish Council***[22] that "*lawful sports and pastimes*" is a composite expression and so it is sufficient for a use to be either a lawful sport or a lawful pastime. Moreover, it includes present day sports and pastimes and the activities can be informal in nature. Hence, it includes recreational walking, with or without dogs, and children's play.

5.11 However, that element does not include walking of such a character as would give rise to a presumption of dedication as a public right of way. In ***R. (Laing Homes***

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[21] [2006] 2 AC 674 per Lord Hoffmann at paragraphs 37 to 39.
[22] [2000] 1 AC 335 at 356F to 357E.

Limited) v. Buckinghamshire County Council[23], Sullivan J. (as he then was) noted at paragraph 102 that:-

> "*it is important to distinguish between use which would suggest to a reasonable landowner that the users believed they were exercising a public right of way – to walk, with or without dogs, around the perimeter of his fields – and use which would suggest to such a landowner that the users believed that they were exercising a right to indulge in lawful sports and pastimes across the whole of his fields.*"

Continuity and Sufficiency of Use over 20 Year Period

5.12 The qualifying use for lawful sports and pastimes must be continuous throughout the relevant 20 year period: ***Hollins v. Verney***.[24]

5.13 Further, the use has to be of such a nature and frequency as to show the landowner that a right is being asserted and it must be more than sporadic intrusion onto the land. It must give the landowner the appearance that rights of a continuous nature are being asserted. The fundamental issue is to assess how the matters would have appeared to the landowner: ***R. (on the application of Lewis) v. Redcar and Cleveland Borough Council***.[25]

Locality or Neighbourhood within a Locality

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[23] [2003] EWHC 1578 (Admin).
[24] (1884) 13 QBD 304.
[25] [2010] UKSC 11 at paragraph 36.

5.14 A "*locality*" must be a division of the County known to the law, such as a borough, parish or manor: ***MoD v Wiltshire CC***;[26] ***R. (on the application of Cheltenham Builders Limited) v. South Gloucestershire DC***;[27] and ***R. (Laing Homes Limited) v. Buckinghamshire CC***.[28] A locality cannot be created simply by drawing a line on a plan: ***Cheltenham Builders*** case.[29]

5.15 In contrast, a "*neighbourhood*" need not be a recognised administrative unit. Lord Hoffmann pointed out in ***Oxfordshire County Council v. Oxford City Council***[30] that the statutory criteria of "*any neighbourhood within a locality*" is "*obviously drafted with a deliberate imprecision which contrasts with the insistence of the old law upon a locality defined by legally significant boundaries*". Hence, a housing estate can be a neighbourhood: ***R. (McAlpine) v. Staffordshire County Council***.[31] Nonetheless, a neighbourhood cannot be any area drawn on a map. Instead, it must be an area which has a sufficient degree of cohesiveness: ***Cheltenham Builders*** case.[32]

5.16 Further clarity was provided on that element by HHJ Waksman QC in ***R. (Oxfordshire and Buckinghamshire Mental Health NHS Foundation Trust and Oxford Radcliffe Hospitals NHS Trust) v. Oxfordshire County Council***[33] who stated:-

> "*While Lord Hoffmann said that the expression was drafted with "deliberate imprecision", that was to be contrasted with the locality whose boundaries*

[26] [1995] 4 All ER 931 at page 937b-e.
[27] [2003] EWHC 2803 (Admin) at paragraphs 72 to 84.
[28] [2003] EWHC 1578 (Admin) at paragraph 133.
[29] At paragraphs 41 to 48.
[30] [2006] 2 AC 674 at paragraph 27.
[31] [2002] EWHC 76 (Admin).
[32] At paragraph 85.
[33] [2010] EWHC 530 (Admin) at paragraph 79.

had to be "legally significant". See paragraph 27 of his judgment in Oxfordshire (supra). He was not there saying that a neighbourhood need have no boundaries at all. The factors to be considered when determining whether a purported neighbourhood qualifies are undoubtedly looser and more varied than those relating to locality… but, as Sullivan J stated in R (Cheltenham Builders) Ltd v South Gloucestershire Council [2004] JPL 975 at paragraph 85, ***a neighbourhood must have a sufficient degree of (pre-existing) cohesiveness. To qualify therefore, it must be capable of meaningful description in some way.*** *This is now emphasised by the fact that under the Commons Registration (England) Regulations 2008 the entry on the register of a new TVG will specify the locality or neighbourhood referred to in the application.*" (My emphasis).

Significant Number

5.17 "*Significant*" does not mean considerable or substantial. What matters is that the number of people using the land in question has to be sufficient to indicate that their use of the land signifies that it is in general use by the local community for informal recreation, rather than occasional use by individuals as trespassers: ***R. (McAlpine) v. Staffordshire County Council***.[34]

As of Right

5.18 Use of land "*as of right*" is a use without force, without secrecy and without permission, namely *nec vi nec clam nec precario*. It was made clear in ***R. v.***

[34] [2002] EWHC 76 (Admin) at paragraph 71.

Oxfordshire County Council ex parte Sunningwell Parish Council[35] that the issue does not turn on the subjective intention, knowledge or belief of users of the land.

