

RECORD OF DELEGATED OFFICER DECISION

Key Decision

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SUBJECT: Section 15(2) Commons Act 2006 – Application to Register Land at Cefn Yr Hendy Fields, Miskin, Pontyclun as a Town or Village Green

PURPOSE OF REPORT:

To consider the Inspector's Report and Recommendations prepared by Mr Michael Bedford QC following a non-statutory inquiry whereupon the evidence and representations made by the Applicant and Objector were heard and to determine whether to support the recommendations: -

- (a) to amend the application to exclude from the site the triangle of land which forms part of Title No.CYM640595 which is shown hatched black on the plan attached this Decision.
- (b) to reject the application to register the land at Cefn Yr Hendy Fields, Miskin, Pontyclun shown edged red on the plan attached to this Decision as a Town or Village Green under Section 15(2) Commons Act 2006.

In accordance with the Council's Scheme of Delegation, this report has been prepared to accompany the intended officer decision of the Director of Legal Services as described below

DELEGATED DECISION:

- (a) To amend the application to exclude from the site the triangle of land which forms part of Title No.CYM640595 and which is shown hatched black on the plan attached to this Decision
- (b) To reject the application to register the land at Cefn Yr Hendy Fields, Miskin, Pontyclun shown edged red on the plan attached to this Decision as a Town or Village Green under Section 15(2) Commons Act 2006.

A. S. Wilkins
Chief Officer Signature

ANDREW WILKINS
Print Name DIRECTOR OF LEGAL SERVICES

6th JANUARY
Date 2020

The decision is taken in accordance with the delegated authority given to the Director of Legal Services in the terms set out in Section 2 of Part 3 (i) of the Council's Constitution

PUBLICATION & IMPLEMENTATION DATES

PUBLICATION

Publication on the Councils Website:- 6th JANUARY 2020

DATE

IMPLEMENTATION OF THE DECISION

The decision will come into immediate effect.

Further Information

Directorate:	Legal Services
Contact Name:	Simon Humphreys
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RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL

KEY DELEGATED DECISION

REPORT TO ACCOMPANY A DECISION OF THE DIRECTOR OF LEGAL SERVICES

19th DECEMBER 2019

SECTION 15(2) COMMONS ACT 2006 – APPLICATION TO REGISTER LAND AT CEFN YR HENDY FIELDS, MISKIN, PONTYCLUN AS A TOWN OR VILLAGE GREEN

Author: Simon Humphreys

1. PURPOSE OF THE REPORT

- 1.1 An application was submitted to the Council as Commons Registration Authority to register land at Cefn yr Hendy Fields, Miskin, Pontyclun as a Town or Village Green under section 15(2) Commons Act 2006.
- 1.2 The purpose of the report is to consider the Inspector's Report and Recommendations, which is Annexed. Mr Michael Bedford QC was appointed by the Council to act as Inspector to consider the application and to provide his recommendations on the application.
- 1.3 Following a non-statutory inquiry whereupon the evidence and representations made by the Applicant and Objector were heard the Inspector has submitted his Report and Recommendations. The Council as Commons Registration Authority need to determine the application and consider whether to support the Inspector's recommendations:-
 - (a) To amend the application to exclude from the site the triangle of land which forms part of Title No. CYM640595 which is shown hatched black on the plan attached to the Inspector's Report and Recommendations; and
 - (b) To reject the application to register the land at Cefn yr Hendy Fields, Miskin, Pontyclun shown edged red on the plan attached to the Inspector's Report and Recommendation as a Town or Village Green under Section 15(2) Commons Act 2006.

2. RECOMMENDATIONS

2.1 It is recommended:-

(a) that the application is amended to exclude from the site the triangle of land which forms part of Title No. CYM640595 which is shown hatched black on the plan attached to the Inspector's Report and Recommendations; and

(b) to reject the application to register the land at Cefn yr Hendy Fields, Miskin, Pontyclun shown edged red on the plan attached to the Inspector's Report and Recommendation as a Town or Village Green under Section 15(2) Commons Act 2006.

3 REASONS FOR RECOMMENDATIONS

3.1 An application dated 2nd August 2017 was submitted to the Council as the Commons Registration Authority to register land at Cefn yr Hendy Fields, Miskin, Pontyclun as a Town or Village Green under section 15(2) Commons Act 2006.

3.2 Public notice of the application was given 30th August 2017 and an objection was submitted by the Welsh Ministers who were the majority land owner of the land that was subject to the application.

3.3 Mr Michael Bedford QC was instructed by the Council to advise on the application.

3.4 It was determined that it would be appropriate to hold a non-statutory Inquiry on the application.

3.5 The Inquiry sat for four consecutive days on 12, 13, 14 and 15 March 2019 at Tyla Garw Community Centre, Tylagarw, Pontyclun with Mr Michael Bedford QC acting as Inspector.

3.6 Following the Inquiry an accompanied site visit was carried out by the Inspector on 3 April 2019.

3.7 The Inspector considered the evidence submitted in writing and at the Inquiry and has submitted to the Council his Report and Recommendations.

3.8 The Report and Recommendations provides a detailed analysis of the issues and the evidence and it is recommended that the contents of the report be accepted by the Council.

- 3.9 Since receipt of the Inspector's Report and Recommendations the Supreme Court has issued Judgement in the cases *R (on the application of Lancashire County Council) (Applicant) v Secretary of State for the Environment, Food and Rural Affairs and another (Respondents)* and *R (on the application of NHS Property Services Ltd) (Appellant) v Surrey County Council and another (Respondents)* [2019] UKSC 58 on the issue of statutory compatibility. Statutory incompatibility was an issue put forward by the Welsh Ministers as to why the claim for registration as a town or village green should be rejected.
- 3.10 There are two issues that need to be considered in this case in order that the application be successful. There is the evidential issue where it must be demonstrated that the legal tests set out in s15(2) Common Act 2006 have been met. The other issue is that of statutory incompatibility and whether there is a legal impediment that prevents the land from being registered as a town and village green.
- 3.11 In paragraph 339 of the Inspectors Report and Recommendations he provides
- "If the CRA takes a different view to me on the question of whether the requirements of s.15(2) CA 2006 have been satisfied, and was of the view that they have been, it would then be my further recommendation that the CRA should defer making a decision on the application until the Supreme Court has given its judgment in the Lancashire and NHS cases, and should allow the parties an opportunity to make further representations about the issue of statutory incompatibility in the light of that judgement, before reaching a decision. However, this will not be necessary if my primary RECOMMENDATION is accepted by the CRA because whatever the outcome of that case would not change the position on the question of compliance with the requirements of s.15(2) CA 2006."*
- 3.12 Having considered the contents of the Inspector's Report and Recommendations, it is recommended that the recommendation of the Inspector be accepted and the application not be added to the register of Town and Village Greens on the basis that Inspectors view that it has not been demonstrated on the balance of probabilities that "a significant number of the inhabitants of [the neighbourhood of Miskin village] have indulged as of right in lawful sports and pastimes on the land [subject to the application] for a period of at least 20 years" is accepted. As such the issue of statutory incompatibility becomes academic and there is no requirement to consider this issue further.

4 EQUALITY AND DIVERSITY IMPLICATIONS

- 4.1 There are no equality or diversity implications.

5 CONSULTATION

- 5.1 No consultations are required.

6 FINANCIAL IMPLICATIONS

- 6.1 The Council as Commons Registration Authority has a duty to consider applications for Town or Village Greens. The costs of considering the applications are to be borne by the Council. There are no legal powers for the Council to recover any costs incurred from considering applications from any applicant, objector or third party.

7 LEGAL IMPLICATIONS OR LEGISLATION CONSIDERED

- 7.1 The legislation considered is contained within the Inspector's Report and Recommendations

8 LINKS TO THE CORPORATE AND NATIONAL PRIORITIES AND THE WELL-BEING OF FUTURE GENERATIONS ACT.

- 8.1 There are no links to the Corporate and National Priorities and the Well-Being of Future Generations Act. Determination of the application is considered on the legal tests set out in Section 15(2) Commons Act 2006 and case law.

9 CONCLUSION

- 9.1 That the recommendation of the Inspector as set out in the Inspector's Report and Recommendations are accepted and:-

(a) that the application is amended to exclude from the site the triangle of land which forms part of Title No. CYM640595 which is shown hatched black on the plan attached to the Inspector's Report and Recommendations; and

(b) to reject the application to register the land at Cefn yr Hendy Fields, Miskin, Pontyclun shown edged red on the plan attached to the Inspector's Report and Recommendation as a Town or Village Green under Section 15(2) Commons Act 2006.

Other Information:-

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ANNEX

IN THE MATTER OF APPLICATION 01/17 MADE TO RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL TO REGISTER LAND AT CEFN YR HENDY FIELDS, MISKIN, PONTYCLUN, AS A TOWN OR VILLAGE GREEN UNDER SECTION 15 OF THE COMMONS ACT 2006

INSPECTOR'S REPORT AND RECOMMENDATIONS

1. INTRODUCTION

1. I have been appointed by Rhondda Cynon Taf County Borough Council, in its capacity as the Commons Registration Authority ("CRA") for its administrative area under the Commons Act 2006, to act as an independent Inspector in respect of an application ("the application") made by Ms Sophie Seymour ("the Applicant") to register land at Cefn Yr Hendy Fields, Miskin, Pontyclun ("the site"), as a Town or Village Green under section 15 of the Commons Act 2006.
2. The application dated 2 August 2017, No. 01/17, was received by the CRA on 3 August 2017. The application was made using Form 44 of the Commons (Registration of Town or Village Greens)(Interim Arrangements)(Wales) Regulations 2007 (SI 2007/2396). The application states that it is made under s.15(2) CA 2006. The site is identified on the plan accompanying the application¹ as three adjoining fields of irregular shape immediately to the north of a modern housing estate. The application states that the site *"has been used for over 20 years 'as of right' by the local community for lawful pastimes. A significant number of*

¹ The plan is marked as Exhibit A and accompanied the application dated 2 August 2017.

residents have used, and continue to use, the fields for activities such as dog walking, walking, playing games with their children, bird watching, exploring nature and foraging. Teenagers also use the fields as a place to meet and socialise... The use of the fields extends beyond the public footpath... The fields are very important to residents of Miskin, who wish to protect their rights to the land, upon which many have enjoyed access as of right currently and previously.”

3. The CRA gave notice of the application on 30 August 2017 and provided an opportunity for objections to be made to registration. An objection was submitted on behalf of the Welsh Ministers (“the WM”), the principal owner of the site, in October 2017. The Land Registry title documents show that the WM own virtually the entirety of the site, barring a small triangle at the northern edge of the middle field (referred to below as Field B), which projects into the next field to the north, and which is owned by Talbot Green Developments Ltd.² It was subsequently clarified by the Applicant (both in the written evidence³ and on Day 1 of the Inquiry) that the triangle was not intentionally included in the application⁴ and that the Applicant would have no objection were I to recommend to the CRA an amendment of the application to exclude that triangle. The WM confirmed that they would have no objection to such an amendment and that there would be no prejudice caused.

4. The power for the CRA to make such an amendment, where it is fair to do so and there would be no prejudice to either the applicant or the objectors, has been recognised by the House of Lords in Oxford City Council v Oxfordshire County Council [2006] 2 AC 674 (per Lord Hoffmann at para

² The covering letter dated 20 October 2017 from Hugh James Solicitors which enclosed the objection on behalf of WM indicated that they also acted on behalf of Talbot Green Developments Ltd. The application plan (Appendix A to the application) used a base map which did not show any obvious division between the triangle and the middle field.

³ Para 3.7 of the Second and Final Statement of Sophie Seymour.

⁴ The application had identified (at Box 8) that only the Welsh Government was an owner (plus a tenant farmer) and it was the research of the CRA into the registered title of the site that led to the identification of Talbot Green Developments Ltd as the registered owner of the triangle. Given the limited boundary details shown on the base map used to compile the application plan, it is understandable that a person seeking to delineate the boundaries of the middle field could have inadvertently included the triangle as part of that field.

61; per Baroness Hale at para 144). Having regard to the positions of both the Applicant and the WM, I can see no reason why there would be any prejudice to any party (or any other person)⁵ if this triangle were to be excluded from the application. Physically, the triangle would seem to be densely vegetated, both at the time of my site visit and in the various aerial photographs, and it is not easy to see how it could have been used for most of the activities described in the application. **I therefore recommend that the CRA should deal with the application on the basis that it is amended to exclude from the site which is subject to the application the triangle which forms part of Title No. CYM640595.** I attach a plan as Appendix A marked to show this area. In the report which follows I proceed on the assumption that the CRA accepts this recommendation. Thus, references to 'the site' hereafter do not include the triangle.

5. I was appointed by the CRA to report to it on the application, with recommendations in writing, having regard to the legal requirements for registration of a TVG and the evidence and representations made by or on behalf of the Applicant and the Objectors. To assist in that task I decided that an Inquiry should be held (which would be open to the public) prior to the compilation of my report to the CRA. Pre-Inquiry Directions were issued on 19 December 2018 and I am pleased to say that the procedural matters there set out were followed by the parties, both as regards the presentation of documentary material and the adherence to the timetable. The Inquiry itself was held at the Tyla Garw Community Centre, Tylagarw, Pontyclun. The Inquiry sat for four consecutive days, on 12, 13, 14, and 15 March 2019 to hear the evidence and submissions from the parties. Although the Inquiry was open to the public, no member of the public wished to speak at the Inquiry (separate from the local residents who gave evidence as part of the case for the Applicant).

⁵ Given the terms of the Hugh James' letter dated 20 October 2017 it is not absolutely clear whether Talbot Green Developments Ltd was a party to the WM objection or not but in any event there would be no prejudice to that owner by the exclusion of the triangle from the application.

6. At the Inquiry the Applicant was represented by Ms Rachel Sullivan of Counsel, who called the Applicant and other local residents as witnesses and cross-examined the witnesses for the WM. The WM were represented by Miss Morag Ellis QC, who called the witnesses for the WM and cross-examined the witnesses for the Applicant. I am grateful to both counsel for their assistance and co-operation in ensuring that a substantial volume of evidence could be considered during the 4 days of the Inquiry, and for their flexibility with regard to the extended sitting hours which were needed to achieve this. It was agreed that written closing submissions would follow on after the completion of the Inquiry.

7. After the completion of the Inquiry I received written closing submissions on behalf of the Applicant and the WM. I also received some further documentation which it had been agreed at the Inquiry I would receive. I carried out an accompanied site visit on 3 April 2019, visiting both the site itself and the surrounding area. I was accompanied by the Applicant and Mr Alvin Fripp (for the Applicant), Mr Peter Waldren (for the WM), and Mr Simon Humphreys (for the CRA).

8. The structure of this report is as follows:
 - (i) section 1 (this section) provides an introduction and sets out the formalities of the application;
 - (ii) section 2 summarises the grounds of objection;
 - (iii) section 3 describes the site and its immediate surroundings;
 - (iv) section 4 describes the wider area;
 - (v) section 5 discusses the evolution of the site, the surroundings, and the wider area over the period of time relevant to the application;
 - (vi) section 6 provides a summary of the evidence provided by the Applicant;
 - (vii) section 7 provides a summary of the evidence provided by the Objector;
 - (viii) section 8 sets out the statutory requirements for registration;
 - (ix) section 9 is my assessment of the determining issues and my conclusions and recommendations.

2. THE GROUNDS OF OBJECTION

9. There are two essential grounds of objection advanced by the WM. The first is that the Applicant has failed to discharge the burden of proof in respect of establishing that all of the requirements of s.15 CA 2006 have been satisfied. The second is that, in any event, registration of the site as a TVG is precluded by the legal doctrine of statutory incompatibility, having regard to the powers and purposes pursuant to which the WM (and their predecessors) have owned the site. Initially, the WM had suggested that the matter of statutory incompatibility should be determined as a preliminary issue without the necessity for a public inquiry. However, due to evolving case law (discussed further below), the WM revised their position, and agreed that a public inquiry would be appropriate so that the evidence and arguments in relation to both grounds of objection could be considered.⁶

3. THE SITE AND SURROUNDINGS

10. As noted above, the site comprises three adjoining fields. All parties have referred to them as Fields A, B, and C,⁷ running from west to east (or from left to right for a person facing north). All three fields are open grassland and of irregular shape. The descriptions which follow relate to the conditions at the time of my site visit (3 April 2019), which is outside of the relevant period for the purposes of the application. However, it is necessary to provide some general description of the site in order to make sense of the evidence. Whilst there was some disputed evidence in relation to individual features (discussed below), there was no dispute that the general characteristics of the site as it exists at present (and as I saw

⁶ Letter dated 4 May 2018 from Hugh James to the CRA.

⁷ The alphabetic lettering system used to identify Fields A, B, and C, and the adjoining fields in the wider locality is shown on the annotated map at p.5 of Part 1 (General Material) of File 2 of the Evidence Bundle provided by the Applicant.

it) are not materially different to the characteristics of the site as it has existed throughout the relevant period.

11. Field A is roughly triangular but with a truncated western tip. Field A slopes down slightly to that tip. To the north is woodland. To the west is a parcel of generally over-grown and unused open land, traversed by informal paths. To the east is Field B. To the south are the rear gardens of residential properties. It would appear that Field A is almost 9 acres (or just over 3 hectares) in size.⁸

12. Field A can be accessed from a number of points. On the western boundary (adjoining the over-grown parcel) there is a six bar metal gate which at the time of my site visit was wired shut with barbed wire fixing it to upright posts on either side. There was no barbed wire across the top of the gate, although there was barbed wire on the top of the wire fencing to either side. An able-bodied person could climb over the gate (which was just over waist height for an adult) without undue difficulty. There were no signs or notices at the gate. There was a warning sign on one of the upright posts relating to electricity hazards, which would seem to be referable to its former use as part of a telegraph pole (or similar).⁹ The ground either side of the gate was well-trodden so that the grass was visibly worn away. On the northern boundary (adjoining the woodland) there is no gate in the wire mesh fencing but in the north west corner of Field A there were obvious areas of worn ground on both sides of the fencing, with a pathway leading into the woodland. The fencing was not topped with barbed wire. The eastern boundary (adjoining Field B) was formed by a 'gappy' hedgerow, with a number of breaks in it, making it permeable to both animals and people. There was a mature oak tree towards the southern end of the eastern boundary where there was a pronounced break in the hedgerow.

⁸ These measurements are an amalgamation of the parcel sizes for OS parcel 5600 as shown in Exhibit JR7 (p.19) in the Second Witness Statement of Jacquelyn Rees. OS parcel 5600 approximates to Field A.

⁹ Para 3.11 of the Second Witness Statement of the Applicant refers to the post as a "recycled pylon".

13. The southern boundary (adjoining the residential properties) was formed by a wire mesh fence before the fencing or hedging of the individual properties. Generally this wire mesh fence was topped with barbed wire. The rear boundary of No. 8 Oaklands is formed by a close-boarded fence. The garden of this property is somewhat higher than Field A. Part of one panel of the garden fence has been cut so that the upper portion can be opened (inwards into the garden). At this point the barbed wire at the top of the wire mesh fence has been covered with grey tubing or lagging. The rear boundary of No.12 Oaklands is formed by a picket fence. Within that fence there is a gate (which opens inwards). Although the gate is similar in style to the picket fencing, the gate has a diagonal cross-member and a latch, both of which can be observed from Field A. In addition, the barbed wire at the top of the wire mesh fencing of Field A at this point is contained by tubing/lagging, and a wooden stile has been inserted through the mesh fencing (two uprights and a horizontal cross-member), with the uprights placed either side of the mesh fencing. The stile was a very visible incursion into Field A at the time of my site visit.
14. The grassed surface of Field A was marked by a number of worn paths, generally straight. The most pronounced path was along the northern edge but inset somewhat into the body of Field A and leading to/from the gate in the western boundary. There was a gap in the hedgerow on the eastern boundary so that this path passed into Field B. There was a somewhat less pronounced path along the southern boundary.
15. Field B is a loose trapezoid shape with the longer northern boundary and the shorter southern boundary being roughly parallel and the western and eastern boundaries splaying northwards. The western boundary adjoins Field A. The northern boundary in part abuts the triangle and in part adjoins two other fields (referred to at the Inquiry as Fields J and I, with Field I also being referred to as the Chimney Field). The eastern boundary adjoins Field C. The southern boundary adjoins the rear gardens of residential properties, with a short section in the south west corner adjoining an area of informal amenity space at the end of a cul de sac,

Maes Y Wennol. Field B is traversed diagonally by a public footpath (Llantrisant 314 on the Definitive Map and Statement). Field B is generally flat but slopes on parts of its northern edge as the land falls away to the north. It would appear that Field B is just over 8 acres (or just over 3 hectares) in size.¹⁰

16. The western boundary of Field B is also the eastern boundary of Field A (as described above) and is permeable in places (especially at the northern end where it is traversed by a path and at the southern end by the mature oak tree). The northern boundary of Field B is generally fenced but there is a wooden stile in the north east corner, on the line of the public footpath, giving access to/from the Chimney Field. Within the Chimney Field there is a tall stone chimney or shaft (hence the local name for this field).¹¹ The eastern boundary of Field B (adjoining Field C) is formed by a hedgerow but with some gaps so that the boundary is permeable in places. There is a particular gap at the northern end of this boundary. The southern boundary is generally fenced (both a wire mesh fence and residential garden fencing/hedging) but there is a wooden stile in the south west corner of Field B, on the line of the public footpath. This gives access on its southern side to a tarmac path or footway which crosses a small area of informal amenity space within the housing estate, close to the cul de sac end of Maes-Y-Wennol. The grassed surface of Field B is marked by a distinct worn or trodden path along the line of the public footpath. There is also a path apparent across the northern part of Field B between the northern stile and the path leading from Field A. Both stiles have finger post markings, typical of stiles on a public footpath.

17. Field C is also a loose trapezoid shape, almost a square but with the eastern boundary being shorter than the western boundary and the northern boundary having a somewhat sinuous alignment. To the west is

¹⁰ These measurements are an amalgamation of the parcel sizes for OS parcel 6800 as shown in Exhibit JR7 (p.19) in the Second Witness Statement of Jacquelyn Rees. OS parcel 6800 approximates to Field B. P.21 of Exhibit JR7 gives an area of 8.02 acres for OS parcel 8600, which is consistent with the measurements.