5.19 "Force" does not merely refer to physical force. User is *vi* and so not "*as of right*" if it involves climbing or breaking down fences or gates or if it is under protest from the landowner: ***Newnham v. Willison***.[36] Further, Lord Rodger in ***Lewis v. Redcar*** stated that "*If the use continues despite the neighbour's protests and attempts to interrupt it, it is treated as being vi…user is only peaceable (nec vi) if it is neither violent nor contentious*".[37]

5.20 "Permission" can be expressly given or can be implied from the landowner's conduct. Further, land that is used "by right" is being used with permission and so is not being used "as of right": ***R. (on the application of Barkas) v. North Yorkshire County Council***.[38]

6. APPLICATION OF THE LAW TO THE FACTS

Approach to the Evidence

6.1 The impression which I obtained of all the witnesses called at the Inquiry is that they were entirely honest and transparent witnesses, and I therefore accept for the most part the evidence of all the witnesses called for each of the Parties.

6.2 I have considered all the evidence put before the Inquiry, both orally and in writing. However, I emphasise that my findings and recommendations are based upon whether

[35] [2000] 1 AC 335.
[36] (1988) 56 P. & C.R. 8.
[37] At paragraphs 88-90.
[38] [2014] 3 All ER 178.

the Land should be registered as a town or village green by virtue of the relevant statutory criteria being satisfied. In determining that issue, it is inappropriate for me or the Registration Authority to take into account the merits of the Land being registered as a town or village green or of it not being so registered.

6.3 I shall now consider each of the elements of the relevant statutory criteria in turn as set out in paragraph 5.4 above, and determine whether they have been established on the basis of all the evidence, applying the facts to the legal framework set out above and to other specific legal principles where relevant. The facts and findings I refer to below are all based upon the evidence set out in detail above. In order for the Land to be registered as a town or village green, each of the relevant statutory criteria must be established by the Applicant on the evidence adduced on the balance of probabilities.

The Land

6.4 The relevant land sought to be registered is clear. The Application Land is identified on the map marked "Exhibit 1" submitted with the Application on which it is outlined.[39] The Land has clearly defined and fixed boundaries, and there was no dispute at the Inquiry nor in any of the evidence adduced that that area of land comprises "land" within the meaning of section 15(2) of the 2006 Act and is capable of registration as a town or village green in principle and I so find.

Relevant 20 Year Period

6.5 As to the identification of the relevant 20 year period for the purposes of section 15(2) of the 2006 Act, the qualifying use must continue up until the date of the Application.

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[39] At AB 10.

Hence, the relevant 20 year period is the period of 20 years which ends at the date of the Application. The Application Form is dated 28 April 2016, the accompanying statutory declaration is dated 8 May 2016, and the date of receipt of the Application by the Registration Authority is 11 May 2016. It follows that the relevant 20 year period for the purposes of section 15(2) is May 1996 until May 2016.

Locality or Neighbourhood within a Locality

6.6 Turning next to the identity of the relevant locality or neighbourhood within a locality for the purposes of section 15(2), the Application Form in part 6 refers to the locality or neighbourhood within a locality relied upon as "Llantarnam". The relevant box is ticked that a map is attached, but that is the map identifying the Application Land.[40] That particular Map does not itself identify the separate locality or neighbourhood within a locality relied upon.

6.7 At the Inquiry, the Applicant confirmed that she relied upon "limb (ii)", namely the neighbourhood known as Llantarnam, rather than on "limb (i)" and a locality. She further confirmed that the neighbourhood of Llantarnam relied upon was the shaded area identified on the plan at AB 28. It was disputed by the Parties whether that area amounted to a qualifying neighbourhood for the purposes of section 15(2).

6.8 In determining that issue, the fundamental question is whether that area has a sufficient degree of pre-existing cohesiveness to amount to a "*neighbourhood*". In contrast to a locality, a neighbourhood need not be an area known to the law. It can

[40] At AB 10.

have imprecise boundaries. Nonetheless, it cannot merely be an area drawn on a map. It must be capable of some meaningful description. The issue is ultimately one of fact.

6.9 In that context, I note the following. The neighbourhood relied upon comprises 3 areas as acknowledged by the Applicant, namely part of Oakfield to the north which is part of the original development of Cwmbran New Town; the part of Llantarnam Road in closest proximity to the Land; and John Fielding Gardens to the south. Firstly, from my site visit, it was apparent that the housing in each of those three areas was very different in terms of age, style and appearance. That is unsurprising given the history of development in the area. The extract from the draft Definitive Map of 1952[41] shows the area of Llantarnam at that time which included St Michael's Church, Llantarnam Abbey, The Greenhouse Pub, and residential properties along Newport Road, along Llantarnam Road and opposite the end of Llantarnam Road. Post-war, Cwmbran New town was developed which included the Oakfield Estate, whilst John Fielding Gardens was constructed around 2008. Of the three parts of the neighbourhood relied upon, the housing in the Oakfield part is late 1940's and early 1950's; along Llantarnam Road it is broadly Edwardian; and in John Fielding Gardens it is from the 1980's onwards. Accordingly, the claimed neighbourhood has no historical coherence. It has been developed at different times and not as one estate or community. Indeed, the Applicant accepted in cross examination that they are three different areas in character.

6.10 Secondly, there was no material evidence that the neighbourhood functions as a distinct community. It does not have its own facilities serving that particular area

[41] At OB A51.

around which it functions. On the contrary, there are no facilities in that area specifically serving it. The nearest shops are outside that area in Oakfield; the nearest pub, The Greenhouse, is outside the area; the nearest church, Llantarnam Parish Church, is similarly outside the area; there is no doctor's surgery in the area; the catchment area of the School was far wider than the claimed neighbourhood, as evidenced by the extent of the school buses on which pupils travelled to and from the School; and there are no community based public buildings in the neighbourhood.