¹¹ The OS base map used for the Definitive Map describes the chimney/shaft as 'Old Air Shaft'.

Field B. To the north is mainly the Chimney Field (Field I) and part of a further field, referred to as Field H. To the east is a field referred to as Field D. To the south there are the rear gardens of residential properties. Field C is generally flat but slopes slightly to the east. It would appear that Field C is just over 7 acres (or almost 3 hectares) in size.¹²

18. The western boundary of Field C is also the eastern boundary of Field B (described above) and is permeable in places (particularly at the northern end). The northern boundary has hedging and wire mesh fencing and is not permeable. The eastern boundary is similar, save that there is a pair of field farm gates in the northern third of the boundary (which were open at the time of my site visit), enabling access into Field D. The southern boundary was generally a wire mesh fence topped with barbed wire but there was a section adjacent to No.37 Dol Y Llan where there was no barbed wire and the domestic boundary hedging had a gap in it. At that point concrete or breeze blocks had been placed on the ground on both sides of the wire fence to assist a person to traverse it.

19. The grass surface of Field C did not contain clearly distinct paths other than close to the field farm gates and in the vicinity of the northern gap on the western boundary.

20. Taking the site as a whole, it is an area of grassland of almost 23 acres (some 9 hectares) split into three inter-connected fields. To the west is a small area of over-grown open land. To the north are woodland and open fields. To the east there are further open fields. To the south is a housing estate. The site is crossed roughly north to south by one public footpath (Llantrisant 314).

4. THE WIDER AREA

¹² These measurements are an amalgamation of the parcel sizes for OS parcel 8700 as shown in Exhibit JR7 (p.19) in the Second Witness Statement of Jacquelyn Rees. OS parcel 8700 approximates to Field C. P.21 of Exhibit JR7 gives an area of 7.01 acres for OS parcel 8700, which is consistent with the measurements.

21. The application states the application is made in respect of *“the locality or neighbourhood within the locality”* of *“Miskin village – in Pontyclun Community Council area”*. In my Pre-Inquiry Directions dated 19 December 2018 I asked the Applicant to clarify whether it was being said that Miskin village was a locality or was a neighbourhood within a locality, and I also asked for a plan to delineate the extent of Miskin village. Para 21 of the Applicant’s Skeleton Argument clarified that the application was put forward on the basis that Miskin village was the relevant area to be considered and that it was a neighbourhood within the locality of Pontyclun Community Council. An aerial photograph was supplied, marked Miskin Boundary Map, with a blue line added to show the extent of Miskin village.
22. The WM’s Closing Submissions accept, at para 6.18, that the village of Miskin in the Pontyclun Community Council area is capable of amounting to a neighbourhood within a locality. There was no dispute at the Inquiry about the blue line on the Miskin Boundary Map being an appropriate delineation of the extent of Miskin village as a neighbourhood within a locality.
23. In the circumstances, it is unnecessary to describe the entirety of the area embraced by the blue line. However, it is appropriate to refer to parts of the area, especially the parts close to the site and the parts that are generally populated. As well as embracing Fields A, B, and C (i.e. the site), the blue line includes Fields H, I, J, K, L, and M to the north of the site. These fields slope down to the Afon Clun watercourse. The blue line does not include the woodland known as Coed-yr-Hendy to the north of Field A. The blue line also includes Fields D, and E, and part of Field F to the east and southeast of the site. The blue line embraces the housing estate north of Ffordd Cefn-Yr-Hendy and south of the site (which includes St David’s Heights, Oaklands, Maes-Y-Wennol, Dol-Y-Llan, and Newmill Gardens). The south side of this part of Ffordd-Cefn-Yr-Hendy comprises a large area of open space, which was generally referred to at the Inquiry as the S.106 Land. The blue line also embraces the small cluster of housing at Bryn Dewi Sant and Crystal Wood Drive, the parcel of over-grown land to

the west of Field A, as well as the Welsh Primary Community School (generally referred to at the Inquiry as the Welsh School), and Shadow Wood Drive. Ffordd Cefn-Yr-Hendy has a circuitous alignment and south of the Welsh School and the S.106 Land it also serves further residential areas before returning to a roundabout southeast of Newmill Gardens. All of these areas are within the blue line. In addition, the older residential areas accessed from Heol Miskin (the B4264) to the south of Ffordd Cefn-Yr-Hendy are included within the blue line, as well as the community facilities of St David's Church, All Hallows Roman Catholic Church, and the Miskin Arms public house. Between this older housing and the residential development off Ffordd Cefn-Yr-Hendy is further open land, some comprising a disused quarry (contained by palisade metal fencing) and some comprising a large grassland field, generally referred to at the Inquiry as the Horse Field.

24. The public footpath which crosses Field B (Llantrisant 314) continues southwards along the footways of Maes-Y-Wennol and a small cut through before crossing Ffordd Cefn-Yr-Hendy and entering the S.106 Land. It ends at a union with three other public footpaths (315 to the south, 316 to the west, and 317 to the east) in woodland within the S.106 Land. This union is broadly on the line of an east-west ridge. Public footpath 315 then continues south, through open space, footways, and cut throughs, crossing the Horse Field, and then the older housing at Manor Hill, until it terminates at the B4264. There is also another short public footpath (354) as a spur projecting south west from public footpath 315 which follows a path/track between the older housing and then roadside footways before it too terminates at the B4264 close to the junction of Miskin Crescent and Heol Cefn-Yr-Hendy.

25. During the site visit, I walked (accompanied by the other attendees) the route of the footpaths south from the southern stile at Field B down to Manor Hill (crossing the S.106 Land and the Horse Field). That journey took about 10 minutes. I also walked the route of the footpaths from Heol

Cefn-Yr-Hendy back to the same stile at Field B (crossing the S.106 Land). That journey also took about 10 minutes.

26. Public footpath 314 (which crosses Field B) continues northwards across the Chimney Field (Field I) and then descends across parts of Fields L and M before crossing the A4119 via an underpass. The A4119 is outside of the blue line showing the limits of Miskin village. Beyond the A4119 the public footpath crosses a further field before terminating at road which leads south to a cemetery or north to the A473. There are retail and other facilities north of the A473 on both sides of the A4119, including a retail warehouse park.

27. There is also a public footpath (313) which follows the north bank of the Afon Clun watercourse in an east-west direction. It can be accessed from the road between the cemetery and the A473. I did not walk along this public footpath during the site visit, but I observed it from the south bank of the watercourse, whilst following an informal path through Field L before I returned to the Chimney Field.

5. THE EVOLUTION OF THE SITE, THE SURROUNDINGS, AND THE WIDER AREA

28. Since the application was made on 3 August 2017 and is made on the basis that the requirements of s.15(2) CA 2006 are satisfied (discussed below), it is common ground between the Applicant and the WM that the relevant 20 year period which needs to be considered is the period from August 1997 until August 2017. During that period, it is not disputed that there were physical changes to the surroundings and to the wider area as a result of residential development taking place. The facts in relation to these changes were not ultimately contentious and it is therefore appropriate to set out a chronological narrative of the evolution of the surroundings and the wider area in one place, rather than dealing with this factual history by reference to the parties' cases. Similarly, there was no

factual dispute about the changes of ownership of the site during the relevant 20 year period and so that is addressed in this section too.

29. It is convenient to start the history some years before August 1997, in the latter part of 1993. In late 1993 the site was owned by the Land Authority for Wales ("LAW").¹³ The site had been transferred to LAW on 28 October 1993 by Helical Bar (Wales) Ltd ("HBL"), together with other land in the general area forming part of Title No. WA448871.¹⁴ The land being transferred also included the areas to the south of the site which are shown edged red on the plan¹⁵ forming part of a s.106 agreement dated 23 December 1993 between LAW and Taff Ely Borough Council ("TEBC"). That land effectively comprised all of the open fields south of the site down to the B4264 and to the west of the short section of Miskin Crescent that connects with the B4264 and the open fields to the east of that part of Miskin Crescent but only as far as the disused quarry (which was not included within the s.106 agreement). There were a few farm buildings within that area of farmland, the eastern part of which was then known as Cefn Parc Farm, but it had not at that time been developed for housing. The disused quarry and the Horse Field were also part of the land transferred.¹⁶ The transfer was subject to existing leases. One of those leases was an agricultural tenancy dated 15 February 1977 of part of Cefn Park Farm between The British Petroleum Pension Trust Ltd (as landlord) and Glyndwr and Vivian Thomas (as tenants).¹⁷ This tenancy included Fields B and C, as well as the immediate fields to the north and the south, but not Field A.

30. At some stage in 1994 Mr Daniel Howells took an agricultural tenancy of parts of Cefn Parc Farm. No copy of that tenancy agreement was presented in evidence but Mr Howells gave evidence (which was not

¹³ The ownership history before this time, so far as relevant, is described later in the summary of the WM's evidence.

¹⁴ This Transfer is at Exhibit JR9.

¹⁵ The plan is on p.275 of Exhibit JR5.

¹⁶ As is clear from the plan on p.10 of Exhibit JR6.

¹⁷ Exhibit JR7.

challenged) that it included the three fields comprising the site (as well as other land). There is a tenancy agreement¹⁸ dated 2 April 2007 between Mr Howells¹⁹ (as tenant) and the National Assembly for Wales (as landlord) which includes a plan showing the area leased at that time, and Mr Howell's evidence was that this area was the same as the area he had originally taken a tenancy of in 1994. The plan shows that the tenancy extended to Fields A, B, C, D, E, F, G, H, I, J, K, L, and M. In overall terms, the tenancy area was some 77 acres (about 31 hectares). Mr Howells has primarily used the tenanted land for sheep grazing (the details of his agricultural activities are discussed later).

31. At the time of the 1993 transfer to LAW, LAW had obtained planning permission (in 1990) from TEBC to allow residential development of the land edged red on the s.106 agreement plan, subject to a legal agreement. For whatever reason LAW and TEBC agreed to revoke that legal agreement and replace it with the s.106 agreement dated 23 December 1993.²⁰ It would seem that it was only after the s.106 agreement was in place that LAW began selling parts of the development site to housing developers, and it was some time after that that the housing development commenced.²¹ The s.106 agreement included some phasing restrictions in Clause 4.²²

32. In general terms (and subject to the further details below), it would appear that until the 1990s the wider area was largely undeveloped farmland (and some disused quarry land), other than the areas of housing associated with the older streets of Miskin, located on or in the vicinity of the B4264, some distance (and about 10 to 15 minutes' walk) to the south of the site (including Miskin Crescent and Manor Hill). Development then began to take place on the open fields to the north of the B4264, starting in the mid-1990s. Development of those fields continued through to the mid-2000s.

¹⁸ Exhibit DRH1.

¹⁹ For some reason the tenancy agreement describes the tenant as David R Howells.

²⁰ Exhibit JR5.

²¹ Paras 13 and 14 of the First Witness Statement of Jacquelyn Rees.

²² These are summarised at paras 4.4 to 4.6 of the WM's Closing Submissions.

Unfortunately, there are no aerial photographs of the area as at 1997. There is an aerial photograph²³ of the site and the fields to the immediate south in 1945 but this is of minimal value since it is too far before the relevant period. The next aerial photograph is not until 2000 or 2001.²⁴ The evolution of the wider area has to be pieced together from planning history records and sales data from property records.

33. The Applicant and the WM have agreed that by 1997 within the older streets of Miskin accessed off Heol Miskin (the B4264) there were some 232 houses. These houses were not part of the development subject to LAW's planning permission. This area is marked as Southern Area 1 on the agreed plan. At that time some of the development forming part of LAW's planning permission had started within Southern Area 2 (on the same plan), in the streets known as Heol Isaf Hendy, Heol Cefn Yr Hendy, Tyle'r Hendy, Pen Hendy, and Pen Bryn Hendy. These streets lie within Phase 1A of the phasing set out in the s.106 agreement. There were some 143 houses either built or under construction in this area in 1997. Taking the Southern Areas together, it is agreed there were some 375 houses in existence in August 1997 (including some in Phase 1A that were under construction).

34. There were also a small number of houses built (or first occupied)²⁵ in the area immediately south of the site by 1997 (including some properties at Newmill Gardens, Dol-y-Llan, and Oaklands). This area is marked as Northern Area 2 on the agreed plan. Most of that housing was built (or first occupied) between 1997 and 2004. The property website, Rightmove, was inspected by Peter Waldren (a witness for the WM) and the results for the

²³ Exhibit PW17.

²⁴ Exhibit PW27. The state of vegetation would suggest this was taken during the summer months. It is possible (despite the Google Earth date of 2001) that the photograph is from 2000 since it does not show the whole of a section of Fford Cefn-Yr-Hendy that the parties (and the CRA) agreed was certified as complete by September 2000.

²⁵ The sales data from Rightmove in Exhibit PW19 does not record the date of construction/completion but only the date of the first sale. It is reasonable to assume that for most domestic dwellings first occupation will follow on shortly after the first sale.

streets within much of Northern Area 2 were provided in evidence.²⁶ The Rightmove data is not comprehensive but it does show that by the beginning of August 1997 there had been sales of houses in Newmill Gardens (4 recorded), Dol Y Llan (12 recorded), and Oaklands (2 recorded). Conversely, there were no sales by that date recorded for Maes Y Wennol or St David's Heights.

35. The Applicant, the WM, and the CRA have agreed²⁷ that the section of Ffordd Cefn-Yr-Hendy between the roundabout of the B4264 and the roundabout to the east of Newmill Gardens was not certified as having achieved satisfactory completion until 7 April 1998.

36. However, some form of available route must have existed on this section and also somewhat further west prior to this date (even if not then completed to highway adoption standards) because, as already noted, houses in Newmill Gardens, Dol-y-Llan, and Oaklands were being sold from spring/summer 1997 onwards.²⁸ It is implausible to imagine that houses were being bought at a time when there was no means of vehicular access to the streets containing those houses. The section of Ffordd Cefn-Yr-Hendy between that second roundabout and the roundabout near to the Welsh School was not certified as having achieved satisfactory completion until 11 September 2000. However, the 2001 aerial photograph²⁹ indicates that the roadway had not gone beyond the westernmost house of St David's Heights at that time and that the roundabout near to the Welsh School (not then built) was not yet in existence.³⁰ The Applicant and the WM have also agreed that the housing south of the S.106 Land was built (or first occupied) between 1998 and 2005. This area is marked as Northern Area 1 on the agreed plan.

²⁶ Exhibit PW19.

²⁷ In a Statement dated 13 March 2019 and signed by both Counsel and my Instructing Solicitor.

²⁸ The Rightmove data in Exhibit PW19.

²⁹ Exhibit PW27.

³⁰ It may be that the aerial photograph is from 2000 rather than from 2001 (the Google Earth date) but nothing material turns on this in this respect.

37. There is currently a children's play area (with play equipment) within the open space at Maes Y Wennol, near to the access to the stile on the south-western edge of Field B. An aerial photograph³¹ shows the playground under construction, at a time when almost all of the Maes Y Wennol houses are complete. That photograph (from Google Earth) is stated to be December 2001. It is clear from the vegetation that it is a summer photograph, and the year may be 2000 rather than 2001.³²
38. On 1 October 1998 all of the property then owned by LAW was transferred to and vested in the Welsh Development Agency ("WDA"). On 1 April 2006 the property then held by the WDA was transferred to the National Assembly for Wales ("NAW"). On 25 May 2007 the property then held by the NAW was transferred to the WM.³³ These statutory transfers were not the subject of dispute. The WM have continued as owner of the site since May 2007 but some other parts of their holdings in this area have been sold off.
39. Mr Howells has continued as a tenant of the site (and other land) since 1994. Until September 2014 the tenancy related to all of the fields that had been rented to Mr Howells in 1994.³⁴ Mr Howells states that thereafter he had two farm business tenancies for a lesser area of some 52 acres (including the site), although since 2017 he has been holding over pending completion of new tenancies.³⁵ Based on the plan included with one of those farm business tenancies (granted on 11 May 2016), it would appear that the reduced area did not include Fields H, I, J, K, L, or M (all lying to the north or north east of the site),³⁶ although Mr Howell's oral evidence was that he continues to farm the same area today as he did in 1994. Since any change in the extent of the tenanted area (if indeed there was a change) does not relate to the site and seems to have occurred towards

³¹ Exhibit PW25.

³² The photograph is an extract of the wider view shown in PW27.

³³ Para 10 of the First Witness Statement of Jacquelyn Rees and the statutory provisions cited there.

³⁴ P.185 of Exhibit GP3.

³⁵ Para 3 of Mr Howell's Witness Statement.

³⁶ P.209 of Exhibit GP3.

the end of the relevant period in 2016, this discrepancy between the written material and Mr Howell's oral evidence is not particularly significant.

6. SUMMARY OF THE APPLICANT'S EVIDENCE

40. Having read the written evidence in advance of the Inquiry, I indicated at the opening of the Inquiry, that I was particularly interested in hearing about the use that had been made of the site in the period from August 1997 to August 2000, and in relating that use to the broad size of the population of Miskin village at that time. I also asked if the Applicant could provide a list or schedule identifying the persons who provided evidence of the use of the site both before August 1997 and in the period from 1997 to 2000. I am grateful to the Applicant for compiling such a schedule and I have used it to assist me in structuring this section of the report.

41. Since the purpose of this report is to provide an account which is sufficient to explain my conclusions and so my recommendations to the CRA, I have not set out in the same level of detail a summary of all of the evidence provided by the Applicant. I have provided a more detailed summary of the evidence in relation to the early years (1997 – 2000) and a broader overview of the evidence relating to the later years (2000 – 2017). The CRA made written notes of the oral evidence that was given during the Inquiry, and those notes are appended to this report as Appendix B. I have utilised those notes, which I regard as an accurate (but not verbatim) note of the oral evidence, in preparing my report. The written evidence is, of course, available in the documentation supporting the application.³⁷ I have carefully considered all of the evidence before reaching my conclusions.

42. I have structured this section as follows:

- (i) evidence relating to the 12 months from August 1997;

³⁷ Some of that documentation, as included in the applicant's bundles of evidence submitted to the Inquiry, was compiled after the application was submitted. As well as written statements and completed evidence questionnaires, the documentation includes various plans and photographs, all of which I have considered.

- (ii) evidence relating to the 12 months from August 1998;
- (iii) evidence relating to the 12 months from August 1999;
- (iv) evidence relating to the period from August 2000 to August 2017;
- (v) evidence relating to the period before August 1997.

43. Where oral evidence was given, the name of the witness appears in **bold with underlining**. Where written evidence was given, the name of the witness appears in **bold** without underlining.

(i) evidence relating to the 12 months from August 1997

44. **Huw Davies**: Mr Davies gave oral evidence on 12 March 2019. His evidence was given using the Welsh language (and simultaneously translated into English). He was questioned in English (and the questions were simultaneously translated into Welsh). I am grateful to Nerys Hurford who provided the translation services. Mr Davies also provided a written statement in the form of a letter (written in English) dated 20 July 2017 and an evidence questionnaire (“EQ”) of the same date.

45. Mr Davies said that he moved to 3 Heol Isaf Hendy (one of the streets within Phase 1A in Southern Area 2) in the “*autumn of 1996*”. No.3 Heol Isaf Hendy was a new house at that time. No.3 is a short distance from the southern end of public footpath 354. Mr Davies’s written evidence was that since he had moved in he had walked his dog on “*Cefn-yr-Hendy fields as often as 3 times a week*”. A signed plan attached to the EQ has marked Fields A, B, C, D, E, F, and G, as fields used by Mr Davies. Mr Davies said that “*I had in mind when I put the crosses on that I had been using those 7 areas... I did use the other fields to walk the dog but I did understand Fields A, B, C were the ones in the Village Green application.*” He said that he “*usually*” accessed the fields by the gate at the western end of Field A, although he could not recall a gate there at the outset of his visits and “*did not open a gate or go over a gate. The landscape has changed dramatically since then – over 20 years ago.*” He later said that the gate

came “*after houses were built*”. He said that the walk from his house to the gate at Field A would take about 7 to 10 minutes to walk.

46. In his oral evidence he said that “*after a few months [from moving in] I came to know the area and the path ways in 1997 – could not give the exact date – but I have been walking the paths ever since.*” He said he “*used to go up by the old farm house at Hendy...the landscape was like the surface of the moon, there were craters. You could walk up and when got to the fields they were lush green fields. I would use [public footpath] 354 to get there.*” Mr Davies said he could not say how he got to the gate at Field A but “*I was just walking about. The landscape was very different. You just came to the land that was smooth and green.*” He also said that “*Sometimes I would have taken the route up [public footpath] 314 and over the stile [into Field B].*”

47. Mr Davies said that “*while houses were being built did not want to walk around as so much construction traffic, there was a period I would not have used those fields or where houses being built because of that*”. I asked Mr Davies whether that meant that he did not go to Fields A, B, and C when the land to the south was a building site, and he said “*No, was not possible, full of caterpillar tracks, diggers, etc.*” but he also said that “*there was no building site when started walking there, perhaps [they] started installing road but those fields were still fields when walked there, [they] may have started roundabouts... They were beginning the construction site by the roundabout, they then built from east to west towards the [Welsh] School.*”

48. The Rightmove data indicates that the first sale of a house in Dol Y Llan was on 21 February 1997 (73 Dol Y Llan), followed by sales in March 1997 (No. 4), April 1997 (No. 72) and May 1997 (Nos. 6 and 7). It also shows that the first sale of houses in Oaklands was on 27 March 1997 (Nos. 9 and 10 Oaklands), followed by sales in November 1997 (Nos. 36 and 37). These two streets are at either end of the cluster of housing between the two roundabouts of Fforde Cefn Y Hendy. Clearly, if houses were being

sold from February 1997 onwards, the actual construction works for those houses must have started some months previously. I consider below (in section 9) the implications of this factual data for Mr Davies' recollection that he started visiting the fields before there was a building site on the land to the immediate south.