6.11 Thirdly, there was no evidence of any societies or community groups or organisations functioning in the claimed neighbourhood for the purposes of that particular area. There was no evidence to suggest that the identified neighbourhood functions as or is otherwise regarded as a community in its own right or that it is a recognised community in any meaningful way.

6.12 Fourthly, the area does not have any name by which it was known. That is not a requirement of a neighbourhood, but is nonetheless one of the factors to be taken into account. Although the neighbourhood was identified in the Application Form as "Llantarnam", it was apparent from the evidence that the area relied upon could not be accurately described as such. The site of the former Llantarnam Abbey clearly falls within Llantarnam, as does the Parish Church and The Greenhouse pub, but they are all outside the claimed neighbourhood. As pointed out by Councillor Thomas, the heart of the village of Llantarnam is where the Church and The Greenhouse Pub are located. Hence, it seems to me that the area relied upon comprises only part of Llantarnam. In addition, the northern part of that area is part of Oakfield rather than Llantarnam.

6.13 Fifthly, the evidence suggested that the neighbourhood was specifically identified by reference to the location of the users of the Land. The Applicant stated that she had selected the claimed neighbourhood because it was the area surrounding the Land from where people wished to see it registered as a village green. No other justification was provided for its identification. Indeed, in her written closing submissions, the Applicant pointed out that the neighbourhood identified was the area in closest proximity to the Land as it was from that area that users were most likely to reside.[42] It seems to me that such an approach is not an appropriate means of identifying a neighbourhood on the basis of its cohesiveness.

6.14 Consequently, it is my opinion that the identified neighbourhood has no particular cohesiveness or meaningful description. It is an area that has been identified for the purposes of the Application, and it did not previously exist, and is not recognised by local inhabitants as existing, as a neighbourhood or as any form of community. Therefore, I find that the claimed neighbourhood is not a qualifying neighbourhood within the meaning of section 15(2) of the 2006 Act.

6.15 I note the Applicant's submission in her written closing submissions that it is sufficient that the Land is "*contained within <u>a</u> neighbourhood or locality, which is all that is needed for the application to succeed*".[43] However, I do not concur. It is necessary for a specific qualifying locality or neighbourhood within a locality to be identified. If the Land is registered as a village green, the recreational rights will attach only to the inhabitants of that qualifying locality or neighbourhood and not to

[42] Paragraph 2 of Summation of Applicant.
[43] Paragraph 8 of Summation of Applicant.

the wider public. It is therefore imperative that such an area is specifically identified. Indeed, as pointed out by HHJ Waksman QC in the ***Buckinghamshire Mental Health*** decision referred to in paragraph 5.16 above, the entry in the register of town and village greens is required to specify the relevant locality or neighbourhood on which basis any land is registered.

Use of Land for Lawful Sports and Pastimes

6.16 The next issue I turn to is whether the Land has been used for lawful sports and pastimes during the relevant 20 year period. I heard evidence from each of the witnesses who gave evidence in support of the Application of their own and their family's recreational use of the Land and of seeing others using the Land for recreational purposes to varying extents and over varying periods of time. Such is supported by the written evidence in support of the Application. References were made to various recreational activities carried out on the Land including children's play, football, cricket, rounders, fruit picking, picnicking, kite flying, camping, photography, jogging, walking and exercising dogs. Although people's recollections may fade over time, particularly in relation to details, I accept the evidence of each of those witnesses that they did in fact use the Land, and saw it being used, for the stated purposes.

6.17 Moreover, in so finding, I note that a number of the witnesses who gave evidence in support of the Objector stated that they had seen some informal recreational use of the Land. Mr Bateman, who was on the Land and at the Leisure Centre regularly between 2001 and 2015, recalled an occasional dog walker, the odd person having a kick about and children playing on the Land. Between 2009 and 2015, Mr Case occasionally saw

children playing on the Land, some camping and dog walking. Mr Williams recalled that during his involvement with the School and the Leisure Centre over the last 10 years, he had seen children picnicking and playing team games on the Land, dog walking, photography, kite flying, fruit picking, walking and family events on the Land.

6.18 Indeed, the very nature and location of the Land is such that it is unsurprising that it has been used for some recreational activities by local residents. It comprises a flat, open, grassed area which was well maintained throughout the relevant period until 2015 when the School shut. It is located within a residential area with many of the properties adjoining the Land along Llantarnam Road having a gate in their back gardens leading out onto the Land. It is a pleasant place to be and it is safe and away from traffic. Easy and unrestricted pedestrian access has always been maintained to it, including via the footpaths over the Land. Given such circumstances, I would expect the Land to have been used for some recreational purposes by local people.

6.19 All such activities referred to in paragraph 6.16 above are lawful recreational pursuits in principle. However, an issue was raised by the Objector as to whether any of them were "lawful" sports and pastimes within the meaning of section 15(2) of the 2006 Act in the context of this particular Application.

6.20 Section 547(1) of the Education Act 1996 provides:-

> "*Any person who without lawful authority is present on premises to which this section applies and causes or permits nuisance or disturbance to the annoyance of persons who lawfully use those premises (whether or not any*

such persons are present at the time) is guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale."

Subsection (2) states:-

> "*This section applies to premises, including playgrounds, playing fields and other premises for outdoor recreation, of—*
>
> (a) *any school maintained by a local authority*".

There can be no doubt that section 547 applies to the Land as there is no dispute that during the relevant 20 year period, it comprised a playing field attached to the School which was maintained by the local authority.