49. Mr Davies said he did not limit his walking to following paths, *"I sometimes follow paths but if no sheep in fields or grass growing I would go all over. The first time I followed path since did not know [the] way but thereafter all over."*

50. As well as visiting the site for more regular dog-walking, Mr Davies also said that in the autumn he went black-berrying there but *"the eastern fields and Field C and the ones bordering the houses are better, the ones near wood are too close to pine trees."*

51. Mr Davies also gave evidence about more recent years (discussed below).

52. **Deborah Hearle:** Deborah Hearle gave oral evidence on 13 March 2019. She also provided a written statement dated 26 November 2018. Ms Hearle said that she moved into 59 Dol Y Llan (immediately south of Field C) in May 1998, and her house was a new house. She said that initially she had a small dog (a Yorkie-cross) and that from the outset in May 1998 she would take the dog for daily walks in Fields A, B, and C. She said she gained access via the stile at Maes Y Wennol, although she said that Maes Y Wennol *"came after I moved in"*. She recalled having to lift her dog over the stile because *"the dog was a wuss"*. She said there were houses still being built on Dol Y Llan when she moved in and that *"in the early years how I got to the stile I cannot recall"*. She later said that there may have been a cut through from Dol Y Llan to Maes Y Wennol in 1998, although it may have been formalised later.³⁸

³⁸ I was provided with an agreed plan, Plan 3, which shows the current pedestrian links between the various streets within the two Southern Areas and the two Northern Areas. This shows a present pedestrian link or cut through from Dol Y Llan to Maes Y Wennol.

53. Ms Hearle said that one of the reasons that she bought her house was the presence of the fields, so that she could take her dog there. Ms Hearle said she lost that dog shortly after moving in and then had two dogs. She said that *“There is a public footpath sign on the stile. I was aware of that. Knew OK to go on there since a public footpath.* Confusingly, she later said she *“did not note the public footpath when I moved in. I logged the fact there were fields all round. I did not log the public footpath.”* She said that she *“would not break a fence down to get there”* and *“it was over a stile to get into the field”*. Ms Hearle said she was *“accessing the fields not the public footpath. I took the fact there was a stile – I saw it as access to a field where I could play with my dogs.”* Ms Hearle also gave evidence about her use in later years (discussed later), including meeting the farmer *“many years ago, may be about 2007”* and having a conversation with him about dogs whilst she was in the Chimney Field. Ms Hearle said she saw other people, dog owners and their dogs, and some were locals, but whether that was just in Field B or in all of the fields she was *“not 100% certain”*.

54. **Helen Batchelor:** Mrs Batchelor gave oral evidence on 14 March 2019. She also provided a written statement dated 26 July 2017. Mrs Batchelor moved to 9 Manor Hill (one of the older streets in Southern Area 1, with No. 9 being a short distance from the southern end of public footpath 315) with her late husband in 1978. Her use of *“the fields now known as Cefn-Yr-Hendy”* was initially (from 1978 to 1994) for walks *“with my children”* and dog-walking there did not begin until 1994. Clearly, any activity with the children ended some 3 years before the start of the relevant period so is not material to the issues. The signed plan attached to her written statement has marks across Fields A, C, D, E, and G as the *“main fields of use”*. There is also a mark on the plan (a contemporary aerial photograph from Google Earth) within the housing estate to the immediate south of the site, and in her oral evidence Mrs Batchelor explained that *“The X in the middle of the Dol-y-Llan housing – it means I went there before there were houses there.”* In the period from 1994 up to 2007 (so including 1997) Mrs

Batchelor said she walked to these fields in the afternoons or evenings with her husband (who died in 2007) as part of daily dog walks (her husband also walked the dog in the mornings but without Mrs Batchelor). After her husband died Mrs Batchelor went abroad to work, returning in 2010.

55. Mrs Batchelor said *"I remember it being fields with footpaths running through it. We would go between the quarries then on a footpath but then on fields, more open, sometimes on paths, sometimes not – we only used stiles or gaps in hedges. Sometimes we would go beyond and back via the river. Also walked to the chimney and beyond."* Mrs Batchelor said that in the earlier period it would take some 15 to 20 minutes to get to the site and that the attraction was *"there is a lovely view when you get to the top"*. Mrs Batchelor said that when the area to the south was *"a building site"* she would *"not [go] through it, go round"*. She also said that whilst she would meet *"local people"* on her walks when in Fields A, B, C, *"it did not happen as much when there was building going on that would meet other people"*. When asked by me whether she was not there as much when the building was taking place she said *"No, it was a shock when got to end of quarry to find these being built."*

56. Mrs Batchelor also gave evidence about more recent years (discussed below).

57. **Sharon Damon** provided a written statement dated 11 November 2017. She stated that she moved to 10 Dol Y Llan (immediately south of Fields B and C) in June 1997 and from then until August 2002 (when she moved out) she used Fields B and C *"on the weekends to take my sons walking and we enjoyed cobnut picking in the winter months"*. She stated that she subsequently used Fields A and B from July 2014 when she moved to 5 St David's Heights. The Rightmove records³⁹ show that 10 Dol Y Llan was first sold as a new build property on 6 June 1997, and then sold again on

³⁹ Exhibit PW19.

30 August 2002. This is consistent with the dates given by Ms Damon for her moves.

58. **Dr Dillwyn Enoch** completed an EQ dated 16 July 2017. It stated that Dr Enoch lived at Owl's Flight, School Road, Miskin (within Southern Area 1), that he used "*the green fields of Cefn Yr Hendy*" for walking and dog-walking from 1985 to 2000 but there was "*no particular pattern*" to his use in terms of frequency. The EQ stated that he accessed the fields "*via footpath from Miskin Crescent before building any houses on Cefn Hendy*" and that he had not sought permission to use them because "*No permission needed as Public ROW understood*".

59. **Mr A Flicker** and **Mrs P Flicker** completed a joint EQ dated 16 July 2017 (signed by Mrs Flicker). It stated that they lived at 7 The Drive, Miskin (within Southern Area 1), that they had used "*the green fields of Cefn Yr Hendy*" for dog-walking from 1986 to "*present*" but "*not on a regular basis*". No detail was given about how the fields were accessed, other than that it was "*through Miskin*". Nor was any detail provided about which fields were used or which parts of those fields.

60. **Richard Greville** and **Fiona Greville** provided a written statement (which they both signed) dated 12 November 2017. They stated that they lived at 18 Heol Cefn Yr Hendy (within Southern Area 2) and had done so for 22 years (so since 1995). They stated that "*As soon as we'd moved in we started using the fields (ABC). Initially we would access them via the farmhouse and open fields behind our house*" and that "*From 1995 – 2010 we would regularly take the children to the fields on a weekly basis. We would play ball games and such like for hours on end.*" On one occasion in that period they saw a person they assumed was "*the farmer in the fields*" but did not speak to that person nor was approached by them.

61. **Hannah Greville** provided an almost identical written statement to Richard Greville and Fiona Greville, also dated 12 November 2017 (and with the same address), save that in the period from 1995 to 2010 she stated that

she *“would regularly use the field to play with my brother and friends. We would always meet at the field on snow days and spend the day having snowball fights and sledging”*. Hannah Greville does not refer to ball games.

62. **John Jenkins** completed an EQ dated 23 July 2017. It stated that Mr Jenkins lived at Crud Yr Awel, School Road, Miskin (within Southern Area 1) and that he used *“the green fields of Cefn Yr Hendy”* for walking from 1988 onwards on a monthly basis, gaining access *“from the village through what is now the housing estate.”*

63. **Llinos Wyn Jones** provided a written statement dated 26 July 2017 and completed an EQ on the same date. She stated that she had lived at 3 Heol Isaf Hendy (the same address as Huw Davies in Southern Area 2) since 1996. She signed a plan marked to show that she used Fields A, B, C, D, E, G, and H, and that she accessed the fields via the gate at Field A. She stated that she had used the fields from 1996 to 2017 for *“dog walking, picking blackberries, walk to the shops, just walking”* and that she used the fields twice a week in the summer and less in the winter. She stated that she saw other people using the fields who came from *“Miskin & surrounding area”*. The activities she observed included *“children playing, camping, having bonfires”* and *“children sledging in winter, blackberrying & foraging in winter & autumn”*.

64. **Non Lawrence** provided a written statement dated 13 November 2017. She stated that she had lived at Rockwell, Miskin Crescent (within Southern Area 1) from 1974 to 1990 and from 1994 onwards, and had used Fields A, B, C for dog-walking and also *“My sons also played in the fields between 1996 to the present time”*. Frequency of use was stated as dog-walking *“twice a day”* but also *“very regular use, no less than monthly and generally more frequent”*. Access was gained *“either via the gate passed the school or over the style [sic] in Maes y Wennol.”*

65. **Jane Rowlands** provided a written statement dated 7 November 2017. She stated that she lived at 5 Heol Cefn yr Hendy (within Southern Area 2) and “*started using Fields A, B and C in 1996*”. She stated that “*When our children were young we were often using the fields on a weekly basis for walking, running around, playing games*”. Mrs Rowlands does not state when this was but does indicate that “*Our children used the fields with friends from 2004 and we continued to use the fields for walking for pleasure*”, which implies that the weekly use when the children were young was before 2004. No details are given of how access was gained in 1996 (or 1997) but more recently access has been via the Maes Y Wennol stile or from “*near the Welsh School*”.
66. **Mark Rowlands** provided a written statement dated 7 November 2017. He stated that he lived at 5 Heol Cefn Yr Hendy and “*started using Fields A, B, and C in 1996*” and that “*We used the fields most days during the summer and winter months*” to “*play games such as hide & seek and ball games*”. Mr Rowlands also stated that “*from 2004 our children played in the fields on their own*”. Mr Rowlands gives similar details about access in recent times as did Mrs Rowlands but also gives no details about how access was gained earlier on.
67. **Geoffrey Sargeant** was due to give oral evidence but in the event did not do so. He provided two written statements (dated 3 July 2017 and 14 January 2019). He stated that he lived at 8 Manor Hill (within Southern Area 1) from 1994 to present (and had previously lived at that address from 1963 to 1977). He stated that he had used “*the fields called Cefn Yr Hendy*” for dog-walking and blackberry picking “*man and boy*”. He states that his use as a child was “*1960s-1970s*” and that “*in more recent years*” use has been for “*walking and exercise*”. He states that he has gained access “*via the gate by the Welsh School by St David’s Heights*”. Obviously, this development was not in existence in 1997 or 1998

(although it seems the gate itself was⁴⁰) and it is unclear from the statements what access route was used then.

68. **Mr G J Thomas** provided a written statement dated 31 October 2017. He stated that he lived at 33 Manor Hill (within Southern Area 1). He marked an aerial photograph to show Field B as the field he used “*most heavily*” for dog-walking and that he had done so from 1996 to 2017 for “*occasional use*”. Access was gained “*via Maes yr Wennol*”.

69. **Frances Williams** provided a written statement dated 30 July 2017. She stated that she lived at 6 Hensol Road (within Southern Area 1) and started accessing “*the Hendy fields*” in 1975 with her son until 1983 and thereafter with her husband walking and blackberrying until “*present time*”. She stated that her frequency of visits since 1983 was “*once a week*”. A signed plan was marked to show Fields A, B, and C, and the Horse Field as the “*main fields of use*” with access to the site via the stile on public footpath 314. The statement does not separate out use of the Horse Field from use of the other fields but the Horse Field is located significantly closer to Hensol Road and would take much less time to get to.

70. **Michelle Lindley** provided an EQ (undated). She stated that she lived at 2 Miskin Crescent (in Southern Area 1) and had used “*the greenfields of Cefn Yr Hendy*” from 1997 to 2017 twice a week for walking, dog-walking, and running but would “*only stay on the footpath, this is not common land*” (original underlining).

71. **David Roderick** attended the Inquiry on 12 April 2019 but there was insufficient time to hear his evidence on that date and, although attempts were made to re-schedule his evidence, it did not prove possible for him to attend when the Inquiry was sitting. He did, however, provide a written statement dated 21 November 2018. He stated that he had lived at 59

⁴⁰ I consider below the contested evidence about when the gate to Field A came into existence and why I have concluded that, on balance, it was present in 1997.

Newmill Gardens (immediately south of Field C) since August 1997 and “started using the fields, usually A and B in October 1997” for walking, dog-walking, and games with children during summers. Initially his use was “on a daily to weekly basis” but became daily from about 2007. Access was gained via the Maes Y Wennol stile or via the gate in Field A. He stated that “I walk throughout Fields A and B and do not adhere to the right of way”.

72. **Barbara Roderick** completed an EQ dated 26 October 2018. She stated that she lived at 59 Newmill Gardens and used Fields A and B “most heavily” for dog-walking and had done so from “late 1997 to date (2018)” on a weekly basis, with access via the Maes Y Wennol stile.

73. **Martin Tucker** completed an EQ dated 30 November 2018. He stated that he lived at 65 Dol Y Llan (immediately south of Fields B and C) and that from 1997 to 2018 he used Fields A and B “most heavily” for dog-walking and running on a “daily basis”, gaining access via the Maes Y Wennol stile. The Rightmove records indicate that 65 Dol Y Llan was first sold (as a new build) on 20 June 1997.⁴¹

74. **Barrie Waite** and **Andrea Waite** completed a joint EQ dated 16 July 2017 (signed by Mr Waite). It stated that they lived at 65 Newmill Gardens (immediately south of Field C) and had used “the green fields of Cefn Yr Hendy” from 1997 to “present day” for walking and kite flying, on a “yearly or more than yearly” basis, gaining access via the Maes Y Wennol stile. No further detail about the use or the areas used was provided. The Rightmove records indicate that 65 Newmill Gardens was first sold (as a new build) on 15 August 1997.⁴²

⁴¹ Exhibit PW19.

⁴² Exhibit PW19.

75. **Mr M G Parsons** and **Mrs C V Parsons** made a written statement dated 30 July 2017 (and signed by both). They stated that they lived at 57 Dol Y Llan (immediately to the south of Fields B and C) and moved in on 9 July 1998. The Rightmove data indicates that the first sale of 57 Dol Y Llan was on 7 July 1998, which corroborates the moving in date. The plan accompanying the statement has Fields B and C marked as the “*main fields of use*”. Mr and Mrs Parsons stated that “*during our long stay here we have taken our nine grandchildren through the fields for walks, shown them wild flowers, picked blackberries and pointed out the many birds which pass through.*” Whilst no details are provided of which parts of Fields B and C were used, the blackberry picking could not have occurred on the line of the public footpath but would have to relate to the field margins where there are hedges.

76. In summary, in the 12 months from the beginning of August 1997 (i.e. the start of the relevant 20 year period), the Applicant provided oral evidence of some use⁴³ of the site from 3 people (**Huw Davies**, **Deborah Hearle**, and **Helen Batchelor**) and written evidence of some use from 23 people, although one of those (Michelle Lindley) stated she only used the public footpath and another (Dr Dillwyn Enoch) stated that he did not need permission because “*public ROW understood*”. My interpretation of this statement is that it is more likely than not that Dr Enoch was a user of the public footpath. The only activities he described were walking and dog-walking, which would be consistent with use of the public footpath. Thus, there was direct evidence of some use of the site by about 24 people in the first 12 months from August 1997. This period (obviously) covered all four seasons.

77. Not all of these people referred to using all three of the Fields A, B, and C, comprising the site and some referred only to one or two fields being used. Many also referred to using other fields in the wider area. The frequency of

⁴³ The quality of that use is considered later in this report.

use varied, from daily (or twice daily) in some cases, to weekly or monthly in others, and for some there was only occasional use.

78. Of course, some of these people did refer to seeing others using the fields at the times of their visits (and some refer to being accompanied by other family members) but it is impossible to quantify the numbers of these additional people from the available evidence (and some of the people seen by one user could be other users who also provided oral or written evidence, since they would all be local people).
79. Putting the user evidence in this period into context, it is agreed between the applicant and the WM that in August 1997 there were some 375 houses within Miskin village, from the various streets in Southern Areas 1 and 2. The Rightmove data for Northern Area 2 is not comprehensive, but it shows that a further 121 houses were first sold between February 1997 and the end of July 1998. Since many of the users in the first 12 months were occupiers of these new houses, it seems artificial to ignore the population of the new housing when looking at the population of Miskin village during the same time. From the examples where there is both a first sale date and a moving in date, it is reasonable to infer that in most cases occupation generally followed on shortly after a sale. Thus, during the first 12 months from 1997 there were at least some 496 houses in Miskin village.⁴⁴ The WM Closing Submissions refer to a dwelling occupancy rate of 2.4 persons per dwelling.⁴⁵ The ratio was not challenged in the Applicant's Closing Submissions.⁴⁶ Whilst this ratio is not given a direct source, I do not consider it unreasonable as a general guide (accepting that some dwellings will have fewer occupiers and some will have more). Broadly speaking, that would suggest that at the outset of the relevant period in August 1997 there would have been some 900 people residing in Miskin Village and by the end of July 1998 (i.e. the first 12

⁴⁴ There may have been others, not picked up in the Rightmove data, but I have taken the figure as 496 from the available evidence.

⁴⁵ WM Closing Submissions, paragraph 6.19.

⁴⁶ The Applicant did dispute the WM's use of 1066 dwellings for Miskin village in August 1997 and correctly pointed out that this was the agreed figure for the position as at August 2017.

months) that number would have risen to almost 1,200 people as the new housing was built and occupied.⁴⁷

80. In comparative terms, this would suggest that the identifiable users in the first 12 months making some use of the site (beyond those purely using the public footpath) were somewhat less than 3% of the inhabitants of Miskin at the time (24 is 2.02% of 1,190 and 2.66% of 900). I consider the implications of this later in my report.

(ii) evidence relating to the 12 months from August 1998

81. All of the users in the previous section also gave evidence which covered the 12 months from August 1998. It is unnecessary to add any further summary of their evidence on this next 12 month period because their evidence did not differ in terms of this period.

82. **Frank Hossack:** Mr Hossack gave oral evidence on 12 March 2019. He also made a written statement dated 9 November 2017. Mr Hossack said that he lived at 7 Heol Isaf Hendy (within Southern Area 2) and had bought his house new in late 1998. However, due to the work he needed to do on his new garden, he said *“it was 1999 onwards that I became familiar with the wider area, once the main house commitments were completed, would have been when the weather started to improve.”* I have taken this to refer to the period from spring/early summer 1999 onwards. Mr Hossack said that as a dog-owner, he began using Fields A, B, and C for dog-walking, and also bird-watching, and berry picking from the hedgerows. He said that initially he had accessed via the gate into Field A but once a friend moved into a house at Newmill Gardens in about 2000 he became aware of the stile to Field B from Maes Y Wennol and that became his preferred access point. Mr Hossack described his route from home to the Fields since 2000 as being generally via Miskin Crescent, Manor Hill, the Horse Field, past the quarry, through the housing in Northern Area 1, then up to

⁴⁷ These figures are derived as follows: $375 \times 2.4 = 900$; $496 \times 2.4 = 1190$.

the School, and then to the gate into Field A. This did not quite fit with the stile at Maes Y Wennol being the preferred access from 2000 but Mr Hossack did say the route he took varied. He also said that *“it is very difficult to remember the geography from 20 years ago”*. He could not recall whether he passed housing under construction.

83. Mr Hossack said it would take 15 to 20 minutes to get to the gate at Field A and that he would walk in the Fields twice a week. He also said he walked his dog on the S.106 Land, where he would *“often spend more time”* and he sometimes explored the Horse Field. Mr Hossack also said *“It was a while before I got to the fields, I visited friend in Newmill Gardens, could see Field C and decided that was an area to explore. That was 2000. It was seeing them from my friend’s garden that I went there. There were a couple of occasions before then. I went over the gate in Field A. I became more confident in my use of the area later.”* This evidence (given in cross-examination) seemed to indicate that Mr Hossack’s initial use of the Fields (before 2000) was very occasional rather than twice weekly. Mr Hossack also referred to his use of the Fields in more recent times (discussed later).

84. **Rebecca Lloyd**: Mrs Lloyd gave oral evidence on 13 March 2019. She also made a written statement dated 1 November 2017. Mrs Lloyd said that she moved in to 9 Dol Y Llan (immediately south of Fields B and C) in May 1997. No.9 is one of the properties abutting Ffordd Cefn Yr Hendy. Mrs Lloyd said her house was the first house in Dol Y Llan to be completed/sold and *“There was a lot of building going on when we first moved in”*. Initially, Mrs Lloyd did not make use of the Fields, partly because her father was ill in hospital and she was attending him, and partly because she was pregnant (her daughter was born in September 1998) and then busy caring for a new born and caring for her mother. Mrs Lloyd said that *“Easter 1999, the baby in a sling, was when started going on proper family walks”* and that was when her use of the site began. Mrs Lloyd said that she *“walked through [from Dol Y Llan to Maes Y Wennol], there was building going on, and over the stile at Maes Y Wennol”*. She

said that it was *“obvious it was a public footpath”*. Mrs Lloyd said she went to the fields (A, B, and C) on a weekly basis but would spend more time in Fields A and B. Mrs Lloyd said that she saw other people in the fields but *“whilst a building site there were less people around”*. She gave evidence about exploring nature with her daughter and helping her *“learn about the countryside in line with her topics in nursery school”* but this would appear to be after August 1999, because her daughter would have only been 11 months old at that time. Mrs Lloyd also gave evidence about her later use of the site (discussed later), including with both of her children (her son was born in May 2001), and in 2002 she moved to 54 Newmill Gardens (directly adjoining Field E).

85. **David Rees**: Mr Rees gave oral evidence on 14 March 2019. He also made a written statement dated 22 July 2017, a second statement dated 23 November 2018, and completed an EQ dated 22 July 2017. Mr Rees said that he moved in to 52 Dol Y Llan (immediately south of Field B) in August 1998. No.52 directly adjoins Field B. He bought the house from new and it was supposed to be ready in April 1998 but was not. However, Mr Rees said he had visited the area in November 1997 and at that time had visited the plot of 52 Dol Y Llan, with the building being at slab level. From that viewpoint he saw a person walking a dog in Field B but could not say whether they were on the public footpath or not. He was aware of the public footpath because on the same occasion he had visited the builder’s (Persimmon) site office which was located on what became the play area at Maes Y Wennol and he remembered seeing the stile.
86. Mr Rees said the main field he used was Field B and his initial use (before his daughter was born in April 2005) was for walking, jogging with his wife, and star gazing (in the autumn and winter evenings). Mr Rees said that the initial use began in August 1998 as soon as he had moved in. He stated that *“jogging was twice a week when we went around the field behind us [i.e. Field B] on each occasion”*, and he said that this was done *“each week (except when I was away on holiday), every week come rain or shine”*. Mr Rees accessed Field B from the stile at Maes Y Wennol. During the

period Mr Rees has lived at 52 Dol Y Llan he said he saw other people using Field B from his house, and that people had used the field as a whole and not just the public footpath. He said that the people he saw he recognised as local people. He said the degree of use had increased over time but not the nature of the activities, which including walking, jogging, dog-walking, and children playing. Mr Rees also gave evidence about his use, his family's use (including by his daughter) and what he had observed of the use by others, in more recent times (discussed later).