6.21 In such circumstances, it was contended that all the unauthorised uses of the Land amounted to a criminal offence by virtue of section 547(1) which renders unlawful any activity which amounts to a nuisance or disturbance to persons who lawfully used the Land and "*whether or not any such persons are present at the time*". As the Land was in active use as a school playing field, both by the School and organised teams and groups, and the marked pitches extended across most of it, any unauthorised activity on the Land would have been an offence, and so not "lawful", given that it would have necessarily caused a nuisance or disturbance to lawful users had those pitches been in actual use at that time.

6.22 I have difficulty with such an interpretation of section 547(1), not least because it would preclude any school playing field in general use by the school or its licensees from being registered as a village green on the ground that "lawful" sports and pastimes within the meaning of section 15 of the 2006 Act could never be carried out on such land. An offence occurs where a person on such land without lawful authority

causes or permits nuisance or disturbance to the lawful users of that land, irrespective of whether any such lawful users are present on the land at the particular time. Nonetheless, it seems to me that a nuisance or disturbance to a lawful user must still **actually be caused or permitted** for the offence to be made out, and it is insufficient to establish merely that a nuisance or disturbance **would have occurred** had a lawful user been using the land at that time. The words used in section 547(1) are "*causes or permits nuisance or disturbance*" without any inclusion of words such as "*or would have caused or permitted nuisance or disturbance*". Moreover, it is my view that the effect of the words in brackets is that a nuisance or disturbance can still occur to lawful users, and the offence would still arise, even if those lawful users are not present on the land at the time the unauthorised use occurs. Hence, for example, a nuisance or disturbance could be caused despite the absence of any lawful users of the Land by an unauthorised dog walker who permitted his dog to foul the Land without clearing it away; by children playing who caused damage to the surface of the Land in so doing; or by informal users leaving litter on the Land. I also note that the alternative interpretation to section 547(1) as suggested by the Objector does not appear to have been previously advanced in any town or village green case of which I am aware which involved a school playing field, including the recent decision of the Administrative Court in ***Lancashire County Council v. Secretary of State for the Environment, Food and Rural Affairs***[44] which I shall refer to further below in relation to the issue of statutory incompatibility.

6.23 Therefore, I find that although some of the unauthorised recreational uses on the Land over the relevant 20 year period would have amounted to a criminal offence under

[44] [2016] EWHC 1238 (Admin).

section 547 of the Education Act 1996, and particularly any which interfered with any use by lawful users which Mr Bateman indicated sometimes occurred, it was my impression from the evidence as a whole that such conflict was very much the exception. It follows that it is my view that the vast majority of the unauthorised use relied upon by the Applicant amounted to "lawful" sports and pastimes within the meaning of section 15(2) of the 2006 Act, save for the walking of dogs on the Land which I refer to in the following two paragraphs.

6.24 The Dog Control Order referred to in paragraph 4.40 above was made under sections 55 and 56 of the Clean Neighbourhoods and Environment Act 2005 and came into force on 1 June 2013. Although those statutory provisions were repealed by the Anti-Social Behaviour, Crime and Policing Act 2014, the Dog Control Order remained in force, unless otherwise revoked, until 20 October 2017 by virtue of section 75 of that 2014 Act, whereafter it became a public spaces protection order within the meaning of section 59. I understand from the Objector that the Dog Control Order has not been otherwise revoked. Therefore, for the purposes of the Application, it remained in force from 1 June 2013 until the end of the relevant 20 year period.

6.25 The effect of the Dog Control Order was to make it a criminal offence for a person in charge of a dog to take a dog onto, or to permit it to enter, any land to which the Order applied in the absence of consent from the landowner or other reasonable excuse.[45] The land subject to the Order included school grounds and marked sports pitches as shown on the ward maps attached to the Order.[46] The relevant map identified all the Application Land as being subject to the Order. It follows that all the

[45] Article 3(1) of the Dog Control Order.
[46] By virtue of Article 2 and Schedule 1 of the Dog Control Order.

dog walking and other exercising of dogs on the Land amounted to a criminal offence from 1 June onwards, and so I find that such activities during that part of the relevant 20 year period were not "lawful" sports and pastimes within the meaning of section 15(2) of the 2006 Act and so cannot be taken into account as part of the qualifying use.

6.26 Consequently, taking the above matters into account, I find that some lawful sports and pastimes have been carried out on the Land during the relevant 20 year period.

Use as of Right

6.27 The next issue I turn to is whether the use of the Land has been "as of right" during the relevant 20 year period.

Nec clam

6.28 There was no suggestion in any of the evidence or the submissions that any of the use was by stealth. On the contrary, it was carried out openly during daylight hours and without any element of secrecy. I therefore find that the use of the Land relied upon in support of the Application has been *nec clam*.

Nec vi

6.29 In contrast, there was a dispute between the Parties over whether such use was carried out with force. As noted in paragraph 5.19 above, the requirement that the use be without force in order to be "*as of right*" does not merely require the use to be without physical force, such as by breaking down a fence, but also that it is not contentious, such as if it is carried out under protest from the landowner.

6.30 In that regard, there is a sign at the entrance to the Land from Llantarnam Road as shown at OB A77. It was erected by Gwent County Council. According to Mrs Edwards-John, it has been in place since she was at the School in the 1980's and there was no evidence adduced to the contrary. From my site visit, I noted that it was apparent that it had been installed some time ago. I therefore find that the sign was in situ throughout the relevant 20 year period. Further, I noted from my site visit that the sign was clearly visible and legible to any person entering the Land from Llantarnam Road. It was clearly written in sufficiently large lettering to be easily read and was unobscured by vegetation or otherwise. It appears from the evidence that such has been the position throughout the relevant 20 year period and I so find. The Applicant and Councillor Thomas both confirmed that they had seen the sign, and there was no evidence to suggest that it was difficult to see or to read at any point in time. In addition, it seemed to me that the sign referred to the Land itself and there was no other parcel of land that it could reasonably be regarded as referring to. That was also confirmed by the evidence of the Applicant and of Councillor Thomas with no evidence to the contrary, and I so find.