87. **Alvin Fripp:** Mr Fripp gave oral evidence on 14 March 2019. He also made a written statement dated 22 July 2017, a supplementary statement dated 3 December 2018, and completed an EQ dated 22 July 2017. Mr Fripp said that he moved in to 55 Maes Y Wennol (immediately south of Field B) as a new house on 1 April 1999 and started using Fields B and C from then onwards. The signed plan with Mr Fripp's EQ had Fields B, C, I, L, and M marked as the "*main fields of use*". He said he did not use Field A other than on a couple of occasions, he could not say when that had been other than "*it was years ago*" but perhaps "*after 10 years of*" using Fields B and C (so not before about 2009). Mr Fripp said he used Fields B and C (and the other fields identified) for running because "*I am quite a keen runner, the fields would be part of my route*". He said he would usually run on Fields B and C at the end of a longer run when returning home. He said he tried to run circular routes, sometimes along the river. He said he did not run simply on the line of the public footpath, but around Field C (from the northern stile) then to Field B, then home, but "*sometimes from the other direction and would do a loop around the fields*". He said his use would be monthly on average, that it was seasonal and sometimes more often. He accessed the fields via the stile at Maes Y Wennol or the stile at the Chimney Field.

88. Mr Fripp also said he had played football as "*an informal kickabout*" in Field B in "*the top part by the oak tree, nearer the houses, before the land slopes away*" and this would be "*a few times every summer*". Mr Fripp said he had been sledging "*on the steeper fields near the river*" as his children

got bigger (he also produced a photograph from January 2013 of children playing in the snow in Field B near the oak tree on the boundary between Fields A and B).

89. Mr Fripp also said he sometimes used the fields for walks, and occasionally for walking to the shops or post office at Talbot Green, in particular if it was not possible to take a car (because his wife was using it or if roads were blocked by snow in the winter).

90. **Lionel Blake** completed an EQ dated 18 November 2017. It stated that Mr Blake lived at 68 Dol Y Llan (immediately south of Fields B and C). The EQ is annotated (apparently in a different hand) to state that he “*moved in 19/6/97 4/5 residents present*”. The Rightmove data indicates that 68 Dol Y Llan was first sold as a new build on 16 June 1997.⁴⁸ This corroborates a moving in date for Mr Blake of 19 June 1997. The EQ stated that Mr Blake used Field B “*most heavily*” for walking and playing games with children from “*1998 to date*” on a weekly basis. When in 1998 this use began (i.e. whether before or after the end of July 1998) is not stated.

91. Taking the sale date as an effective moving in date, any use by Mr Blake in 1998 could not have been before the second half of June 1998. However, it is clear from the evidence of other people moving in to the area (such as **Huw Davies**, **Frank Hossack**, **Rebecca Lloyd**, **David Roderick**, and **Rachel Farrant**) that use of the fields did not always begin as soon as a person moved in to the area. Nothing in the EQ provides any information on when in 1998 Mr Blake first began to use the fields. I do not consider that I can infer merely from a moving in date and in the absence of any other information that Mr Blake’s use began within the first 2 months of his occupation of the house. However, this means that his use in 1998 is relevant to the 12 months from August 1998.

⁴⁸ Exhibit PW19.

92. **Deborah Coleman** provided a written statement dated 24 July 2017. She stated that she had lived at 7 Oaklands (immediately south of Field A) since February 1998. The Rightmove data indicated that 7 Oaklands was first sold on 27 February 1998.⁴⁹ Mrs Coleman stated that between “1998 and 2017 (current)” she had accessed “*the fields of Cefn Yr Hendy*” via the Maes Y Wennol stile and would “*usually walk towards the old mining tower*”. A plan with the written statement indicates Fields B, I, and L as the “*main fields of use*”. These fields are crossed by public footpath 314. Mrs Coleman also stated that “*My family have used the fields for walking and sledging*” and a photograph was provided (dated 6 January 2010) showing two young children on plastic sledges in a snow covered Field B.⁵⁰ This may or may not have been on the footpath, but since it relates to 2010 it is not relevant to user in the early years.

93. When in 1998 Mrs Coleman’s use began (i.e. whether before or after the end of July 1998) is not stated. Taking the sale date as an effective moving in date, any use by Mrs Coleman in 1998 could not have been before the latter part of February 1998. However, as indicated above, it is clear from the evidence of other people moving in to the area that use of the fields did not always begin as soon as a person moved in to the area. Nothing in the written statement provides any information on when in 1998 Mrs Coleman first began to use the fields. I do not consider that I can infer merely from a moving in date and in the absence of any other information that Mrs Coleman’s use began within the first 6 months of her occupation of the house. However, this means that her use in 1998 is relevant to the 12 months from August 1998.

94. **Robert Coleman** made a written statement dated 24 July 2017 in the same terms as the statement from Deborah Coleman (and from the same address). No further details were provided.

⁴⁹ Exhibit PW19.

⁵⁰ There is also a written statement from Lucy Coleman of 7 Oaklands indicating that she was born in 2002.

95. **Eryl Davies** made a written statement dated 10 May 2018. The statement was not accompanied by a plan or map. Mrs Davies stated that she moved in to 47 Dol Y Llan (immediately south of Fields B and C) in February 1999 and *“started using the Field immediately as it was ideal for walking my dog.”* The Rightmove data indicates that 47 Dol Y Llan was first sold (as a new build) on 19 February 1999). Access was gained *“by using the stile by the playground”* (in Maes Y Wennol) which would suggest that *“the Field”* included Field B. Mrs Davies also stated that *“since 1999 I have used Fields A and B on a regular basis and on times use Field C for the activity described above”*. That activity was daily dog-walking in the period from 1999 to 2009, and also use *“as a family, be that walking the dog, playing ball games, exploring nature”*. Mrs Davies also referred to more recent use from 2015 onwards.

96. **Mike Donnelly** completed an EQ dated 29 October 2017. It stated that Mr Donnelly lived at 8 Newmill Gardens (immediately to the south of Field C) and that Mr Donnelly used *“all of the fields around the states [sic]”* for dog-walking, playing with children, walking and *“access to other areas”* from 1998 to 2017, with the dog-walking being on a daily basis *“avoiding the sheep when they are in the fields”*. Access was gained from *“corner of field B by park”*. There is no Rightmove data for 8 Newmill Gardens and it is unclear from the EQ when in 1998 the use began. The EQ was accompanied by photographs of a dog being walked in Fields A, B, and C, but these date from 2012 and 2013 so are not relevant to the early years. In the absence of a moving in date or any other information, there is no basis to attribute Mr Donnelly’s use in 1998 to the first 12 month period. However, this means that his use is relevant to the 12 months from August 1998.

97. **Michael Doyle** made a written statement dated 30 July 2017. He stated that he grew up in Talbot Green and in September 1998 moved to 15 Newmill Gardens (immediately south of Field C) *“and started to use the fields then to exercise my dogs”*. The Rightmove data indicates that 15 Newmill Gardens was first sold (as a new build) on 25 September 1998).

In the period from 1998 to 2010 Mr Doyle stated that he made daily use of the fields. A signed map with the written statement was marked to indicate Fields A, B, C, I, J, K, and L, and Mr Doyle stated that he had *“walked all over the fields”* marked on that map. Access to the fields was gained *“at Maes Y Wennol stile”*. Mr Doyle stated that he had never asked for permission or been asked to leave and that he had *“had chats in the past with the current farmer and never been any problem. He has seen me walking across the fields, off the public right of way.”* Mr Doyle also referred to use of the fields after 2010.

98. **Yvonne Farrant** completed an EQ dated 26 July 2017. It stated that she lived at 26 Oaklands (immediately south of Field A) and had used *“the greenfields of Cefn Yr Hendy”* from *“1998 to present”* for walking, nature walks, sledging, and *“exploring old chimney”*. A map with the EQ showed Fields A, B, C, D, H, I, J, L, and M as the fields used. Access was gained either over the stile at Maes Y Wennol or over the gate to Field A. Use was indicated as weekly. The EQ is not precise on when in 1998 the use began but the Rightmove data indicates that 26 Oaklands was first sold (as a new build) on 5 November 1998.

99. It is to be noted that a written statement dated 25 July 2017 from **Rachel Farrant** of the same address (26 Oaklands) stated that *“We moved to Oaklands in Miskin in 1998 and I probably started using the fields at Cefn Yr Hendy approximately 5 years after living there. Originally, I thought they were private land and then realising there was a public footpath going through them, other people used them and it was also a quick and scenic walk to the shops and back”*. In terms of use, this evidence relates to the period from about 2003 onwards, but it does need to be considered when assessing the evidence from Yvonne Farrant, another occupier of the same house (apparently a relation since they share the same surname) about when Yvonne Farrant’s use of the fields began. Rachel Farrant makes no mention of her co-resident using what she regarded as *“private land”* from 1998 onwards, and if that had happened on a weekly basis then

it would be surprising (and in my view implausible) that Rachel Farrant held off her own use for 5 years or so. Given the more detailed explanation for the commencement of use provided by Rachel Farrant, I think it is more likely than not that Yvonne Farrant's own use also did not begin in the early period up to 2000 but was deferred until about 2003.

100. **Ann-Marie Fripp** made a written statement dated 22 July 2017. She also completed an EQ dated 22 July 2017.⁵¹ The map with the EQ showed Fields B, C, I, L, and M as the *"main fields of use"*. Mrs Fripp stated that she lived at 55 Maes Y Wennol (the same address as **Alvin Fripp** immediately south of Fields B and C) and had used the fields *"from 1999 to 2017"*. The Rightmove data indicates that 55 Maes Y Wennol was first sold (as a new build) on 1 April 1999. **Alvin Fripp** also gave that date as the date he moved into the property. Mrs Fripp stated that she had *"enjoyed the open space and freedom of the fields for many years"* with her husband and children. Mrs Fripp also referred to using the fields *"over the years for little picnics in the summer"*. Since Mr Fripp has given a moving in date and said that he began using the fields from then onwards, I consider it reasonable to infer that use by Mrs Fripp had also commenced by summer 1999. Access was *"mostly"* gained from the Maes Y Wennol stile. Mrs Fripp referred to using the fields for walking, picnics, exploring nature, ball games, physical activities, and (in the winter) for sledging. Mrs Fripp's EQ stated that the fields were used *"monthly, sometimes 4 times a month"* (in answer to Q.25) and *"monthly and sometimes 3 times a month"* (in answer to Q.36), with current use being *"monthly or more"* (in answer to Q.37). Given these somewhat confusing responses, I have taken it that use was generally on a monthly basis.

101. **Simon Longman** made a written statement dated 30 July 2017. He stated that he lived at 58 Newmill Gardens (immediately south of Field C).

⁵¹ The version of the EQ in the Applicant's evidence bundle (File 3) only provided pp.1-3 of the full 7 page EQ (and omitted the last page of the EQ with the signature and date) but the full EQ was included in the material I was provided with by the CRA.

The Rightmove data indicates that 58 Newmill Gardens was first sold (as a new build) on 31 October 1997. No later transactions are recorded. A plan with the written statement was marked to show Fields C, D, and a field on the eastern side of the A4119 to the south of the cemetery as the fields used. Mr Longman stated that he had used *“the greenfield space”* since August 1999 for *“physical and mental wellbeing”*. Nothing was stated the frequency of use. According to the plan, access was gained directly into Field C but no further details were provided as to how this was achieved. 58 Newmill Gardens does not adjoin Field C but is close to the eastern roundabout on Fford Cefn Yr Hendy.

102. **Jeff Mason** completed an EQ dated 25 November 2018. It stated that he lived at 31 Dol Y Llan (immediately south of Fields B and C) and used Fields B and C *“most heavily”* from 1998 to 2018. There is no Rightmove data for this property. The EQ stated that Mr Mason used the fields for *“dog walking & walking with the family”* with a frequency of *“a few times a week”*. Access was gained *“At the Stu [sic] bottom of Maes Y Wennol”*. It is unclear from the EQ when in 1998 the use began. In the absence of a moving in date or any other information, there is no basis to attribute Mr Mason’s use to the first 12 month period (ending in July 1998). However, this means that his use is relevant to the 12 months from August 1998.

103. **Mrs L Owens** completed an EQ dated 19 March 2018. It stated that Mrs Owens lived at 25 Walnut Close (within Northern Area 1) and used Fields A, B and C *“most heavily”* for walking, dog-walking, picnics, playing games with children, and sledging. The use was stated to be *“From 1998 to present day”* on a *“daily”* basis. An accompanying map indicated that access was gained from the southern boundary of Field A, from the south eastern corner of Field B (the Maes Y Wennol stile is at the south western corner), and from the north eastern corner of Field B (where there is the stile to the Chimney Field).

104. It is unclear from the EQ when in 1998 the use began. In the absence of a moving in date or any other information, there is no basis to attribute

Mrs Owens' use to the first 12 month period (ending in July 1998). However, this means that her use is relevant to the 12 months from August 1998.

105. **Phil Pengelly** completed an EQ (undated but signed). It stated that he lived at 32 Newmill Gardens (immediately south of Field C) and used Fields A, B, and C "*most heavily*" for dog-walking and kite flying from "*1998 to present*" on a daily basis, gaining access via the Maes Y Wennol stile into Field B. The Rightmove data indicates that the first sale of 32 Newmill Gardens was on 22 May 1998.⁵² Taking the sale date as an effective moving in date, any use by Mr Pengelly in 1998 could not have been before the latter part of May 1998.

106. However, as indicated above, it is clear from the evidence of other people moving in to the area that use of the fields did not always begin as soon as a person moved in to the area. Nothing in the EQ provides any information on when in 1998 Mr Pengelly first began to use the fields. I do not consider that I can infer merely from a moving in date and in the absence of any other information that Mr Pengelly's use began within the first 3 months of his occupation of the house. However, this means that his use in 1998 is relevant to the 12 months from August 1998.

107. **Lisa Powell** made a written statement dated 20 May 2018. She stated that she lived at 27 Oaklands (immediately south of Field A) and moved there in 1998 "*and began to use the fields from then to 2017*". The Rightmove data indicated that 27 Oaklands was first sold (as a new build) on 28 August 1998. Ms Powell stated that she used Fields A and B "*for walking, playing with my children*". Prior to 2003 (and after 2014), and so relevant to the 12 month period from August 1998, Ms Powell stated that "*I used the fields sporadically, once or twice a year*". In the period 2003 to 2014 use was "*on a monthly basis*". Access was gained from Maes Y Wennol "*by the children's play area*". Ms Powell has not stated when in

⁵² Exhibit PW19.

1998 her use began but given the sale date, and her statement that she used the fields “*from then*”, any use in that year would have been in the 12 months from August 1998.

108. **Carol Rees** made a written statement dated 22 July 2017 and completed an EQ on the same date. She stated that she lived at 52 Dol Y Llan (the same address as **David Rees** immediately south of Field B) and bought her house from new in August 1998. The Rightmove data indicates that the first sale of the property (as a new build) was on 28 August 1998. Mrs Rees stated that “*My family and I have regularly used the fields as a place of recreation and learning since that time*” including for activities such as “*walking, kite flying, jogging, Frisbee throwing and various ball games*”. An accompanying map was marked to show Field B as the “*main field of use*”. Mrs Rees also stated that her daughter learnt to ride a bike without stabilisers in the fields. However, as **David Rees** said that their daughter was born in April 2005, the bike activity is not relevant to the 12 months from August 1998.

109. Mrs Rees stated that since her house overlooked the fields, “*I regularly see people using the fields for walking, jogging and playing ball games such as tennis and football. I personally have seen people use the field for other activities such as metal detecting and playing with battery-powered remote control cars*”. She also referred to use by people for exercising dogs as well as walking on a daily basis. In the EQ Mrs Rees said that “*Everyone who I see using the fields is local*”. Mrs Rees stated that her own use was “*typically*” at least once a week (the EQ said “*4 times a month*” and “*weekly*”). Access was gained “*via a stile entrance in the corner of the field*”.

110. **Kwai Tan** completed an EQ dated 27 July 2017. It stated that Mrs Tan lived at 33 Newmill Gardens (immediately south of Field C) and had used “*the green fields of Cefn Yr Hendy*” for flying kites, football, strolling, and walks with children “*since 1998 to 2017*”. The Rightmove data indicates that 33 Newmill Gardens was first sold on 8 May 1998. Access was gained

“from Dol Y Llan access”. There is a cut through from the western end of Dol Y Llan to the part of Maes Y Wennol adjacent to the stile giving access to Field B. The EQ provides no other details about the nature of the uses or the areas of the fields that were used.

111. When in 1998 Mrs Tan’s use began (i.e. whether before or after the end of July 1998) is not stated. Taking the sale date as an effective moving in date, any use by Mrs Coleman in 1998 could not have been before May 1998. However, as indicated above, it is clear from the evidence of other people moving in to the area that use of the fields did not always begin as soon as a person moved in to the area. Nothing in the written statement provides any information on when in 1998 Mrs Tan first began to use the fields. I do not consider that I can infer merely from a moving in date and in the absence of any other information that Mrs Tan’s use began within the first 3 months of her occupation of the house. However, this means that her use in 1998 is relevant to the 12 months from August 1998.

112. **Humphrey Thomas** made a written statement dated 30 July 2017. He stated that he moved in to 34 Newmill Gardens (immediately south of Field C) in April 1998 and *“from 1998 I and my wife would access the fields along the right of way as well as around the fields, especially when exercising my son’s dog.”* Mr Thomas also referred to later activities with his grandson from 2000 to 2008. Mr Thomas stated that he gained access via the stile at Maes Y Wennol *“and via my neighbour’s gate to the fields at 36 Newmill Gardens”*. A plan accompanying the statement was marked to show Fields B, C, and E as the *“main fields of use”*.

113. There is no Rightmove data for 34 Newmill Gardens but Mr Thomas gave a moving in date of April 1998 so any use in 1998 could not have been before April 1998.

114. However, as indicated above, it is clear from the evidence of other people moving in to the area that use of the fields did not always begin as

soon as a person moved in to the area. Nothing in the written statement provides any information on when in 1998 Mr Thomas first began to use the fields. I do not consider that I can infer merely from a moving in date and in the absence of any other information that Mr Thomas's use began within the first 4 months of his occupation of the house. However, this means that his use in 1998 is relevant to the 12 months from August 1998.

115. In summary, in the 12 months from August 1998 to July 1999, the Applicant provided oral evidence of some use of the site from 7 people (3 from August 1997 onwards plus 4 from August 1998 onwards) and written evidence of some use from 36 people (21 from August 1997 onwards plus 15 from August 1998 onwards). I have not included **Yvonne Farrant** in these numbers for the reasons indicated above. Thus, there was direct evidence of some use of the site by about 43 people in the 2 years from August 1997. Not all referred to using all three of the fields, and frequency of use varied. Whilst several referred to seeing others at the times of their visits it is impossible to quantify the numbers (or to know whether they were or included some of the other users already included in the 43).

116. The Rightmove data, though not comprehensive, indicates that in Northern Area 2 a further 54 houses were first sold between August 1998 and the end of July 1999. Adding the population of these houses (at the occupancy rate of 2.4 persons per dwelling) to the pre-existing population of Miskin (at the end of July 1998) would mean that some 1,300 people were residing in Miskin village by July 1999.⁵³ In comparative terms this would suggest that the identifiable users by the end of the first 2 years of the relevant period making some use of the site (other than purely as a public footpath) were just over 3% of the inhabitants of Miskin.⁵⁴ I consider the implications of this later in my report.

⁵³ $54 \times 2.4 = 129$; $1190 + 129 = 1,319$.

⁵⁴ $43/1319 \times 100 = 3.26\%$

(iii) evidence relating to the 12 months from August 1999

117. All of the users in the previous two sections also gave evidence which covered the 12 months from August 1999. It is unnecessary to add any further summary of their evidence on this next 12 month period because their evidence did not differ in terms of this period.

118. No additional witnesses gave oral evidence covering the 12 months from August 1999.

119. **Edwin Burke** made a written statement dated 15 July 2017. He stated that he bought 8 Oaklands (immediately south of Field A) *“in 1999”* and lived there until April 2017. He stated that he used the fields marked on an attached plan (Fields A, B, C, D, E, F, G, H, I, J, L, and M) *“from 1999 – 2017”*. Until 2010 he gained access by *“climb[ing] over the gate behind houses at St David’s Heights.”* He stated he would then walk across the fields to *“the monument”* (which I infer refers to the chimney/air shaft) and *“back the same way or up to Maes Y Wennol”*. He used the fields for walking and dog-walking, sometimes with family members (including grandchildren when visiting). He saw others walking and dog-walking, and *“tobogganing on the slopes, especially down towards the river”*. Mr Burke said he never sought permission nor had been asked to leave, and *“only asked to be careful with the dog (by the farmer) when there were lambs”*.

120. It is unclear from the written statement when in 1999 Mr Burke began to use the fields. The Rightmove data only records two sales transactions for 8 Oaklands, the first being 27 February 1998, as a new build sale, and the second being 13 April 2017. The second transaction coincides with when Mr Burke stated his occupation of 8 Oaklands ended but the first is well before he stated that his occupation or his use of the fields began. Obviously, there may be a whole variety of reasons why a person might not move into a house immediately after buying it (e.g. because working away). Alternatively, Mr Burke may have made a mistake about the date

when he started living at 8 Oaklands. Even if Mr Burke was resident from February 1998 onwards, as noted above use of the fields should not necessarily be taken to begin at the outset of occupation. In the absence of a specific moving in date (or month) or other information, there is no basis to attribute Mr Burke's use of the fields to the 12 months from August 1998 to July 1999. However, this means that his use "from 1999" is relevant to the 12 months from August 1999.

121. **Teresa Burke** made a written statement dated 15 July 2017. This was very similar to the one made by **Edwin Burke**, who she stated was her husband. Mrs Burke stated that she "*walked these fields daily for almost 18 years*" and that she lived at 8 Oaklands until April 2017. The Rightmove data indicates a sale of 8 Oaklands on 13 April 2017. A full 18 year period would have commenced on 13 April 1999 but "*almost 18 years*" could have commenced either before or after August 1999. In the absence of any other information there is no basis to attribute Mrs Burke's use of the fields to the 12 month period from August 1998 to July 1999. However, this means that her use is relevant to the 12 months from August 1999.

122. **Janet Emery** made a written statement dated 31 October 2017. She stated that she bought her house at 51 Dol Y Llan (immediately south of Field B) "*in 1998 from the builders*". The Rightmove data indicates the first sale of the property (as a new build) was on 2 October 1998. There is no map or plan with the written statement. Ms Emery referred to using "*the fields*" for walking "*generally*" and jogging without describing where she meant, other than stating that she used "*field B almost daily – for around 15 minutes each time for walking around*". Access was gained "*via the stile at Maes Y Wennol Park*". Ms Emery did not state when she started using the fields. She also referred to seeing others using the fields daily for dog-walking, ball games and kite flying, which she could see from her house because "*my back windows look out onto one of the fields.*"

123. Taking the sale date as an effective moving in date, any use by Ms Emery could not have been before October 1998. However, as indicated

above, it is clear from the evidence of other people moving in to the area that use of the fields did not always begin as soon as a person moved in to the area. Nothing in the written statement provides any information on when Ms Emery first began to use the fields. I do not consider that I can infer merely from a moving in date and in the absence of any other information that Ms Emery's use began within any particular period of months following her occupation of the house. Some other people had moved in for more than a year before they first started using the fields. However, taking a balanced view I consider it more likely than not that Ms Emery's use began at some point in the early period up to 2000, and so I have proceeded on the basis that the use should be attributed to the 12 month period from August 1999.

124. **Alun Fellows** made a written statement dated 29 July 2017. He stated that he had lived at 33 Rowan Tree Lane, Miskin (within Northern Area 1) *"between 1999 and 2015"* and *"walked the fields in question regularly with my dog"*. Mr Fellows also referred to his sons as young children playing outdoors in *"the fields"*. There is no accompanying map or plan and there is no description of how access was gained (which might allow some inferences to be drawn). It is therefore not easy to know whether the fields Mr Fellows was referring to included the site. However, Mr Fellows did refer to *"On one occasion the tenant Farmer did request that when livestock (e.g. sheep with lambs) were there that our dog be kept on a secure lead, but this was the extent of the restriction."* This would suggest that the fields were those tenanted by Mr Howells. Access to those fields from the south (i.e. from the location of 33 Rowan Tree Lane) would most probably be via the Maes Y Wennol stile or the gate into Field A, so I consider it reasonable to infer that Mr Fellows made some use of Fields A and B.

125. It is unclear from the written statement when in 1999 the use began. In the absence of a moving in date or any other information, there is no basis to attribute Mr Fellows' use to the 12 month period from August 1998

(which would include up to July 1999). However, this means that his use is relevant to the 12 months from August 1999.

126. **Barbara Hancock** made a written statement dated 10 November 2017.

There was no accompanying map. She stated that she lived at 4 Rowan Tree Lane (within Northern Area 1) and had been a resident for 18 years (i.e. from 1999). Ms Hancock stated that she used Fields A and B “*mostly*” and knew the fields as “*the old mine fields*”. She stated that she had used the fields for 18 years to walk her dog and “*to run around the perimeter*”. Access was gained by “*Maes Y Wennol play area*” but also via St David’s Heights (which implies the gate to Field A) or “*the woods alongside the River Clun*” (which are adjacent to Field A). Use was stated to be three times a week, sometimes more, sometimes less.

127. It is unclear from the written statement when in 1999 the use began. In the absence of a moving in date or any other information, there is no basis to attribute Ms Hancock’s use to the 12 month period from August 1998 (which would include up to July 1999). However, this means that her use is relevant to the 12 months from August 1999.

128. **Enid Lilwall** made a written statement dated 10 October 2017. She stated that she lived at 51 Dol Y Llan (immediately south of Field B) and had been a resident “*since 1998*” living with her daughter Janet Emery “*who bought the house in that year*”. The Rightmove data indicates that 51 Dol Y Llan was first sold (as a new build) on 2 October 1998. Mrs Lilwall stated that she used “*the fields*” for walking on a regular basis “*approximately 3 or 4 times each week*”, gaining access “*through the stile which is next to my house*”. This would be the Maes Y Wennol stile giving access to Field B. A map with the written statement was marked to show Field B as “*the field I use regularly for walking*”. Mrs Lilwall did not state where she walked within Field B or when her use began. Mrs Lilwall also referred to seeing “*lots of people using the fields to walk their dogs, fly their kites and playing with their children. I see the same people on a regular basis using the fields for recreational purposes.*”

129. Taking the sale date as an effective moving in date, any use by Mrs Lilwall could not have been before October 1998. However, as indicated above, it is clear from the evidence of other people moving in to the area that use of the fields did not always begin as soon as a person moved in to the area. Nothing in the written statement provides any information on when Mrs Lilwall first began to use the fields. I do not consider that I can infer merely from a moving in date and in the absence of any other information that Mrs Lilwall's use began within any particular period of months following her (and her daughter's) occupation of the house. Some other people had moved in for more than a year before they first started using the fields. However, taking a balanced view I consider it more likely than not that Mrs Lilwall's use began at some point in the early period up to 2000, and so I have proceeded on the basis that the use should be attributed to the 12 month period from August 1999.

130. **Karen Lloyd** made a written statement dated 28 October 2017. She stated that she had lived at 18 Oaklands (immediately south of Field A) *"from May 2000 and have been using the fields every couple of months since then."* Ms Lloyd stated that *"I mainly use fields B and C for about 15 minutes"* and would *"access the fields by the stile at the children's park and walk within them"*. Ms Lloyd referred to her step-children playing in the fields when they were young but does not give a date for this, other than that it was before 2010. She also referred to more recent use.

131. **Jan Steele** completed an EQ dated 28 November 2018. It stated that she lived at 1 Maes Y Wennol (immediately south of Field B) and that Fields A and B were the fields used *"most heavily"*. The EQ stated that use for *"walking and walking to the shops"* took place in the period 1999 to 2015. The Rightmove data indicates that 1 Maes Y Wennol was first sold (as a new build) on 3 December 1999. Access was gained via the stile at Maes Y Wennol and use (when it took place) was stated as *"several times a week. At least 3"*. The EQ does not state when in 1999 Ms Steele's use began but given the sale date of December 1999, and the statement that

she used the fields in 1999, any use in that year would have been in the 12 months from August 1999.

132. **Rachael Tandy** made a written statement dated 30 July 2017. She stated that from February 1999 to 2004 she lived at 2 Pen Bryn Hendy (within Southern Area 2) and moved to 19 Delfryn (within Northern Area 1) in 2004. She stated that she had *“known of the fields called Maes Y Wennol fields for 19 years”*. An accompanying map was marked to show Fields A, B, and C as the *“fields of use”*. Access was shown as via the south east corner of Field B, but the statement said that Ms Tandy *“accessed the fields via the stile [sic] at Maes Y Wennol”*. I therefore consider it reasonable to infer that the map is inaccurate in showing the access point to Field B. Ms Tandy stated that she used the fields for *“dog walking, general exercise, kite flying and geo-caching.”*

133. It is not clear from the written statement when any use of the fields began. It is not said that it began as soon as Ms Tandy moved to 2 Pen Bryn Hendy, and knowing of the fields is not the same as using the fields. As indicated above, it is clear from the evidence of other people moving in to the area that use of the fields did not always begin as soon as a person moved in to the area. In addition, there are open spaces closer to 2 Pen Bryn Hendy than Fields A, B, and C. I do not consider that I can infer merely from a moving in date and in the absence of any other information that Ms Tandy's use of the fields began within the first 6 months of her occupation of the house. However, this means that any use in 1999 is relevant to the 12 months from August 1999.

134. In summary, in the 12 months from August 1999 to July 2000, the Applicant provided oral evidence of some use of the site from 7 people (3 from August 1997 onwards plus 4 from August 1998 onwards) and written evidence of some use from 45 people (21 from August 1997 onwards plus 15 from August 1998 onwards, plus 9 from August 1999 onwards). Thus, there was direct evidence of some use of the site by about 52 people in the 2 years from August 1997. Not all referred to using all three of the

fields, and frequency of use varied. Whilst several referred to seeing others at the times of their visits it is impossible to quantify the numbers (or to know whether they were or included some of the other users already included in the 52).

135. The Rightmove data, though not comprehensive, indicates that in Northern Area 2 a further 25 houses were first sold between August 1999 and the end of July 2000 (all in Maes Y Wennol). Adding the population of these houses (at the occupancy rate of 2.4 persons per dwelling) to the pre-existing population of Miskin (at the end of July 1999) would mean that some 1,380 people were residing in Miskin village by July 2000.⁵⁵ In comparative terms this would suggest that the identifiable users by the end of the first 3 years of the relevant period making some use of the site (other than purely as a public footpath) were just under 4% of the inhabitants of Miskin.⁵⁶ I consider the implications of this later in my report.

(iv) evidence relating to the period from August 2000 to August 2017

136. Eleven people gave oral evidence in relation to their use of the site in all or part of the period from August 2000 to August 2017 (in addition to the seven people who gave oral evidence of use from August 1997 onwards). I set out below a general summary of this evidence in terms of matters of particular relevance to the claim. The notes at Appendix B provide a fuller record.

137. **Cyrus Ginwalla**: Mr Ginwalla gave oral evidence on 12 March 2019. He also provided written statements dated 28 July 2017 and 25 November 2018. Mr Ginwalla stated that he became a resident of 7 St David's Heights (immediately south of Field A) in June 2004 and then moved to 1 Crystal Wood Drive in September 2018 (after the end of the relevant period). The Rightmove data indicates that 7 St David's Heights was first

⁵⁵ $25 \times 2.4 = 60$; $1,319 + 60 = 1,379$.

⁵⁶ $52/1379 \times 100 = 3.77\%$

sold (as a new build) on 2 July 2004. Mr Ginwalla stated that he had *“used [Fields] A, B, and C daily since 2004”* with an average visit of 30-45 minutes, either for walking or dog-walking or playing ball games with his daughter when she was younger (from about 2 until she was 11). Mr Ginwalla said his daughter was born in 2006 so this playing would refer to the period between 2008 and 2017. In his oral evidence he said that he *“predominantly used Fields A and B, Field C does not take you anywhere. We use as a loop, A-B-C and back round, we have a small dog”*. Mr Ginwalla said that he accessed the fields *“predominantly”* via St Davids Heights. A plan with the first written statement was marked with a ‘B’ at the location of the gate to Field A, and Mr Ginwalla said that ‘B’ marked his *“entrance point”*. He said he would *“occasionally use the other access point at Maes Y Wennol... but not predominantly”*.

138. Mr Ginwalla said that the gate to Field A was *“always shut”* and that he gained access to Field A by climbing over it, although *“the dog goes through the gate”*. He said there was no barbed wire across the top of the gate but only on the post (and he had not noticed that until it was pointed out to him via a photograph in cross-examination).⁵⁷ Mr Ginwalla said that Barratts were the developers of his house and that about 4 days after moving in in 2004 there were travellers *“looking at”* the field *“opposite the primary school”* (which I take to mean the unkempt area of land to the immediate west of Field A and north of the western roundabout). Mr Ginwalla said *“I went to Barratts, they dug a huge trench and [put] big boulders [at the access to that land]. Barratts contacted the farmer and suggested they put strong locks on it [the gate].”*

139. Mr Ginwalla said he *“used to chat to the farmer. He never once asked us not to [go on the fields]”*. He also said that he *“did not see the farmer a huge amount when I was there”* but he recalled one occasion when he was in his garden (which backed on to Field A) and the farmer was hedge trimming and gave Mr Ginwalla his phone number *“so I could call him*

⁵⁷ The photos numbered 19 and 20 on p.47 of the Applicant’s File 2.

about any stuck sheep". He said the farmer was "mid to late 30s". He said there was another occasion when he was in Field A with his daughter in about 2008 or 2009 when he saw two farmers in a jeep, they "could have been father and son", and there was a conversation between them and Mr Ginwalla about a quad bike being driven in the fields and distressing the sheep, and that this might also put people and children in the fields at risk of injury from the quad bike. Mr Ginwalla said "there used to be sheep all the time when initially there. Latterly there were less. I cannot be more precise on dates."

140. **Huw Davies:** Mr Davies' evidence in the early years is summarised above but he also gave evidence about a conversation with the farmer in about 2015. He said this happened whilst he was at the stile between Field B and the Chimney Field and he had his dog (a Labrador) with him. Mr Davies said "I think there were two, one was older than the other, could have been father and son, the older was taking the lead". Mr Davies said that after he had said "hello" the older farmer asked him if the dog would chase sheep. Mr Davies said he replied that his dog did not chase sheep. He then walked along the path from Field B to Field A heading for the gate in Field A. He said the farmer did not ask him to put his dog on a lead, and did not ask him not to walk there or not to go that way. Mr Davies said "it is possible he was consenting to me doing that although the questions he asked me, the dog was off the lead, he was quite abrupt." In re-examination, Mr Davies said that in relation to the farmer giving consent, "he did not say anything about that".

141. **Frank Hossack:** Mr Hossack's evidence in the early years is summarised above. He also said, in relation to dog-walking on the site, that "I keep dog on the lead and check there are no livestock in close proximity", and "when stock on the fields I always keep dog on the lead". In terms of routes used, Mr Hossack said "I would say a myriad of different footpaths on the land, originally I followed them, I have every intention of following paths but if I throw a stick for the dog, I follow the dog wherever." He said "The sheep graze at will over the fields. If there are sheep there I

respect that, I avoid them. If sheep are on a footpath I go round another way.”

142. **Neil Thomas**: Mr Thomas gave oral evidence on 13 March 2019, and provided a written statement dated 11 November 2017. Mr Thomas stated that he moved to 36 Oaklands (immediately south of Field A) in April 2010 and from then on had used Fields A, B, and C for dog-walking and family walking with his children (one born in 2003,⁵⁸ one born in 2004, and one born in 2014). The Rightmove data indicates that 36 Oaklands was sold (for the second time) on 14 April 2010, which is consistent with Mr Thomas’s moving in date. Mr Thomas said that Field B was used by him and his family for sledging, saying that *“Field B dip[s] down to the fence... the incline is the north west corner of Field B for the dip”*. Mr Thomas did not agree that *“the area down to river is the most popular area for sledging, there are crevices there and there are jagged rocks and broken bottles. So we stay in the Field B area”*. Mr Thomas accessed the fields *“usually”* via Maes Y Wennol but sometimes via the gate to Field A. He stated that his *“daily when possible”* dog-walks would last for 30-60 minutes. When walking his dog Mr Thomas said that *“the dog goes all over including Field C and Field A”* but agreed that *“quite a lot of activity has focused on Field B”*. Mr Thomas also said he had taken a drone and flown it from Field C but he could not recall when that was. He said Field C was chosen for this activity because *“further away from the houses, so seemed safer for flying drones. i.e. not at risk of drifting back to houses.”*

143. **Emma Heaversedge**: Ms Heaversedge gave oral evidence on 13 March 2019, provided two written statements dated 24 July 2017 and 23 November 2018, and completed an EQ dated 24 July 2017. She said that she moved to 28 Dol Y Llan in 2002 (immediately south of Fields B and C) and then moved to 5 Shadow Wood Drive (to the south of Fforde Cefn Y Hendy) in 2004. She said she had 2 children, born in October 2008 and

⁵⁸ Reference to Mr Thomas’s eldest daughter only emerged in re-examination but Miss Ellis confirmed that she did not wish to cross-examine on this evidence.

December 2011. Ms Heaversedge stated that “since 2002” she had used Fields A, B, and C for walking, running, dog-walking, and more recently for games with her children, including sledging, putting them in a backpack from 4 or 5 months old. She accessed via the Maes Y Wennol stile or the gate at Field A, and in the latter case “*whenever used it I have to climb over. It is not actually locked it is bound with barbed wire.*” When Ms Heaversedge lived at Dol Y Llan she used the Maes Y Wennol stile.

144. Ms Heaversedge said “*I use the fields to run around. I would just run the 3 fields when the dogs were older. I run half marathons. I would run, the course I would follow would depend, probably circular, starting at the gate and through the fields to [Field] C and back round, or sometimes via Maes Y Wennol, it depends.*” She said that “*if sheep not there the dog off the lead, previous dogs on leads, special leads and I run with them.*” Ms Heaversedge also said that “*We would play ball games in Field A, in the general area, away from the houses and trees, in the middle.*” This was from once her oldest child was 2 (so about 2010). Ms Heaversedge referred to sledging as an “*occasional event*” and that she had seen people sledging “*in the field going down to the river*”. She said “*we would play with snow in Field A, there’s an incline in Field B, ideal for a 3 year old and a new born or 4-5 months old.*”

145. **Deborah Hearle**: Ms Hearle’s evidence in the early years is summarised above. She also gave evidence about a conversation with the farmer in “*about 2007*”. This took place when she was in the Chimney Field with her dogs, which were not on leads. There were no sheep in the fields at that time. Ms Hearle said that the farmer said he was the farmer and asked her whether her dogs were sheep dogs. She replied that they were not, they were border collies. She said that “*the farmer mentioned, be careful when the sheep are on the field. He also said he was not afraid of shooting dogs if they are after the sheep.*” Ms Hearle said the farmer did not ask her to put her dogs on a lead or ask her to leave the Chimney Field.

146. **Rebekah Daniel**: Mrs Daniel gave oral evidence on 13 March 2019, made two written statements, dated 26 July 2017 and 1 December 2018, and completed an EQ dated 26 July 2017. Mrs Daniel stated that she moved to 26 Maes Y Wennol (immediately south of Field A) in August 2000. She said it was a new house when she first moved in. The Rightmove data indicates that 26 Maes Y Wennol was first sold on 25 August 2000. Mrs Daniel said she would “occasionally” go into the fields “from once moved in” but more regular use with her young son (born in February 2001) did not begin until he was able to walk (which I infer to be late 2001/early 2002).

147. Mrs Daniel said that *“the children’s park [at Maes Y Wennol] was not built until 2002, i.e. completed then, my son was first child to use it.”* Mrs Daniel used the stile at Maes Y Wennol to access the fields “for walks” taking her son across Field B to the Chimney Field, telling her son the chimney was “Rapunzel’s” and *“he probably grew out of that by 2005/06”*. As well as going to the chimney she said they *“would use the other fields, A and B more frequently. C would be occasional use. He [her son] was fascinated with animals, if sheep in C we would go to the edge of Field C unless they were lambing.”* She said that *“if going to the chimney, sometimes via the footpath route but not always. A typical route – over stile and he was fascinated by massive oak tree between Fields A and B. We would look at that and look at our house from the back in Field A. He would run loose unless there were sheep there. We would go to the far end of Field A at the north east end near Field B [and] walk perimeter of field B”*.

148. Mrs Daniel also referred to sledging *“in Field B where it slopes”*. She could not recall when she first did this but *“son was little, a toddler, he sat on the sledge”*. She also said that from 2002 she would take her son for picnics in the fields, taking a hamper, a blanket, or a game to play. This would be about twice a week in the summer when her son was younger, depending on the weather, but not if sheep were there. Mrs Daniel also mentioned taking her cat for a walk there when dogs were not present.

She also referred to regular kite flying, “predominantly [in] A and B less so Field C”, having bought her son his first kite in 2005. Mrs Daniel also said that in 2011 she went to university in Cardiff and whilst there saw **Deborah Hearle** as someone she recognised from having seen her in the fields.

149. **Patrick Moran**: Mr Moran gave oral evidence on 13 March 2019 and made a written statement dated 23 November 2018. He stated that he moved to 37 Bryn Dewi Sant (to the west of Field A and to the north of the Welsh School) in October 2006 (having bought the house in 2005) and “As soon as we moved in we started to use the fields” for dog-walking. He said this use “would have been within the first week of moving in”. Mr Moran said that initially he had one dog, a sheep dog, until 2017, and more recently had 2 dogs. He said his son was born in 2009. Mostly he accessed the fields by the gate at Field A but sometimes by the Maes Y Wennol stile, “80% Field A, 20% the stile in Field B”. Mr Moran said the gate had always been “locked/wired” and recalled a period when the gate became loose but it was then re-secured. Mr Moran thought this was in about 2009 - 2012 before his son started school. Mr Moran continued to climb over the gate.

150. Mr Moran said that he met the farmer once in Field A in 2006 “soon after moved in”. He said that he saw the farmer in a truck and put his dog on a lead, “the dog would have been running in the field before then”. There were no sheep in the field at that time. He said “I would have suspected the farmer was coming to have a chat about my use of the field. I put dog on lead out of respect for farmer”. Mr Moran said the farmer asked him why he had a sheep dog, and he replied that he always had. Mr Moran said that the farmer told him he had shot dogs who worried sheep. Mr Moran said he was not asked to leave the field and “My interpretation – the farmer not that bothered about me being in the field with dog on a lead.” He said that during his walks it was “unusual not to see another dog-walker there. In 20 minutes would expect to see 2 to 3 dog-walkers there.”