6.31 There are two elements of the sign that are of particular note in relation to whether the use of the Land was "as of right". Firstly, it states:-

"*The exercising of animals is strictly prohibited*".

It is my view that such wording is sufficiently clear to indicate that, inter alia, dog walking is prohibited on the Land. That was confirmed by the Applicant who stated in evidence that she understood that element of the sign to mean that dog walkers were prohibited from using the Land. Consequently, I find that dog walking and any other

exercising of dogs on the Land during the relevant 20 year period by persons who entered the Land via Llantarnam Road was contrary to that sign and was accordingly contentious and so not "as of right". Any such use of the Land must therefore be discounted from the qualifying use in support of the Application which I shall consider below.

6.32 Secondly, the sign further states:-

"*Authorised use only of these grounds.*"

In my view, that indicates to any person that he may only use the Land if that use is "authorised", and any other unauthorised uses are prohibited by the notice. That was also the view of the Applicant as stated in evidence, who confirmed that she was using the Land contrary to that sign, and that it would have been apparent to all other unauthorised users who had seen the notice that they were using the Land contrary to the sign. It follows that all such unauthorised uses were contentious and so not "as of right".

6.33 I note that unauthorised users nonetheless ignored the sign and still used the Land. However, the Court of Appeal's decision in ***Winterburn v. Bennett***[47] indicates that such a sign which is clear in its terms and clearly visible to users is sufficient to make the unauthorised use by such users contentious. As stated by David Richards LJ with whom the others agreed[48]:-

"*The erection and maintenance of an appropriate sign is a peaceful and inexpensive means of making clear that property is private and not to be used*

[47] [2017] 1 WLR 646.
[48] At paragraph 41.

> *by others. I do not see why those who choose to ignore such signs should thereby be entitled to obtain legal rights over the land.*"

I therefore find that all the use of the Land by unauthorised users who entered via Llantarnam Road was contentious and so not "as of right". All such use must accordingly be discounted from the qualifying use.

6.34 There was also evidence that some of the unauthorised users had been challenged. The Applicant stated that the School challenged users who were on the Land and off the footpaths during school hours, and she had challenged a dog walker herself in her capacity as a School Governor. A letter was sent to residents of Llantarnam Road from the Objector stating that the use of the Land for the exercising of dogs would be prosecuted. Further, Mr Case stated that he had challenged people on the Land who appeared to be causing a nuisance. The impression I gleaned from the evidence was that some challenges occurred from time to time, but they were not frequent. Nonetheless, such uses that were subject to challenge must also be discounted from the qualifying use as they were contentious and so not "as of right".

Nec precario

6.35 There was also a dispute over whether the use was carried out with implied permission. Before turning to that issue, I note that it was accepted by the Applicant that the Land was used by a number of clubs, teams and organisations for formal recreational uses with the express permission of the School. The Land, or a particular pitch, was paid for at the Leisure Centre and hired out for a particular period of time. Such uses were clearly carried out with express permission and not "as of right" and were authorised uses.

6.36 Moreover, I find that such uses of the Land were regular and relatively frequent, particularly from around 2011 onwards. I accept the unchallenged evidence of Mr Bateman in relation to such formal uses of the Land who was the manager of the Leisure Centre between 2001 and 2015 where the bookings were taken. He pointed out that the Land was less well used in terms of formal bookings between 2001 and 2010. Rugby or football tended to take place around once a week and the Archery Club used the land. In addition, the School used the Land for PE lessons and for after school activities. Subsequently, the bookings for the use of the Land increased substantially from around 2011 onwards. The facilities were advertised at that time with the specific objective of increasing the revenue generated from the Land at weekends. A number of football teams regularly used the Land, both for matches and training; the Archery Club used it 3 times a week for six months of the year; and there were various formal annual events held on the Land by organisations including Bron Afon Community Housing, the Welsh Gurkhas and Fairwater Runners Club, each of whom hired the Land for such purpose. In addition to the School's use of the Land at that time, the Land was being used by Clubs up to 5 times a week on weekdays and virtually every weekend, particularly on Saturdays. That evidence of Mr Bateman was supported by the evidence of Mr Case and of Mr Williams. Moreover, the Applicant acknowledged in cross examination that she accepted the written evidence of both Mr Bateman and Mr Case in relation to the formal uses of the Land and that such uses were carried out with permission.

6.37 Therefore, I find that all such formal uses of the Land that were booked through the Leisure Centre were carried out with express permission and so cannot form part of the qualifying use in support of the Application.

6.38 The Objector further contended that the informal use of the Land by local people was carried out with implied permission. It was submitted that where land is laid out as a sports ground, and the pitches and facilities are used from time to time by the landowner and his licensees, then the public use of the land only at times when the landowner and his licensees are not using it is being carried out with the implied permission of the landowner. Rather than being a situation of "give and take" as in ***Redcar***, the circumstances were such that the landowner was demonstrating by his use and that of his licensees that when he wished, he could shut off the land, or any part of it, from public use, which was sufficient to demonstrate that their use of his land was subject to his permission.

6.39 Such a scenario arose in ***R. (Mann) v. Somerset County Council***[49] in which a private landowner erected a beer festival marquee on part of the application land on a few occasions and charged for entrance and for the use of the funfair facilities. Access to the marquee and the facilities was denied to anyone who had not purchased a ticket. HHJ Robert Owen QC upheld the Inspector's conclusions that such conduct by the landowner of excluding all comers to part of the application land, subject to payment of an entrance charge, was sufficient on the facts to bring it home to a reasonable local inhabitant that his use of the land was pursuant to the landowner's permission.[50]

[49] [2012] EWHC B14.
[50] See in particular paragraphs 71-77 of his Judgment.

6.40 Whether the acts of a landowner have such an effect is a question of fact on a case by case basis. Moreover, I take into account that the issue is to be judged objectively rather than by the subjective impression of any particular user.[51]

6.41 In this instance, the Land is publicly owned rather than privately owned. There is no evidence of the public being actively excluded from any part of the Land other than on payment of a charge. Nonetheless, as the issue is one of fact, I accept that the particular circumstances which arose in ***Mann*** are clearly not the only means by which permission can be implied through the landowner's conduct of excluding the public from his land.

6.42 It appears from the evidence that the public's use of the Land was limited when it was in use by the School or when individual pitches or the Land generally were hired out. As Mrs Dennehy acknowledged, when the Land was being so used, the public would merely go on to watch if matches were being played; otherwise, they would generally stay off the Land at such times. That was also reflected by the Applicant's evidence that the public tended to use the Land when neither the School nor any of its licensees were using it. Such would suggest that the uses were "*consecutive uses*", rather than "*concurrent competing uses*" as in ***Redcar***, in the sense referred to by HHJ Robert Owen in ***Mann***.[52] However, taking into account all the relevant factual matters and factual context, and adopting an objective approach, I do not find that the Landowner's conduct was such as to demonstrate to the public that they were using the Land subject to its implied permission for the following particular reasons.

[51] See ***Mann*** at paragraphs 74-75.
[52] At paragraph 86.

6.43 In contrast to the circumstances in ***Mann***, the Landowner itself did not exclude the public other than on payment of a charge or otherwise; rather, the impression I gained from the evidence was that the public themselves chose not to use the Land when it was otherwise being used if their use would conflict. Indeed, a number of local inhabitants nonetheless continued to use it on such occasions, but to watch the games being played rather than actively using the particular pitches in use at the time, or to carry out activities that did not interfere with such formal use such as walking around the perimeter. Such conduct by the Landowner was not, in my view, "*a manifest act of exclusion*" as arose in ***Mann***.[53] Further, a finding that the public's use was being impliedly permitted by the Objector as Landowner at other times when the Land was not in such use would, in my view, be inconsistent with the factual existence of the sign at Llantarnam Road.[54] That sign does not seem to me to indicate that the Landowner was inviting the public to use the Land subject to its permission; rather, it seems to me to be informing them of the contrary, namely that they were not permitted to use the Land unless their use was authorised. In addition, I take into account the factual evidence, which I accept, that challenges were made to users from time to time even when the Land was not being actively used by the School or its licensees. That is inconsistent with a demonstration by the Landowner that the public were entitled to use the Land when it was not otherwise in active use. Indeed, I find that the factual context of the Land being part of the School, which is subject to strict safeguarding obligations for obvious and good reasons, also supports my view that the Landowner's conduct was not such as to make it apparent that the public's use was being permitted when the Land was not otherwise in use.

[53] At paragraph 73.
[54] At OB A77.

6.44 Therefore, taking all the relevant facts into account and considering the matter objectively, I conclude that the Landowner did not conduct itself so as to make it clear to the public that they were using the Land with its permission. Consequently, I find that the informal use by the public was *nec precario*.

Use of Land for Lawful Sports and Pastimes by a Significant Number of the Inhabitants of the Neighbourhood for at least 20 Years

6.45 The next issue I consider is whether the Land has been used by a significant number of the inhabitants of the locality for lawful sports and pastimes throughout the relevant 20 year period from May 1996 until May 2016. The crucial question to determine is whether the qualifying recreational use has been carried out to a sufficient extent and frequency throughout that relevant 20 year period to demonstrate the assertion of recreational rights over the Land by the local community.

6.46 In order to address that issue, it is necessary to discount any non-qualifying uses. Firstly, and as acknowledged to be appropriate by the Applicant, I discount those formal and organised uses of the Land which were carried out with express permission and so were not "as of right" for the reasons set out in paragraphs 6.35 – 6.37 above.

6.47 Secondly, I discount not only all the use involving the walking or other exercise of dogs on the Land by those who entered via Llantarnam Road, but I also discount all the unauthorised use by those who entered via that entrance for the reasons given in paragraphs 6.30 - 6.32 above, together with the use by those who had been challenged. Such use was not, in my view, "as of right".

6.48 Thirdly, I discount all the use involving the walking or other exercising of dogs on the Land from 1 June 2013 onwards as it was not a "lawful" use for the reasons set out in paragraphs 6.24 and 6.25 above, unless it was authorised in which case it was *precario* and so not "as of right".

6.49 Fourthly, and subject to my further finding in relation to the lack of a qualifying neighbourhood, it is necessary to discount the use by those who resided outside the claimed neighbourhood at the time of their use, such as Mrs Keeling's use and Councillor Thomas's use up until 2008.