151. Mr Moran also said that he used the fields to practice golf, although this was “*not ideal*”. He produced a photo of his young son in Field A in July 2014 taking a golf ‘swing’.⁵⁹

152. **Shaun Croeser**: Mr Croeser gave oral evidence on 13 March 2019, made a written statement dated 7 December 2018 and completed an undated (but signed) EQ. He stated that he moved to 3 St David’s Heights (immediately south of Field A) in December 2016 and “*one of the first things I did was follow the path at the end of the road and go into the fields (fields A and B).*” I have taken this to be a reference to the cut through from St David’s Heights to the overgrown area of land to the west of Field A, which gives access to the gate to Field A. Mr Croeser said he used the fields for walking, dog-walking, and observing nature. He said he would access Field A by the gate, climbing over, and it was always secured to the post by barbed wire. He said “*There are worn marks in Field A. For the first time I followed the path from A, to B, to C, but subsequently I have gone all over, following the bugs and birds. There is activity in the hedges but also in the fields themselves.*”

153. **Martina Davies**: Mrs Davies gave oral evidence on 13 March 2019, made 2 written statements, dated 24 July 2017 and 1 December 2018, and completed an EQ dated 24 July 2017. Mrs Davies stated that she moved to 7 Maes Y Wennol (immediately south of Fields A and B) “*in the beginning of July 2005*”. In November 2010 she moved to 29 Manor Hill (within Southern Area 1). She had two daughters, one born in 2003 and one born in 2006. After moving to Maes Y Wennol Mrs Davies said “*started using the fields pretty much straight away. We went to the play area at the end of the road, with [our] 2 year old, and then to the fields.*” After moving to Manor Hill Mrs Davies got a dog (in 2011) and more recently had 2 dogs.

⁵⁹ The photo is Photo 4 dated 26 July 2014 on p.18 of File 2 of the Applicant’s Bundle.

154. Mrs Davies said that when she lived at Maes Y Wennol she would go to the fields with her daughters about 4 times a week, whereas since moving to Manor Hill it was less frequent, generally monthly for dog-walking. Before moving to Manor Hill she would always access via the Maes Y Wennol stile but since then she sometimes, *“on a handful of times”*, used the gate at Field A. Mrs Davies would not go onto the fields if there were sheep there, *“Never been particularly fond of sheep. I would not take girls onto the fields if there were sheep there.”* Mrs Davies said her daughters *“would do gymnastics on the line of the path [in Field B] since it is flat but obviously they do run around the field.... They would play tag and run across the whole field, kick a ball around, not confined to that line.”* More recently, when walking the dogs, Mrs Davies would use Fields A, B, and C, but would walk in whichever field did not have sheep in and avoid the ones that did.

155. **Rebecca Lloyd**: Mrs Lloyd’s evidence in the early years is summarised above. Mrs Lloyd moved from 9 Dol Y Llan to 54 Newmill Gardens in August 2002, and her house in Newmill Gardens directly adjoins Field E. In 2012 she acquired a family dog and began twice daily dog-walking in Fields A, B, and C. When dog-walking, *“if sheep in Field B, would turn left and go to Field A, if [sheep] in A, try C, if in all three fields, go to Chimney Field and then down to the river.”*

156. Some time after August 2002 Mrs Lloyd said she was in her garden at Newmill Gardens and saw the farmer in the fields and called him over to report that she had seen an Alsatian dog running around in Field E. The farmer she spoke to was ‘Rob’ and he was the son of the older farmer. Rob gave her a mobile phone number for use in emergencies and subsequently she had called him 3 times when there have been problems of sheep stranded on their backs or sheep that were dead. These sheep were in Fields E and F. Mrs Lloyd said she had not seen any sheep in trouble in Fields A, B, or C. Mrs Lloyd stated that in her various conversations with the farmer she had not been told that she should not be in the fields. She said that she had seen the older farmer in his truck, when

she was in the fields with her dog, which she would keep on a lead *“if just over the stile”* and *“he waved, whether he recognised me or [was] just being polite I don’t know. I had the impression he was content for me to be there.”*

157. Mrs Lloyd also said that in terms of use of the fields by other people during her own use, *“There are more people around now, but I did see people in the past. You see more variety of ages now, see older people there now. I go there now and can guarantee there will be people in the fields now. When I see people, mainly dog-walkers and families. Children tend not to be on the paths, the children in Field A tend to play in the muddy part.”*

158. **Sophie Seymour**: Ms Seymour (the Applicant) gave oral evidence on 14 March 2019, and made 2 written statements, dated 30 July 2017 and 4 February 2019. The latter written statement included commentary on the evidence provided by the WM as well as commentary on the applicable TVG tests and the processes involved in making the application. Since I address those matters later in this report, I only set out a summary of Ms Seymour’s factual evidence, so far as relevant to the main issues.

159. Ms Seymour stated that from May 2013 until April 2017 she lived at 15 Miskin Crescent (within Southern Area 1) and then moved to 8 Oaklands (immediately south of Field A). The Rightmove data indicates that 8 Oaklands was sold (for a second time) on 13 April 2017, which is consistent with the moving in date given by Ms Seymour. When at Miskin Crescent Ms Seymour stated that she used Fields A and B for dog-walking *“around every 6 to 8 weeks”* and that once she moved to Oaklands her use became more frequent, *“2-3 times a week”*. As well as dog-walking, Ms Seymour has used the fields with her children, playing running games and exploring, and meeting other friends and children. Ms Seymour stated that she would spend between 15 and 40 minutes in the fields, mostly in Fields A and B but sometimes in Field C.

160. Initially, Ms Seymour gained access via the Maes Y Wennol stile. More recently she has used that stile, the gate at Field A, and an informal gate from her back garden (described in section 3 above). This gate had been present when Ms Seymour bought 8 Oaklands in April 2017. Ms Seymour accepted (in cross-examination) that *“The gate is not immediately apparent to a casual look, it looks like a fence, but can see there is a cut there”*. She also said that there was tubing over the barbed wire of the field fencing which *“I assume [was] put there by previous owners to avoid being caught on barbed wire when using the gate.”*

161. Ms Seymour stated that in all the time she had been using the fields she had never seen the farmer there at the same time. She did, however, make contact with Robert Howells in July 2017 whilst preparing the application, having been given his phone number by another resident, and Ms Seymour stated that he told her he was the farmer of the fields. Ms Seymour stated that she asked Mr R Howells whether he had had to tell people to leave the land, and he said that he had not, but had had ‘stern words’ with people about their dogs and had had to shoot dogs that had attacked the sheep. Ms Seymour stated that she also had contact with Mr R Howells in December 2017 (after the relevant period) about sheep that she had seen in Fields A and B that were stuck in the brambles and fencing.

162. Ms Seymour also provided evidence about the nature of Miskin village, in terms of its historical origins, its community facilities, and communal activities that took place within it. The facilities included the pub, the churches, and the Welsh School. The community activities include parent and child groups, a scout group, a cricket club, a choir, charity events, and events linked to the pub. There was no challenge to any of this evidence. Ms Seymour stated that *“Miskin is a cohesive neighbourhood. Although there are no shops or GP surgeries in Miskin, we have a number of resources that we draw on in common, including local businesses where people work from home. Many people move between the streets yet see themselves as still within Miskin. There are friendships between people*

throughout Miskin. It may have changed throughout the years, with the last houses in the newer streets being completed in 2005 but we residents feel strongly that we are a community and recognise Miskin as our neighbourhood.”

163. **David Rees:** Mr Rees’s evidence in the early years is summarised above. Mr Rees stated that from about October 2006, when his daughter (born in April 2005) was about 18 months old, he and she would use Field B together, initially with her running about and then from age 5 (2010) she learnt to ride a bike without stabilisers there. Mr Rees also described how he and his daughter would act out activities from the children’s story ‘We’re going on a bear hunt’ in Field B, going to the northwest corner of Field B for *“the boggy bit”*.

164. Mr Rees also said that the *“use of Field B has increased since about 2008/09 in terms of numbers [of users] rather than the range of activities”*. He described an event in 2013 when he and his daughter had been near the oak tree in Field B watching a tractor in that field, and his daughter waved and the tractor operatives waved back, *“they knew we were there and were content with our presence there.”* Mr Rees also said he had seen overnight camping during the summer months some 6 or 7 times, most recently in summer 2017, and this had taken place in Field B close to the fence of the southern boundary *“just beyond the bracken”*.

165. Mr Rees also produced a series of photographs⁶⁰ taken on Sunday 29 October 2017 and on dates in the summer of 2018 (all after the end of the relevant period), taken from his home, showing activity on Field B, with groups of people walking, jogging, dog-walking, and playing with dogs. Some are on or close to the public footpath but many others are not and are elsewhere within Field B. Mr Rees stated that this activity was *“representative of activities and use I have seen occurring in Field B since*

⁶⁰ The 2017 and 2018 photos are at pp.21-29 of File 2 of the Applicant’s Bundle.

I bought the property in August 1998.” He agreed that the “vast majority [of photos] were taken on a Sunday morning.”

166. **Helen Fisher:** Mrs Fisher gave oral evidence on 14 March 2019 and made a written statement dated 2 November 2017. She stated that she moved to 12 Oaklands (immediately south of Field A) in August 2014. She said that at that time there was no rear garden fence but there was the wire fence to the field, topped with barbed wire.⁶¹ There was foam piping or cladding on part of the barbed wire. She also said that there had been breeze blocks in her garden in that location to assist in climbing over the barbed wire fence, although they *“may not be obvious from the other side”*. Mrs Fisher said she had the garden fence installed (a picket type fence) because she had a dog and there were sheep in the field, including installing a gate in that fence (as described in section 3 above). She also installed the ‘sty’ or stile for crossing the barbed wire fence.⁶² Mrs Fisher said she did this because she had seen the gate in Ms Seymour’s fencing (at 8 Oakland) and had seen people in Field A from her kitchen, using the field recreationally, dog-walking and throwing balls. This tended to be *“after work and at weekends”*.

167. Mrs Fisher said her children were born in 2004 and 2006 (so would have been about 10 and 8 when the family first moved in). Mrs Fisher said that her son and her husband (**David Fisher**) were cyclo-cross enthusiasts, and that each year from September 2014 used Field A for practicing for cyclo-cross events. Photos provided with the written statement of David Fisher, but apparently taken by Alex Fisher, show people (adults and children) on bikes in Field A in September 2015.⁶³

⁶¹ The initial garden boundary treatment is shown in Photo A (August 2014) on p.217 of File 3 of the Applicant’s Bundle, accompanying a written statement from David Fisher. That photo also shows two people and a dog standing in Field A, i.e. beyond the garden.

⁶² The garden fence and ‘sty’ are shown in the photo (November 2015) on p.14 of File 2 of the Applicant’s Bundle.

⁶³ Photos C and D at p.218 of File 3 of the Applicant’s Bundle.

168. Mrs Fisher said that in November 2014 she held a fireworks party, with the party itself being in her garden but the fireworks were let off in Field A *“immediately behind my house”*. This was an evening event, and she had first checked that there were no sheep in the field.
169. Mrs Fisher said that until summer 2018 (when she dislocated her elbow) she would go running in the fields on a weekly basis, with her route being twice around the perimeters of Fields A and B. She also took her dog for daily dog-walks in Fields A and B. Mrs Fisher said that during the summers from 2014 onwards her children would play ball games in Field A in July and August, with *“football on the flat bit of Field A by the house, they have a metal goal they pass over the fence to play football”* and netball practice by her daughter. The football would involve *“a troop of boys”*. She also said that her children would build camps or dens in the bracken near to the fence in Field A. Mrs Fisher also stated that her children would have picnics in Field A and fly kites there.
170. Mrs Fisher said she had never seen the farmer when she was using the fields but from her garden she had seen him driving past in his truck on about 4 occasions.
171. **Ceri Thomas**: Mr Thomas gave oral evidence on 14 March 2019 and made a written statement dated 23 November 2018. He stated that he lived at 6 St David’s Heights (immediately south of Field A) and had moved in in June 2004. The Rightmove data indicates that 6 St David’s Heights was first sold (as a new build) on 21 June 2004. Mr Thomas said that *“within weeks or a month of moving in, started using the fields”*. He stated his initial use was for running (twice a week in the summer, less in the winter), from 2009 when he got a dog, walking the dog (twice a day but shared with his wife), and from 2013 training his daughter running with speed endurance training (about 6 times a year). Mr Thomas also stated that he used the fields with his children for playing and exploring nature. When running, Mr Thomas said that he would be *“either on the worn paths*

or trampling the grass". He later clarified that he was *"not making huge indentations when running through long grass."*

172. Mr Thomas said he accessed the fields by the gate at Field A, although he had also used the Maes Y Wennol stile. Mr Thomas said that when he first used the gate at Field A in 2004 *"the gate was openable when first arrived, sometimes it was open already, sometimes I opened it myself"*. Mr Thomas said that *"It was open in 2004, then, after 2 or 3 years, some sheep got out and were walking up our street. Then it was fixed and closed."* Mr Thomas said he was not sure if he had been present when the sheep escaped but *"[my] wife jogged my memory"*. He said it *"was shortly after that that the situation with the gate changed."* Mr Thomas did not agree (in cross-examination) that the farmer *"wired it up to stop people going onto [his] land. I have spoken to him when on [the] land. He has not asked me not to be there."*

173. Mr Thomas referred to two occasions when he had spoken to the farmer. One was in 2015 when he was in Field B near the oak tree and it was dark and he had his dog on a lead, and the farmer told him he was looking for a dog that had attacked the sheep. Mr Thomas stated that *"at no point did he tell me to leave and I carried on with my walk"*. Mr Thomas also spoke to the farmer when he was in the Chimney Field with his dog (also on a lead) and the farmer asked him to keep his dog on a lead.

174. Mr Thomas said he could see into Field A from his garden (which adjoins it) and when he first moved in his northern boundary was a *"thorny hedge"* and he would *"go in to the field to trim the hedge"* a few times a year. He said it was a *"daily occurrence"* to see people in Field A, and he recognised some as *"dog-walkers and other regulars"*. Mr Thomas also said he sometimes saw the farmer in Field A baling the grass in the summer.

175. **Emma Wilkins**: Mrs Wilkins gave oral evidence on 15 March 2019, made a written statement dated 8 December 2018, and completed an EQ

dated 26 July 2017. She stated that from 2007 to 2013 she lived at 10 Pen Bryn Hendy (within Southern Area 2) and then moved to 13 Bryn Dewi Sant (to the west of the area of unkempt land north of the Welsh School). Mrs Wilkins stated that she used the fields for daily dog-walking, and had had a dog since 2007 when she first moved to Pen Bryn Hendy. Mrs Wilkins said that her children were born in January 2009 and March 2014, and that it was 6 weeks after her oldest son was born (so about February/March 2009) that she first went to the site with him, walking there from Pen Bryn Hendy. Once her son was walking (which was *“before his first birthday”*) he *“would tumble about”* in the fields. The written statement refers to using Fields A, B, and C, but the map with the EQ is marked (somewhat roughly) to show also the use of Fields J, I, D, and E. She also said that *“we use the other fields when it snows, for sledging down to the river, but not as much.”*

176. Mrs Wilkins said that her route to the fields from Pen Bryn Hendy would vary. Sometimes she would go *“via the School and Field A, sometimes through middle field [the S.106 land] and then in via the Maes Y Wennol stile.”* When Mrs Wilkins moved to Bryn Dewi Sant she would use the gate at Field A, which she said *“has never been open, always closed, sealed with barbed wire.”* Mrs Wilkins said that whilst it could take 30 minutes to walk to the play area near the Maes Y Wennol stile from Pen Bryn Hendy if *“ambling”* with her young son as a small child or toddler, it would take less time (10 to 15 minutes) if *“walking briskly”* but that was preferred to using the closer area of public open space immediately north of Pen Bryn Hendy because that was *“not pleasant, marshy, wet, full of tufts [of] horrible grass, not nice to sit on”*.

177. Mrs Wilkins said they also made use of the S.106 land *“sometimes”* and the Miskin Cricket Ground *“regularly”* for playing cricket when the weather was nice but that was not used for dog-walking.

178. Mrs Wilkins said that she used the fields for dog-walking and children’s activities, including picnics and kite flying, and *“my son learnt to ride bike*

on Field B". She said that her son had his first kite at 3 or 4 (so about 2012/13) and "*we lost several kites in the field*". Mrs Wilkins said that "*we have a particular route around the fields, a circular walk, unless we stop to do things.*"

179. In addition to the persons who gave oral evidence of their use for all or parts of the period from August 2000 to August 2017, there were a large numbers of written statements and EQs from persons describing their use of some or all of Fields A, B, and C in this period. I do not propose to summarise this evidence on an individual by individual basis but will provide a broad overview of its tenor. The written material is set out (arranged in alphabetical order) in File 3 of the Applicant's Bundle, together with the written statements and EQs for users covering the early period from August 1997 to July 2000 (which I have summarised above). However, for clarity I comment briefly on the evidence from persons identified in the Applicant's schedule of users in the early years, whose evidence is not already specifically summarised above.

180. **Stewart Baynham** provided an EQ dated 18 March 2018. It stated that he lived at 31 Maes Y Wennol and had accessed Field B "*from 2000 to 2018*". No date was provided for when any use in 2000 began. The Rightmove data indicates that 31 Maes Y Wennol was first sold (as a new build) on 19 May 2000, so any use by Mr Baynham would not have been before May 2000. However, as indicated above, it is clear from the evidence of other people moving in to the area that use of the fields did not always begin as soon as a person moved in to the area. I do not consider that I can infer merely from a moving in date and in the absence of any other information that Mr Baynham's use of the fields began within the first 3 months of his occupation of the house. However, this means that any use in 2000 is relevant to the period from August 2000.

181. **David Burgess** provided an EQ dated 17 July 2018. It stated that he lived at 21 Maes Y Wennol and had moved there in December 2000 and had accessed Field B "*from 2000 to 2018*". The Rightmove data indicates

that 21 Maes Y Wennol was first sold (as a new build) on 30 November 2000, so any use by Mr Burgess in 2000 would not have been before August 2000 (indeed, it would not have been before the moving in date of December 2000). However, this means that any use in 2000 is relevant to the period from August 2000.

182. **Diane George** made a written statement dated 1 October 2017. Mrs George stated that she lived at 30 Maes Y Wennol and had done so “for 17 years”. The Rightmove data indicates that 30 Maes Y Wennol was first sold (as a new build) on 8 June 2000. Mrs George does not state when she first began to use any of the fields (the map with her statement only identifies Field B). Any use by Mrs George would not have been before June 2000. However, as indicated above, it is clear from the evidence of other people moving in to the area that use of the fields did not always begin as soon as a person moved in to the area. I do not consider that I can infer merely from a moving in date and in the absence of any other information that Mrs George’s use of the fields began within the first 2 months of her occupation of the house. However, this means that any use thereafter is relevant to the period from August 2000.

183. **Craig Griffiths**: Mr Griffiths completed an EQ dated 18 March 2018. It stated that Mr Griffiths lived at 36 Maes Y Wennol and had accessed Field B “from 2000 to 2018”. No date was given as to when in 2000 use of Field B began. The Rightmove data indicated that 36 Maes Y Wennol was first sold (as a new build) on 10 March 2000. Any use by Mr Griffiths would not have been before March 2000. However, as indicated above, it is clear from the evidence of other people moving in to the area that use of the fields did not always begin as soon as a person moved in to the area. I do not consider that I can infer merely from a moving in date and in the absence of any other information that Mr Griffith’s use of the fields began within the first 5 months of his occupation of the house. However, this means that any use thereafter is relevant to the period from August 2000.

184. **George Kerslake:** Mr Kerslake made a written statement dated 30 July 2017. He stated that he lived at 37 Newmill Gardens and had moved there in December 2000, had known “*the fields since then*”, and had accessed them “*since 2000*” by climbing the stile at Maes Y Wennol. The Rightmove data indicates that 37 Newmill Gardens was sold (for a second time) on 4 December 2000. Any use by Mr Kerslake in 2000 would not have been before December 2000, so his use is relevant to the period from August 2000.

185. **Teresa Kerslake:** Mrs Kerslake made a written statement dated 30 July 2017 which was very similar to that from Mr Kerslake and gave the same information on the date of moving in to 37 Newmill Gardens and the same date for accessing the fields. The same conclusions are also applicable about the period the use relates to.

186. Turning from individuals to a broad overview of the written evidence (written statements and EQs) provided by persons making use of Fields A, B, or C in the period from August 2000 to August 2017, the general tenor of that evidence is similar to that provided by the persons who gave oral evidence for that period. There is reference to regular use of the fields (and other fields in the wider area) by local people for the activities of walking, dog-walking, playing by children (including ball games and kite flying), running, jogging, and nature watching, on a generally frequent basis (sometimes daily, sometimes weekly, and sometime more occasionally). Whilst some activities could be consistent with use of the Public Footpath, other activities are more extensive, and those persons using Fields A and C have not limited their use only to use of the Public Footpath.

187. In addition to the written material, I was also provided with a large number of photographs, including photographs of people (and dogs) making use of Fields A, B, and C. None of the photographs of users related to the early part of the relevant period before August 2000, and most were considerably later, and some were outside of the 20 year period

altogether. Typically, they show people in the fields, sometimes on or close to the Public Footpath and sometimes well away from that Footpath. The photos generally show the activities described in the written material.

(v) evidence relating to the period before August 1997

188. Some of the users whose evidence is discussed above commenced their use of the site before August 1997 but since their use also continued in to some or all of the relevant period from August 1997 to August 2017, their evidence is directly relevant to use in the 20 year period, and I have already summarised that evidence.

189. One person (**Neil Matthews**) whose use began before August 1997 also ended that use before that date. Mr Matthews made a written statement dated 1 October 2017 (and further signed on 12 October 2017). Mr Matthews stated that he lived at 2 Old Police House, Miskin and accessed fields he knew as 'Mwyndy Fields' between "*around 1970 – 1985*". Since the last use by Mr Matthews was some 12 years before the start of the relevant period and well before the significant changes to the wider area as a result of the housing developments which took place from 1993 onwards, I do not consider this evidence (assuming it relates to the site) sheds any light on how the site may have been used by local inhabitants in the relevant period.

7. SUMMARY OF THE EVIDENCE PROVIDED BY THE OBJECTOR

190. It is convenient to start with the evidence provided about how the site has been used, managed, and inspected, before considering the more formal evidence about the ownership arrangements.

191. **Daniel Howells**: Mr Howells gave oral evidence on 15 March 2019 and made a written statement dated 16 October 2017. I have already set out (in section 5 above) the details of Mr Howells' farm tenancies which

included Fields A, B, and C, and the wider fields of Cefn Parc Farm, and the fact that he has been 'holding over' since 2017.