6.50 Fifthly, it is necessary to discount those uses that were more akin to the exercise of a public right of way than a right to recreate over the Land generally. That issue was addressed by Lightman J. at first instance in ***Oxfordshire County Council v. Oxford City Council***[55] and he notably stated at paragraph 104 in relation to an existing right of way:-

> "*The second scenario is where the track is already a public highway and the question arises whether the user of the track counts towards acquisition of a Green. In this situation, the starting point must be to view the user as referable to the exercise (and occasional excessive exercise) of the established right of way, and only as referable to exercise as of right of the rights incident to a Green if clearly referable to such a claim and not reasonably explicable as referable to the existence of the public right of way.*"

[55] [2004] Ch. 253.

The Court of Appeal and the House of Lords declined to rule on the issue since it was so much a matter of fact in applying the statutory test. However, neither the Court of Appeal nor the House of Lords expressed any disagreement with the above views advanced by Lightman J. Moreover, insofar as the use involves the lawful use of a definitive right of way, it is exercised "by right" rather than "as of right" in any event applying the principles set out in ***Barkas***.

6.51 Applying that legal position to the evidence, there is a definitive right of way crossing the Land, namely Footpath 162, which runs from the access to the Land on Llantarnam Road to the access on the west, passing to the north of the Leisure Centre, as marked on the aerial photograph at OB A41. There was previously a footpath known as Footpath 164 running from the same access point on Llantarnam Road southwards across the Land to The Greenhouse public house on Newport Road as marked on OB A41. It remained on the Definitive Map until 2012 when it was closed. Access to the Land via John Fielding Gardens ceased at that point in time. Walking along those routes, with or without a dog, would clearly not be a qualifying use in terms of the statutory criteria. Similarly, walking along a particular route around the perimeter of the Land would amount to a use more akin to the exercise of a right of way. Further, other uses on those paths that were more referable to the exercise of a public right of way than the right to recreate over the Land generally would not be qualifying uses, such as jogging along the routes, fruit picking from them or kicking a ball whilst walking along them. That being so, it is evident that a material amount of dog walking, general walking and other activities on the Land must be discounted on that basis insofar as it occurred on, or in the general vicinity of, the line of those paths.

6.52 In that respect, I note in particular the following evidence. The Applicant pointed out that the footpaths were "*extremely well used*"; Mrs Dennehy and her family had used the footpaths which she described as being "*very well used particularly by young children*"; and Mrs McCarthy had seen others using the footpaths. On behalf of the Objector, Mr Williams stated that walkers used the two footpaths through the Land throughout the day; Mr Bateman pointed out that before it was closed, many people cut across the footpath as a shortcut to The Greenhouse pub; and the use of the footpath as a shortcut was also reiterated by Mr Case and Mrs Edwards-John. It was apparent from the evidence that a material amount of the use of the Land, particularly by walkers both with and without dogs, involved the use of the footpaths.

6.53 Having discounted all the non-qualifying uses, the overall view I reach from the evidence as a whole is that the remaining qualifying use over the 20 year period was, at its highest, irregular and sporadic rather than of such a nature that would indicate to a landowner that recreational rights were being asserted over the Land. My reasons for that finding are as follows.

6.54 The extent of the non-qualifying uses as referred to above was very significant. In essence, it seemed to me that the vast majority of the informal lawful use relied upon, if not virtually all of it, either involved the exercise of a right of way, or was an unauthorised use where the user would have been aware of the sign at Llantarnam Road and so their use was *vi* and not as of right. Any remaining qualifying lawful use that did not fall into either of the above categories was extremely limited.

6.55 Further, in terms of oral evidence of use in support of the Application, that was relatively limited in nature in any event. Mrs Keeling lived outside the claimed neighbourhood throughout the relevant 20 year and so her use does not contribute to the qualifying use; Mr Chowdhury gave no detailed evidence of his use; and Councillor Thomas's evidence of his qualifying use was limited to 2008 onwards when he lived within the neighbourhood. Further, Mrs McCarthy acknowledged in cross examination that she probably did not use the Land much herself after her children, born in 1986 and 1987, were older and stopped using it. In terms of the remaining oral evidence in support of the Application, the Applicant gave credible evidence of her use together with that of her family and friends, all of which I accept. Mrs Dennehy also gave particularly credible evidence which I accept. She used the Land regularly as did her family and friends. Those two users and their families and friends mainly accessed the Land via their private garden gates which in turn suggests a relatively private rather than a public use. I also take into account the written evidence in support of the Application. However, the standard witness statement forms used were very general and the statements lacked important details, such as the frequency of the use, the extent it involved use of the footpaths and, in a number of instances, the period over which the use took place. Consequently, I am unable to attribute them considerable weight. Further, the signed Petition merely stated that the signatories supported the Application rather than provided any evidence of use of the Land, so I am unable to attribute that any material weight in the determination of the Application.

6.56 Moreover, I also bear in mind that such informal use that did take place was mainly at times when the School was not open and the Land was not in use by the School or any

of its licensees. That is of particular note for the part of the relevant 20 year period from 2011 onwards when the formal use of the Land increased significantly.

6.57 I further note the evidence on behalf of the Objector in respect of the informal use of the Land. Mr Bateman pointed out that he saw the "occasional" dog walker and the "odd person" having a kick about on the Land. Mr Case "occasionally" saw children playing on the Land. Similarly, Mrs Edwards-John referred to seeing dog walkers and a few others walking on the Land, but not often children playing there informally. In contrast, Mr Williams gave evidence of a higher level of informal use. However, taking the Objector's evidence as a whole, the impression I gained was that the informal use carried out off the footpaths was relatively occasional by a few individuals. I also accept the evidence of Mr Bateman and Mr Case that such use that there was ceased significantly after 2013 when the School site was fenced. That is consistent with the evidence of Mrs Dennehy that after the closing of the footpath at John Fielding Gardens in 2010 and the subsequent erection of the security fencing, the use of the Land declined generally.