192. Mr Howells said he lived at Graig Fatha Farm, Tonyrefail, which was some 5 miles away from the site (to the north west), with the site being *"about 15 minutes [drive] from the home farm."* He also said he farmed *"another 3 or 4 places"*, although the sheep at Cefn Parc Farm simply moved between those fields and Graig Fatha Farm.

193. The farming enterprise comprised Mr Howells, his son, Rob, and a *"couple of boys"*. He stated that *"the property is usually visited on a daily basis either by myself, my son, or my shepherd"*. In oral evidence Mr Howells said that there were *"daily"* visits to Cefn Parc Farm by either him or his son, although he later qualified this to say that *"we go there most days, even if not any sheep there, but even if not, one of the shepherds will go."* Mr Howells said he went more frequently than his son, doing about 5 days a week. Visits could be at any time of day from early morning through to the evening/night time, and would include weekends as well as week days. Mr Howells said *"when I visit, I normally drive around, to see the sheep."* Mr Howells also said he sometimes went there together with his son.

194. With regard to the public footpath, Mr Howells stated that it *"runs through the middle of the land so that it is not feasible to fence the path. To do so would create a physical separation of the Land into two plots which from a farming perspective would be unworkable."* He said that there had *"always been a public footpath across the middle field [Field B]. People are allowed to take dogs on walks on that."*

195. Turning to the gate at Field A, Mr Howells said that *"since we took the ground over in 1994, the gate has been wired up. Anyone tell you different is [talking] crap. It gives access to land we did not take on as part of [the] farm."* Mr Howells was asked (in evidence in chief) whether he had ever re-wired the gate and said *"I do not think it has been cut, we may have had*

to get sheep back in but do not think that [it was] cut.” Later he said there was “There was a fence there initially, we wired the gate, then there was piping for the building works, drainage works, [it] went back to just being a gate, but it was wired up.” I think it is reasonable to infer from this that Mr Howells was saying that there was a period during the construction of the adjacent housing when the gate was not wired up but was “just a gate”, because it was needed to provide access for some drainage/piping works, and that it may have been opened by him to allow escaped sheep to be returned, but otherwise it was kept wired shut.

196. Mr Howells said *“we wired it up to prevent stock getting out. We wired the gate to stop it being opened by whoever.”* Mr Howells also said that *“there was barbed wire across [it] once, but people would only cut it and blame us for the injury.”*

197. In terms of sheep escaping, Mr Howells said *“We have had sheep escaping from various points over the years but I cannot remember when. I cannot be sure how they got out. By the river there are holes in the fence. The gate [at Field A] is wired to stop the sheep getting out.”*

198. With regard to farming activity on the fields, Mr Howells said that *“We had cattle from [the] start in 1994, until about 15 years ago. Stopped due to the danger of it.”* He later explained that *“The cows, they were a danger to walkers”*. This would indicate that cattle grazing ended in about 2004.

199. For sheep, he said that they grazed somewhere between 100 and 400 sheep at Cefn Parc Farm for parts of the year. Generally this would be during the summer months from July/August to September/October, and from November to April, with the grass being grown for silage in between times. Mr Howells said that *“it is a low stocking rate for 50 acres”*. He stated that *“The land at Cefn Parc Farm is used to fatten lambs and old barren ewes throughout the year”*.

200. Mr Howells said that initially sheep were kept on the fields at Cefn Parc Farm when they were lambing but *“it is quite a few years since we did lambing. Probably not for 15 years”* (implying 2004). He said *“The reasons we stopped lambing, it was the amount of dogs. Since more houses, more people walking. Previously, it was more remote.”* He also said *“could not lamb there now. It would not work. Since the residents have come, their dogs have come, and we cannot have lambs.”*

201. Mr Howells said there had been a problem with toxo plasmosis on the land which could cause abortions in pregnant sheep. However, since autumn 2017 (after the end of the relevant period) this had been resolved *“by injecting the sheep before pregnant, and can then put on the land. [It] costs £5 per sheep per year.”* It would appear from this that ewes that were in-lamb (pregnant) were now (from autumn 2017) put on the land to graze, but the lambing itself still took place elsewhere.

202. In relation to the cause of toxo plasmosis, Mr Howell’s written statement was silent, beyond saying *“we have encountered Toxo Plasmosis on the land”*. In oral evidence he said that *“it is caused by cats”*.

203. Mr Howells also referred to another health problem for the sheep, which was *“C-ovis”*. He said *“dogs eat things they shouldn’t, they excrete onto grass, can’t see it, the sheep eat that and the sheep develop cysts, it is on the carcass of the sheep, inside the sheep, see it only after slaughter, if so, the sheep carcass is then binned.”* He said it was not possible to inject sheep against this hazard and *“it lives on the ground for 12 months, you cannot see it. It may be connected with tape worm. That is very common.”*

204. In terms of the silage that was grown on the fields (when not grazed by sheep), Mr Howells said that it had *“not been trodden down too much so we cannot cut it. We use the silage for food”*.

205. In relation to seeing non-farming activity taking place on the fields, Mr Howells initially said he had *“never witnessed ball games or other activities on the land”*, that there had been no *“bonfires, camp fires, rubbish, not on the 3 fields, A, B, C, but it does happen by the [Chimney] tower and down by the river. Not seen picnics on the 3 fields or anywhere else.”* He said that *“teenagers- they drop crap, that does happen, you can see that, by the tower and by the river.”* Later (in cross-examination) Mr Howells said *“I have seen a youngster kick a ball. I have seen people sitting on [a] bale and by the baling machine”*. He said that when he had seen children on the bales *“I have shouted at them. Someone told me, ‘don’t shout at the kids’. I said, ‘I’m shouting to save children’s lives’. They took the children over the stile at Maes Y Wennol and we got on with the baling job.”*

206. With regard to dogs, and people walking dogs on the fields, Mr Howells said *“I shoot dogs if interfering with sheep, but not just for not being on a lead. I have spoken to people who have been on the fields to put dogs on a lead, but if they don’t, what can I do? Not much you can do about it.”* Later he said *“If the dog is close to them, I don’t ask them to do so.”*

207. Mr Howells said he had seen people *“in Field A, I have seen them in every field. I haven’t seen people using the gate but if they do it is illegal.”* He said *“I have only spoken to tell people off in the left-hand field [Field A] if a dog is doing something stupid”*. He referred to finding gin bottles in Field A but said that where he saw non-damaging activity, *“if occasional person, not done anything about them”*. He also said that *“people, if in the top field [Field A] I have let them be, I don’t like quarrelling with everyone I see”*. In terms of the gate at Field A, Mr Howells said he had *“never put up a notice to say ‘private’ or ‘keep out’. We just have not done it. Can’t say why not.”*

208. With regard to the informal gates and stiles from some residential gardens into Field A, Mr Howells said that the gate at 8 Oaklands was *“illegal, can’t see that when it [is] shut”* and *“I had not noticed that stile [at 12 Oaklands]”* and when informed it had been there since 2014 or 2015

said that *“shows how bad my eye-sight is”*. He said that there had been a stile from a garden into Field C, and he and his son spoke to the householder about its removal but *“it is like talking to a wall”* and *“so Rob and I took it down.”*

209. **Lee Lapham**: Mr Lapham gave oral evidence on 15 March 2019 and made a written statement dated 13 October 2017. Mr Lapham is a Chartered Surveyor and was engaged by the Welsh Government (“WG”), or its statutory predecessor bodies, from 1995 to 2017 to carry out asset valuations for WG of its various property interests. The asset valuations are undertaken as at 28 February of each year (although previously that date was 31 March), and to that end a site visit of each property would be made in January or February of that year. Mr Lapham was responsible for this work, including in relation to the site and the wider WG land holding at Llantrisant, but did not do the inspections of the site in 2015 and 2016. Mr Lapham stated that when he inspected the land at Cefn Parc Farm it was being used for agricultural purposes, that there were some tracks over it, and a right of way. He stated that the site was always valued as Asset Category C, which was *“land held for development”*.

210. Mr Lapham said that initially the inspection would simply have been from the site boundaries of the overall holding but that after the site was allocated *“from 2006”* he *“would have looked at the three or four fields in a lot more detail.”* He said that he would use available access points, including parking by the hammerhead near the Welsh School and then walking to the gate at Field A. Mr Lapham said *“The gate was shut, I climbed over it”* and he could not recall if it had ever been openable but *“Even if it was I would have climbed over it.”* He said his inspection had not picked up the stile at 12 Oaklands, but its presence *“would not be regarded as a material change for valuation”*. He said he was aware of the *“tracks, trodden paths”* on the land but they would not affect the valuation.

211. **Paul Williams**: Mr Williams gave oral evidence on 15 March 2019 and made a written statement dated 13 October 2017. He stated that he was an

officer of WG and was responsible for development projects in South East Wales. Most of his evidence was not contentious, and covered the processes involved in promoting the site (and adjacent land) for development. Mr Williams referred to 2 occasions when he had been to the site but he could not recall the dates. He said they would have been during the working day. He said one of the occasions was a visit with WG's joint developer, and he accessed the site via the gate at Field A and went through Fields A, B, C, D, and E. He said he did not recall seeing anybody on the land on that occasion.

212. **Gareth Porter**: Mr Porter gave evidence on 15 March 2019 and made a written statement dated 13 October 2017. He stated that he was a Chartered Surveyor and was employed by WG as a Senior Property Manager with responsibility for WG's land holdings in Miskin since 2008. In particular he was responsible for farm tenancy matters and dealing with Mr Howells. Mr Porter provided details of the tenancy arrangements. He stated that he visited the site at least once a year since 2008, usually in late summer or early autumn. Mr Porter stated that during his visits to the site he had seen people with dogs walking on the public footpath but had not seen any other non-farming activity or other recreational activity.

213. Mr Porter was asked in his oral evidence about the gate at 8 Oaklands, the gate and stile at 12 Oaklands, and the gate at Field A. He said that he had not noticed the informal gates/stile during any of his site inspections but had subsequently looked at them having read the Applicant's supporting evidence. He said that the gate at 8 Oaklands was "*very well-concealed*", although this did not apply to the piping/cladding over the barbed wire which was "*now obvious*" and he was "*kicking myself it was not picked up on a previous inspection.*" He said that the stile at 12 Oaklands was "*very obvious on site now*" and "*stands out like a sore thumb*" but could "*only assume it was concealed*" by the bracken vegetation at the base of the wire fence at the time of his inspections. He said that the gate at Field A was "*not locked, it is wired shut, also embedded in soil now so would struggle to open it anyway.*"

214. **Michael Cuddy**: Mr Cuddy gave oral evidence on 15 March 2019 and made a written statement dated 13 October 2017. Mr Cuddy stated that he was a retired former WG civil servant, and had worked for WG (and its statutory predecessors) since 1978 until he retired in June/July 2012. He provided a narrative of the planning process undertaken in relation to the site (the main parts of which are summarised in section 5 above). In addition, he explained the workings of the s.106 agreement, particularly in relation to phasing. Mr Cuddy also dealt with the history of the WG's holdings at Llantrisant prior to 1993 (from the mid-1980s). Whilst this information is useful background, it was not disputed, and I see no need to summarise it here. To the extent that it is relevant, I refer to it as part of the summary of the evidence from **Jacqueline Rees** on land ownership matters (below) and when dealing with the arguments about statutory incompatibility.

215. Mr Cuddy said that in the course of his duties he had visited the site but (disregarding a recent visit for the purpose of preparation for the Inquiry) he could not recall when, other than that it would have been “years ago, within the last 10 years.” He said his visits were during the working day in the working week and that he had “seen people walking on the right of way. I cannot recall seeing people walking elsewhere on the site.” He also said that he “cannot recall [seeing] any paths from previous visits.”

216. Mr Cuddy said that “the entire acquisition” of the lands at Central Llantrisant “was acquired under the same powers” and that the lands acquired included Coed Yr Hendy woodland. He said “I believe it is referred to as ancient woodland. It is something we would never develop.” He later said that was “in my view, anyway”. He also said that “The lower part, the valley, part of that is a SINC [a nature conservation site], a marshy area. There would be no argument that was not an area for building on.” He later explained that this was habitat that was “important [for the] Marsh Fritillary butterfly and was Rhos pasture”.

217. Mr Cuddy clarified in his oral evidence that when his written statement said (at para 11) that *“We always had in mind that the Land was a natural location for development”*, this was a reference to all of the land held by WG at Central Llantrisant and not simply the three fields comprising the site, and also that there was no document to show the land as a natural location for development. He also clarified that the statement (at para 18 of the written statement) that *“the future development of the Land was always considered an appropriate extension and had been included in our long term stage by stage strategy with regards to the overall development of Central Llantrisant”*, was not a reference to any document setting out such a long term strategy, and *“it would have been assessed, do not want to preclude any options.”*

218. **Peter Waldren**: Mr Waldren gave oral evidence on 15 March 2019 and made written statements dated 19 October 2017, 18 February 2019, and 4 March 2019. Mr Waldren is a planning consultant engaged by WG (and its predecessor bodies) and provided a narrative of the planning process undertaken in relation to the site (the main elements are summarised in section 5 above). He also provided details of the representations made by persons objecting to the most recent planning application (which included the site). In addition, Mr Waldren provided the results of his investigation of the Rightmove date on house sales in the residential streets closest to the site. There was no dispute about the factual material presented by Mr Waldren.

219. Mr Waldren said that the SINC nature conservation designation north of the site included not only the Coed Yr Hendy woodland but also other land up to the A473 and that some of the other planning consents (but not the one for the site) did include parts of the SINC. He also said that a *“SINC designation is not a bar to development”*.

220. Mr Waldren provided his expert opinion on whether a change of use from an agricultural use to an agricultural and recreational use covering

the activities described in the application would be a material change of use and so development under the Town & Country Planning Act 1990. He said that the question *“turns on the character of the use on the land and any effects on neighbouring land.”* He said that *“The character of the 3 fields is agriculture, rough grass and hedgerows. Entirely similar to the other fields that are not part of the TVG application. Regarding impacts, noise, etc, I do not think there are any impacts. Not aware the use has given rise to any complaints. I do not consider there has been any material change of use. I cannot see how [it] would be development.”*

221. Mr Waldren provided some information of his own site visits on 3 occasions over a 12 year period but agreed (in cross-examination) that *“3 visits across 12 years is not necessarily representative of activity”*. During his visits, in 2007, 2008, and 2017 he did not see any other people using the site (leaving aside planning professionals associated with a formal site visit for a planning appeal and his young daughter who accompanied him in January 2017).

222. **Jacquelyn Rees:** Ms Rees provided a written statement dated 19 October 2017 and a second statement dated 15 March 2019. This second statement provided clarification of some of the ownership details and transactions in response to some queries I had raised. The Applicant confirmed (through Ms Sullivan) that she was content that there was no need for Ms Rees to give oral evidence in the light of that new evidence. Ms Rees did not therefore give oral evidence. Her evidence was not disputed. I do not consider it is necessary to summarise all of that written material (I have drawn on it in section 5 above in relation to the position from late 1993 onwards) but will refer to it as relevant when dealing with the argument on statutory incompatibility.

223. It is, however, useful to set out a broad summary of the pre-1993 position, taken from the non-contentious information provided by both Ms Rees and Mr Cuddy.

224. It would appear that in the mid to late 1980s LAW was interested in acquiring land for development in the Llantrisant area. For whatever reason, this was not achieved by the simple means of LAW acquiring the land that it wanted. It seems that instead LAW entered into an arrangement with an entity then known as International Land and Development (Cardiff) Ltd. This entity on 23 August 1989 changed its name to Helical Bar (Wales) Ltd (which I have already referred to in section 5 as 'HBL'). Since nothing turns on the change of name I will refer to the entity throughout as HBL.

225. The arrangement between LAW and (what became) HBL was formalised into an agreement dated 23 September 1988⁶⁴ whereby HBL would tender for extensive lands at Llantrisant (and elsewhere) that were being marketed for sale by Western Ground Rents for the owner, Ropemaker Properties Ltd (the lands having previously been part of the Bute Estate), but on the basis that if HBL was successful it would then in future transfer certain parts of the acquired lands to LAW in tranches over a 5 year period. At the time of the 1988 Agreement, HBL had already been short listed to tender for certain of the parcels being offered for sale but not for others. It was agreed that if HBL succeeded in the tender for Lot 1, it would hold that land as trustee on behalf of LAW.

226. One element of Lot 1 which was subject to this arrangement, was parcel 1.1.17, described as "*Land at Central Llantrisant*". In all, this parcel was an area of some 346 acres, and included the site and other surrounding areas of land at Llantrisant, generally (but not exclusively) west of the A4119 and generally (but not exclusively) north of the B4264.⁶⁵ HBL was successful in its tender, at least as regards parcel 1.1.17, and it was acquired by HBL from Ropemaker Properties Ltd by a conveyance and transfer dated 28 October 1988.⁶⁶ On 28 October 1993 HBL then

⁶⁴ Extracts of the Agreement are at Exhibit JR1.

⁶⁵ There is a poor quality map showing parcel 1.1.17 at p.240 of Exhibit JR2, and a better and clearer map of the same area at p.10 of Exhibit JR6.

⁶⁶ Extracts of the conveyance are at Exhibit JR3.

transferred the land, including parcel 1.1.17, to LAW (as already set out in section 5 above). This parcel included the site, and as indicated in section 5, the site (and other land) was then transferred from LAW to WDA, then to NAW, and now to the WM.

227. It is relevant to note that one term of the transfer dated 28 October 1988⁶⁷ between HBL and LAW was as follows:

“The land hereby transferred is being acquired for the purposes of residential and or commercial and or industrial and or retail development and or any other development necessary for the purpose of carrying out its functions under the provisions of the Local Government Planning and Land Act 1980.”

228. It was by means of the Transfer of 28 October 1993 that the site came into the ownership of a public body (LAW), albeit that since 28 October 1988 the site had been held by HBL on trust for LAW.

8. THE STATUTORY REQUIREMENTS FOR REGISTRATION

229. The application has been made in reliance on s.15(2) CA 2006. The relevant parts of s.15 CA 2006 provide:

“(1) Any person may apply to the commons registration authority to register land to which this Part applies as a town or village green in a case where subsection (2), (3) or (4) applies.

(2) This subsection applies where –

(a) a significant number of the inhabitants of any locality, or of any neighbourhood

⁶⁷ The Transfer dated 28 October 1993 is at Exhibit JR9.

- 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.”*

230. In order for use of the site to support a successful TVG application under s.15(2) CA 2006, the Applicant (who bears the onus of proof) would need to show, on a balance of probability:

- (i) that within the vicinity of the site there is a *“locality or neighbourhood within a locality”*;
- (ii) that a *“significant number”* of the inhabitants from the *“locality”* or *“neighbourhood”* (as applicable) have used the land;
- (iii) that their use has been for *“lawful sports or pastimes”*;
- (iv) that their use has been *“as of right”*;
- (v) that their use has been for a period of *“at least 20 years”*;
- (vi) that their use is continuing at the date of the application.

231. These elements are cumulative and all must be satisfied in order for the requirements for registration to be made out: see R (Beresford) v City of Sunderland [2003] UKHL 60, per Lord Bingham at para 2.

232. Because it featured as a key issue raised by the WM in their objection, it is worth saying something at the outset about the burden of proof. In R v Suffolk County Council ex parte Steed (1996) 75 P&CR 102, Pill LJ said (at p.111):

“... I approach the issue on the basis that it is no trivial matter for a landowner to have land, whether in public or private ownership, registered

as a town green... Use, as of right, and as inhabitants of Sudbury, for sports and pastimes must be 'properly and strictly proved'".

233. Pill LJ had taken the phrase *"properly and strictly proved"* from a passage of the judgment of Sir George Jessel MR in Hammerton v Honey (1876) 24 WR 603 on the establishment of a customary right at common law (which he had cited at p.105).

234. In R (Cheltenham Builders Ltd) v South Gloucestershire District Council [2004] 1 EGLR Sullivan J said in relation to a TVG Inspector's report (at para 29):

"When dealing with "the issues", the report correctly stated that the onus was on the applicants for registration to prove, on the balance of probability, that the site had become a village green. Thus, the applicants had to demonstrate that the whole, and not merely a part or parts, of the site had probably been used for lawful sports and pastimes for not less than 20 years."

235. Taking these passages together, it is clear that the onus is on the Applicant to show, on the balance of probabilities, that all of the requirements for registration are made out. That, therefore, is the approach I have adopted in considering the evidence that has been provided by both parties.

236. It is convenient also at this stage to set out how I have approached the user evidence that was provided in written form only rather than being available to be tested by questioning. This material comprised written statements and the various EQs. The WM made detailed submissions in the Closing Submissions about this written evidence,⁶⁸ and in essence suggested that it should carry less weight, and that unanswered questions

⁶⁸ WM Closing Submissions, paras 3.1 to 3.11.

arising from it or ambiguities in it should be resolved in favour of the WM, in order to be consistent with the Applicant bearing the onus of proof on all matters relating to the requirements for registration. The Applicant, in her Closing Submissions,⁶⁹ placed less weight on the written user evidence, and focused primarily on the oral evidence of user, but submitted that the written user evidence should not be discounted, noted that 101 of the statements were supported by a statement of truth, and that all statements were signed and dated, which gave them formality, meaning they should be given weight accordingly.

237. I accept that the written material was compiled in good faith with a view to its makers providing correct information on the matters they described. Whilst it is possible that some of those making the statements were as much motivated by finding a way to hinder or halt the proposed development of the site as by the intrinsic worth of a TVG application, I see no reason to infer that they set out to provide false or inaccurate information in their written material. However, this does not mean that the material should be accepted uncritically. The standard form of the various EQs, in terms of the questions asked, was not always detailed enough to help identify where or when activities being referred to took place, or to make it clear that the activities described should be attributable to use of the land for lawful sports and pastimes.

238. For example, the EQ from **Stewart Baynham** dated 18 March 2018 was completed to indicate that, of the three fields A, B, and C, it was Field B that was used “*most heavily*”, with access being gained from a point marked at the Maes Y Wennol stile, and the activity undertaken being described as “*walking, playing games with children, dog walking.*” Without any further information, there is no basis to infer that Mr Baynham made any use at all of Fields A and C. Also, his use of Field B for walking and dog-walking, starting from the Maes Y Wennol stile, could be no more than use of the public footpath. Without any further description of these

⁶⁹ Applicant’s Closing Submissions, paras 94, 98 to 102.

activities in terms of where they occurred within Field B, there is nothing to allow me to infer that the activities took place away from the line of the public footpath.