6.58 I acknowledge the existence and nature of other areas of public open space in the vicinity, namely Oakfield Flower Garden, Cwmbran Stadium, and the Boating Lake leading to Southfields. There is evidently no shortage of recreational land in the area. Nonetheless, I accept the evidence of the Applicant that they are different in nature to the Land, are less intimate and are further afield to those who have the Land on their doorstep. Their existence and popularity does not materially affect my views as to the use of the Land itself.

6.59 Having considered all the evidence from both Parties, oral and written, I find that it has not been demonstrated that the qualifying use was by a significant number of the inhabitants of the claimed neighbourhood throughout the relevant 20 year period. Consequently, I conclude that that element of the statutory criteria has not been established.

Continuation of Use

6.60 The remaining issue in terms of the statutory criteria is whether the qualifying use continued up until the date of the Application, namely May 2016. The Land remains open to public access as evidenced on my site visit and the evidence indicated that it continues to be used for some recreational purposes. Therefore, subject to all the matters set out above, I find that the qualifying use was continuing as at the date of the Application.

STATUTORY INCOMPATIBILITY

6.61 The final issue I turn to is that of statutory incompatibility, namely whether registration of the Land would be inconsistent with the holding of the Land by the local authority for the purposes of education as contended by the Objector. I shall deal with this point relatively shortly given the particular factual circumstances.

6.62 The Objector accepted that the mere holding of land by a local education authority for the purposes of education is not inconsistent with the registration of land as a village green. That is undoubtedly correct. However, it was submitted that where land is subject to the restrictions contained in section 547 of the Education Act 1996[56], it

[56] Set out in paragraph 6.20 above.

would be contrary to Parliament's intention for the public to acquire a right of recreational use that would limit the school's use of the land. The consequence of registration would prevent the school from varying the provision of school recreation so as to conflict with the public use. It is evident from the terms of section 547 that such was not Parliament's intention where land was used as a school playing field. In response, the Applicant contended that statutory incompatibility does not arise in this instance as the School has closed and the Land is proposed to be subject to residential development.

6.63 In ***Lancashire County Council v. Secretary of State for the Environment, Food and Rural Affairs***[57], Ouseley J. stated in relation to the current leading case on statutory incompatibility, namely the Supreme Court's decision in ***R. (Newhaven Port & Properties Limited) v. East Sussex County Counci***l[58]:-

> "*The crucial point to be drawn from* **Newhaven** *is this: where a statutory body holds land under statutory powers for defined statutory purposes, the public cannot register a green under the Commons Act on the basis of public user which is incompatible with the* **continuing use** *of the land for those statutory purposes*" (my emphasis).

It is thus necessary to ascertain whether registration would be incompatible with the **continuing use of the Land** for the statutory purposes for which it is held.

6.64 In this instance, the School has been closed since 2015 and so the Land is no longer in use as the School's playing field. Indeed, the School site has been fenced off from the Land since 2013. It is not proposed by the Objector that the Land be used for

[57] [2016] EWHC 1238 (Admin) at paragraph 75.
[58] [2015] AC 1547.

education purposes of any form in the future but, rather, its stated intention is that the Land be developed for residential purposes. Given such factual circumstances, it seems to me that registration would evidently not be incompatible with the continuing use of this particular parcel of land for the statutory purposes for which it is currently held as it is not intended to continue to use the Land for such statutory purposes. On that factual basis, I find that there would be no such statutory incompatibility within the meaning of the principles set out in ***Newhaven*** arising from the registration of the Land as a village green.

7. CONCLUSIONS AND RECOMMENDATION

7.1 My overall conclusions are therefore as follows:-

7.1.1 That the Application Land comprises land that is capable of registration as a town or village green in principle;

7.1.2 That the relevant 20 year period is May 1996 until May 2016;

7.1.3 That a qualifying neighbourhood has not been identified;

7.1.4 That the Application Land has been used for some lawful sports and pastimes during the relevant 20 year period;

7.1.5 That significant elements of the use of the Application Land for lawful sports and pastimes have been carried out with force as they have been contentious and so have not been as of right;

7.1.6 That the Application Land has not been used for lawful sports and pastimes by a significant number of the inhabitants of the claimed qualifying neighbourhood throughout the relevant 20 year period;

7.1.7 That the use of the Application Land for lawful sports and pastimes continued up until the date of the Application; and

7.1.8 That registration of the Application Land would not be incompatible with the statutory purposes for which it is held.

7.2 In view of those conclusions, it is my recommendation that the Registration Authority should reject the Application and should not add the Application Land or any part of it to its register of town and village greens for the reasons contained in this Report, and on the specific grounds that:-

7.2.1 The Applicant has failed to identify any qualifying locality or neighbourhood within a locality; and

7.2.2 The Applicant has failed to establish that the Application Land has been used for lawful sports and pastimes as of right by a significant number of the inhabitants of a locality or neighbourhood within a locality throughout the relevant 20 year period.

8. ACKNOWLEDGEMENTS

8.1 Finally, I would like to thank the Applicant and the Objector and their representatives for the very helpful manner in which the respective cases were presented to the Inquiry. I would further like to express my gratitude to the representatives from the Registration Authority for their significant administrative assistance prior to and during the Inquiry.

8.2 I am sure that the Registration Authority will ensure that both Parties are provided with a copy of this Report, and that it will then take time to consider all the contents of this Report prior to proceeding to reach its decision.

RUTH A. STOCKLEY

21 October 2017

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