239. Walking and dog-walking on a public footpath which runs across land which is claimed as a TVG but which is not registered as a TVG can present problems of interpretation. The WM drew attention to the guidance on this matter given by Lightman J in the first instance decision in Oxfordshire County Council v Oxford City Council [2004] EWHC 12 (Ch) at paras 96 to 105. When the case reached the House of Lords, [2006] 2 AC 674, Lord Hoffman called Lightman J's remarks "*sensible suggestions about how such evidence might be evaluated*" but declined to give any guidance himself, on the basis that "*Every case depends upon its own facts and I think that it would be inappropriate for this House in effect to legislate to a degree of particularity which Parliament has avoided*" (at para 68).

240. The issue has to be examined in terms of how that activity would appear to the reasonable landowner (assuming that he observed that activity). The question is whether there is anything in the way in which the activity was undertaken that would alert a reasonable landowner, knowing that there was a public footpath running across Field B, that the person concerned was not exercising the right of way but was exercising as of right the right to indulge in lawful sports and pastimes. Where the only information in a written statement or EQ is that a person was "*walking*" or "*dog-walking*" I do not consider there is any evidential basis to conclude that this was more than the use of a public footpath.

241. "*Playing games with children*" is extremely broad-brush as a description, without any details of the activities or the ages of the children concerned. Playing a game of i-spy whilst on a country walk, or an adventure expedition to visit "*Rapunzel's*" tower, could be one person's view of playing games with children, whereas a kickabout football game or a game of tag could be another's. One could be consistent with the use of

a public footpath whereas the other is unlikely to be. There is nothing in the EQ to allow an inference to be drawn that the activity described simply as “*playing with children*” should be taken to be the latter, involving the use of the land beyond merely the exercise of rights to use the public footpath. The EQs from **Lionel Blake** and **David Burgess**, though differently worded, give rise to the same issues, because they also only refer to the use of Field B and to activities of either walking or playing with children.

242. The written statements also leave open questions about what is being described. For example, **Edwin Burke** of 8 Oaklands (the house later bought by **Sophie Seymour**) highlighted on the plan attached to his statement the use of Fields A, B, C, D, E, F, G, H, I, J, L, and M and stated that they were “*the fields we have used from 1999 to 2017*”. He stated that to use the fields he would “*climb over the gate behind houses at St David’s Heights. I would then walk Eastwards and Northwards over the fields to the monument and back the same way or up to Maes Y Wennol. I would also walk to Aldi and the shops by there through the fields. From 2010 I got to the fields directly from a gate in my garden and would then walk Eastwards. I would usually take the dog for a walk and also walk with my wife, and sometimes children and grandchildren when they visited.*” The journeys described could be consistent with someone walking along the paths as an incipient or nascent public right of way that was in the process of being created by implied dedication over Field A and Field B, or as an incipient or nascent private right of way that was in the process of being created by prescription from their garden over Field A, or in the case of the route from the “*monument*” to Maes Y Wennol, using the public footpath in Field B, rather than someone engaging in lawful sports and pastimes. Certainly, in any event, walking to the shops and back would not be use for a lawful sport and pastime. Without any further detail, it cannot be inferred that there was any wider use of any of the fields.

243. In addition, there were cases where persons who gave oral evidence had earlier made a written statement and/or completed an EQ. The oral evidence in some cases differed from the written material in important

respects, such as on dates. For example, the EQ from **Huw Davies** stated that he used the fields “*From 1996 to 2017*” and his written statement stated that he had walked his dog on the fields “*as often as 3 times a week and I have done so since I moved to my present address back in 1996/97.*” However, in his oral evidence he said that “*after a few months [from moving in] I came to know the area and the pathways in 1997 – could not give an exact date – but I have been walking the paths ever since*” and that “*while houses were being built did not want to walk around as so much construction traffic, there was a period I would not have used those fields or where houses being built because of that.*” In other words, the fuller picture of Mr Davies’s evidence which emerged from questioning showed that his use did not begin in 1996 but at an unspecified point in 1997 and that thereafter there was an indeterminate period, during the building works, when he did not use the fields.

244. Similarly, the written statement of **Frank Hossack** stated that he moved to his address (7 Heol Isaf Hendy) “*during 1998*” and “*Being dog owners, me, my partner began using fields A, B and C from the time we occupied the property.*” However, in his oral evidence Mr Hossack said “*it was 1999 onwards that I became familiar with the wider area, once the main house commitments were completed, would have been when the weather started to improve.*” The fuller picture was therefore that use did not begin in 1998 (as suggested by the written statement) but at some time in spring/summer of 1999.

245. In the light of such differences between the written material and the oral evidence, I consider that where there is only written material from a particular user, I need to treat that material with some caution because, in the absence of questioning and testing of that evidence, I cannot know what might have been said to qualify some of the written material. That said, I do not consider that I should disregard the material as having no evidential value. I have taken the material into account, but I have given it less weight than the oral evidence. Where the written material is supportive of what is set out in the oral evidence, I have regarded it as

evidence which reinforces the picture I heard from those who gave oral evidence. However, where there is no oral evidence on an issue, I have not regarded the written material as sufficiently persuasive in itself, and in the absence of other corroborative evidence, to discharge the burden of proof.

9. DETERMINING ISSUES

246. The requirements for registration are set out above. I shall consider them in turn, although in the light of the evidence and the conclusions I have reached I will set out my reasoning more fully on some elements than on others. Whilst for convenience I have set them out as separate elements and in an order which I consider is logical, I do not lose sight of the fact that the test in s.15(2) CA 2006 is a single test, and it is either satisfied or it is not (applying the onus and standard of proof discussed above).

247. In addition to the question of whether the statutory requirements for registration have been satisfied (applying the evidential test above) there is a separate legal issue which arises if I conclude that those requirements are satisfied. That is the issue of whether, nonetheless, registration would be precluded by the legal doctrine of statutory incompatibility because of the statutory basis on which the WM (and/or their statutory predecessors) hold the land which is the subject of the application. Since it is my conclusion (and so my recommendation) that the statutory requirements for registration are not satisfied, I have set out my conclusions on the issue of statutory incompatibility in shorter form.

(i) Has it been shown that within the vicinity of the site there is a “locality or neighbourhood within a locality”?

248. This issue was discussed in section 4 above and it has been clarified that the application is put forward on the basis that Miskin village, as

delineated by the blue line shown on the Miskin Boundary Map is a “*neighbourhood within a locality*”. The WM did not contest that this area was “*capable*” of being a neighbourhood within a locality. In Cheltenham Builders Sullivan J said (at para 85):

“It is common ground that a neighbourhood need not be a recognised administrative unit. A housing estate might well be described in ordinary language as a neighbourhood... The registration authority have to be satisfied that the area alleged to be a neighbourhood has a sufficient degree of cohesiveness; otherwise, the word “neighbourhood” would be stripped of any real meaning.”

249. The information provided about facilities and geography of Miskin village, and the links between its residents (as described in the undisputed evidence on this matter provided by Ms Seymour) is sufficient in my view to show, on the balance of probabilities, that Miskin village, as delineated on the Miskin Boundary Map, has a sufficient degree of cohesiveness to be a “*neighbourhood within a locality*”. Whilst the onus was on the Applicant to demonstrate this point, the WM did not, in reality, seek to argue that this part of the test was not satisfied by the evidence presented.

(ii) Has it been shown that a “significant number” of the inhabitants from the neighbourhood have used the land?

250. This issue needs to be considered in the context that it must also be shown that the qualifying use by the “*significant number*” of local inhabitants has been taking place on the land for “*at least 20 years*”.

251. In R (McAlpine Homes Ltd) v Staffordshire County Council [2002] EWHC 76 (Admin) Sullivan J said (at para 71):

“Dealing firstly with the question of a significant number, I do not accept the proposition that significant in the context of section 22(1) as amended [now s.15 CA 2006] means a considerable or a substantial number. A

neighbourhood may have a very limited population and a significant number of the inhabitants of such a neighbourhood might not be so great as to be properly described as a considerable or a substantial number. In my judgment the inspector approached the matter correctly in saying that “significant”, although imprecise, is an ordinary word in the English language and little help is to be gained from trying to define it in other language. In addition, the inspector correctly concluded that, whether the evidence showed that a significant number of the inhabitants of any locality or of any neighbourhood within a locality had used the meadow for informal recreation was very much a matter of impression. It is necessary to ask the question: significant for what purpose? In my judgment the correct answer is provided by [counsel] on behalf of the council, when he submits that 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.”

252. Having made the point that a “significant number” might not be a large number of people in absolute terms, and that it would depend in part on the size of the population of the relevant neighbourhood, Sullivan J went on to say (at para 72), *“I accept that, if all of those six witnesses had said that they had not seen others on the land over the 20-year period, then it would be difficult to see how six out of 20,000 or one out of 200 could be said to be significant. But the fact of the matter is that they did not give such evidence: they were able to give evidence, not merely about what they did themselves, but what they saw others doing on the meadow over the 20-year period.”*

253. The comparative figures that Sullivan J referred to were explained at para 50 of his Judgment, with 20,000 being the population of the relevant “locality” and 200 being the population of the relevant “neighbourhood”. Only one of the witnesses in that case covering the full 20-year period came from that neighbourhood and the other five came from the locality.

254. In the same case Sullivan J rejected an argument that the Inspector had not been entitled to conclude that a significant number of local inhabitants had used the land just because only six people gave evidence of use during the whole of the 20 year period and others gave evidence of use in the recent past, in periods going back almost 20 years, and some covering periods before the 20 year period began. He said (at para 73):

“It is difficult to obtain first-hand evidence of events over a period as long as 20 years. In the present case there was an unusual number of witnesses who were able to speak as to the whole of the period. More often an inspector at such inquiries is left with a patchwork of evidence, trying to piece together evidence from individuals who can deal with various parts of the 20-year period...”

255. However, Sullivan J did add a note of caution to reliance on “*piecing together evidence*” using a “*patchwork*” approach, saying at para 74:

“If there had been anything to suggest circumstances might have changed — a change of ownership, a change in the physical condition of the land, fences erected, bridges broken down, gates locked — then there might have been some substance in [counsel]’s submissions. But there is no evidence to suggest that there was any relevant change that might reasonably lead to the conclusion that evidence about what was happening, say, 15 years ago was not relevant for the purpose of deciding what was happening 20 years ago.”

256. I consider that cautionary note has particular relevance to the circumstances of the present case. It is entirely unsurprising that many of those who have provided oral or written evidence of their use of the site have been persons living in the residential streets lying to the immediate south/southwest of the site (i.e. Northern Area 2). That is graphically illustrated by the blue dots showing the addresses of users on the Miskin

Village Green Users plan.⁷⁰ The plan shows some 200 blue dots overall (some representing two people but most representing one person), and some 130 (i.e. a substantial majority) come from Northern Area 2. However, it is also the case that at the beginning of the 20 year period (in August 1997) there was very little housing in this part of Miskin and most of those people were simply not present. Plan 2⁷¹ submitted with the WM's skeleton argument has a similar spread of dots of users' addresses (using a different colouring system) but this shows that none of the persons claiming use over the full 20 year period are persons resident in Northern Area 2 (they are in either Southern Areas 1 or 2). The Rightmove data discussed in section 5 above is not comprehensive but it shows that as at August 1997 there had been less than 20 recorded sales in Northern Area 2 (mostly in Dol Y Llan, a few in Oaklands and Newmill Gardens, and none recorded in Maes Y Wennol or St David's Heights).

257. In other words, in the early part of the 20 year period (before August 2000), the areas closest to the site were only partially developed and much remained as a building site. This is borne out by the numbers of people from Northern Area 2 who indicated (or the Rightmove data indicated) that they were the first occupiers of their new built home (such as **Deborah Hearle** (May 1998), **Sharon Damon** (June 1997), **Martin Tucker** (June 1997), **Barrie Waite** and **Andrea Waite** (August 1997), **Mr M G Parsons** and **Mrs C V Parsons** (July 1998), **Rebecca Lloyd** (May 1997), **David Rees** and **Carol Rees** (August 1998), **Alvin Fripp** and **Ann-Marie Fripp** (April 1999), **Lionel Blake** (June 1997), **Deborah Coleman** and **Robert Coleman** (February 1998), **Eryl Davies** (February 1999), **Michael Doyle** (September 1998), **Janet Emery** and **Enid Lilwall** (October 1998), **Yvonne Farrant** and **Rachel Farrant** (November 1998), **Simon Longman** (October 1997), **Phil Pengelly** (May 1998), **Lisa Powell** (August 1998), **Kwai Tan** (May 1998), **Jan Steele** (December 1999), **Stewart Baynham** (May 2000), **Diane George** (June 2000), and **Craig Griffiths** (March 2000)). Not all of these

⁷⁰ This plan, based on an aerial image of the Miskin area, was provided with the Applicant's Skeleton Argument in response to a request made in my Pre-Inquiry Directions.

⁷¹ WYG Plan no. P.02.

people began their use in the early period (as discussed in section 6 above) but the point here is that new build houses were still being constructed and sold during the whole of that early period. Indeed, construction continued on some parts of Northern Area 2 even after August 2000 (**Ceri Thomas** did not move into a new build house at 6 St David's Heights until June 2004). This is also apparent from the Rightmove data for properties within Northern Area 2, with none of the houses in St David's Heights, Shadow Wood Drive, Bryn Dewi Sant, and Crystal Wood Drive (some 118 dwellings) being sold before 2004.⁷² Even after the houses were built, construction activity continued in the area near the site, with the Welsh School clearly not apparent in the 2000/2001 aerial photograph⁷³ and some indication that it did not open until 2005.⁷⁴ The area closest to the site was therefore an area of marked transition, in terms of its physical characteristics, during the early part of the 20 year period.

258. The presence of building activity in the immediate locality in the early period clearly had an effect on the pattern of use of the site. **Huw Davies** said that *"while houses were being built did not want to walk around as so much construction traffic, there was a period I would not have used those fields or where housing being built because of that."* He gave a graphic image of what conditions were like on the building site: it was *"full of caterpillar tracks, diggers, etc."* **Helen Batchelor** said she did not go to the fields as much when the building was taking place and *"it was a shock when got to end of quarry to find these being built."* I do not consider this evidence to be in the least surprising. Construction sites are often noisy and muddy and a source of large vehicles, none of which is conducive to recreational activity.

259. In these circumstances of marked changes to the immediate surroundings of the site (which would affect access routes to it) and also

⁷² The Rightmove data produced in Exhibit PW19 does not give details for Shadow Wood Drive, Bryn Dewi Sant, or Crystal Wood Drive but the figures are set out in the agreed note on housing completions.

⁷³ Exhibit GP4

⁷⁴ Second Statement of Sophie Seymour, para 3.43.

marked changes in the numbers of people living closest to the site (who would be expected, as a matter of common sense, to provide a great number of the 'pool' of potential users), I do not consider it would be reasonable to regard evidence of activity taking place on the site once the housing development was complete (and the area had 'settled down') as persuasive evidence to inform a judgment as to how the site was being used in the early period. In my view it is necessary to look at the actual evidence of how the site was being used in the early period, rather than to assume that what was happening later on can or should be taken as representative of what was happening in that early period. In my view the facts are quite different to the facts that Sullivan J was considering in the McAlpine case.

260. In this regard it needs to be borne in mind that what s.15(2)(a) CA 2006 requires is that there is a qualifying use of the land by *"a significant number of the inhabitants"* of the relevant place *"for a period of at least 20 years"*. In other words it is not just that the qualifying use has to have endured for 20 years, such use must be by *"a significant number of inhabitants... for a period of at least 20 years"*. Thus, if a *"significant number"* of local inhabitants have used the land but only for 19 years, the test will not be satisfied. Equally, if a *"significant number"* have used the land for 19 years but there was only isolated or sporadic use by a few individuals in the preceding year, which could not be sensibly regarded as a *"significant number"*, it would not be possible to add that isolated use to the later use to then conclude that overall there had been use by *"significant number of the inhabitants"* for a period of *"at least 20 years"*. In the first year of the required *"at least 20 years"* period, the requirement would not have been satisfied.

261. In the context of this case, bearing in mind the changes in circumstance outlined above, I think it is necessary to look at the position by reference to reasonable periods of time rather than merely looking at the 20 year period as a whole. Of course, it would be unreal to suggest that there had to be qualifying use by a *"significant number"* of local inhabitants on every single day of the 20 year period, or that within any period of time there could not be periods of greater or lesser qualifying recreational activity (as between

weekdays and weekends or as between winter and summer). A 'snap-shot' looking at too short a period would not be representative.

262. However, with this in mind, I consider that looking at the position on a 12 month basis provides a reasonable period of time to see what the general or typical pattern and level of use is, allowing for such fluctuations. A 12 month period (even one spread across calendar years because the 20 year period started in August 1997) will, of course, include weekdays, weekends, holiday periods, and each of the different seasons. In addition, as a cross-check and to gain a broader picture, I have also considered the position taking successive years together, looking at the early period from August 1997 to August 2000.

263. I have set out in some detail in section 6 above the evidence from users in the early period. I now propose to comment on that evidence and indicate the conclusions I have reached as to whether it shows a “*significant number*” of local residents were using the site for lawful sports and pastimes as of right in that period.

264. In the first 12 month period there were 3 people who gave oral evidence of their use. **Huw Davies** moved into a new house in Southern Area 2 in autumn 1996 and started walking around the area and its various pathways from some time in 1997. He lived close to the southern end of public footpath 354 and took his dog for walks in the locality, including getting up to the fields comprising the site. He followed paths initially, before he knew where he was going, but thereafter he walked all over. According to Mr Davies there was no building site when he first visited the fields. Bearing in mind the facts about the development of the housing to the south of the site, if there was a period after autumn 1996 (prior to the first 12 months of the relevant period) when there was no building taking place in Northern Area 2, it must have been very short indeed because the Rightmove data shows there were house sales beginning in Dol Y Llan from February 1997, in Newmill Gardens from July 1997, and in Oaklands from March 1997.

Obviously, building works to construct those houses (and the roads giving access to them) must have started some months before these sales took place.

265. Since Mr Davies said he moved in to his house in autumn 1996 and it was after a few months that he came to know the area, I am not persuaded that when he first visited the fields comprising the site there would not have already been a building site on the land immediately to the south. Assuming that, when he walked up public footpath 314 to what is now Fforde Cefn Y Hendy, he found a building site ahead of him, full of construction vehicles, diggers, and caterpillar tracks, I can accept that he may well have tried to find a way round it, rather than going through it to the Maes Y Wennol stile, and so come to the western side of Field A. Mr Davies was clear that he did reach that point, although he could not recall the route he used to do so.

266. Mr Davies did not recall a gate at Field A being there at the outset, but his specific recollection was that he did not have to open or climb over a gate then, rather than ruling out there being a gate at all. If the gate had been left open by others, or temporarily removed, to allow access for the drainage/pipe works that **Mr Howells** said was linked to the building works, it is possible Mr Davies passed through the gateway without needing to open a gate.

267. However, it is also the case that Mr Davies said that when the land to the south was a building site he did not use the fields (meaning the site). Trying to reconcile this evidence, and bearing in mind that Mr Davies was trying to recollect common place events (rather than special occasions) from over 20 years ago, it seems to me that any visits Mr Davies made to the site in the period of the early construction works, when the ground was being cleared and the roads were being laid out, were likely to have been infrequent rather than regular events because, even if the fields themselves were not being built on, the route to get to them involved negotiating construction traffic and churned up ground, which would not be an attractive proposition for dog-walking. I also keep in mind that Mr Davies had other

closer areas of open land available for dog-walking in those early years. Thus, whilst I accept that Mr Davies made some use of the site during the first 12 months of the 20 year period, I am not persuaded that it was anything like the three times a week he referred to. I consider it more likely that Mr Davies, as part of his explorations of the wider area in the months after he had moved in, came across the fields and may have occasionally walked there, but deferred any regular use of them for dog-walking until much later on, when the land to the south was no longer a building site.

268. **Deborah Hearle** moved to Dol Y Llan in May 1998 and said she took her dog for daily walks in Fields A, B, and C from then onwards, attracted by the fields rather than by the presence of the public footpath. At that time she said the area around Maes Y Wennol was still a building site but she was clear that she accessed the fields via the stile to Field B, which she had to carry her dog over. I did not find her claim that she did not “log” that this was a public footpath convincing. It was inconsistent with her earlier evidence that she was aware of the public footpath sign on the stile and knew that it was OK to go there since it was a public footpath. The stile has the typical appearance of a stile on a right of way, including finger post markings. However, I can accept that it may not have been immediately obvious where the route of the public footpath was within Field B because the worn path which is now present does not seem to be apparent in the 2000/2001 aerial photograph. I can accept that Ms Hearle may well therefore have taken her own route or routes once she had crossed the stile.

269. The issue is not whether Ms Hearle thought she was following a public footpath or not, but how her activity would have appeared, on an objective basis, to a reasonable landowner, had they seen Ms Heale lift her “wuss” of a dog over the stile and then play with it in the fields. If this activity took place in Fields A and C as well as in Field B, I do not think the reasonable landowner would have interpreted it as merely a user of the public footpath who had lost their way, but whether it would be seen as “*general use by the local community for informal recreation rather than occasional use by*”

individuals as trespassers” is a matter which depends on the other evidence of use in that first 12 month period.

270. **Helen Batchelor** was a long-standing resident of Southern Area 1 (since 1978) and had initially used the fields with her children up to 1994. However, this use had ended well before the relevant period. Her use from 1994 was for dog-walking, where the site was on one of the routes in the area that she would walk. From where she lived, the southern end of public footpath 315 was only a short distance away. However, once the land to the south became a building site, Mrs Batchelor did not go to the fields on the site as much, being shocked to find housing being built when she got beyond the quarry. Whilst she did say she would not go through the building site but would “go round”, she was also clear about not using the site as much at that time. In addition, her reasons for walking to the fields rather than to the other open land closer to home, was to appreciate the “lovely view” but I think it reasonable to regard this prospect as somewhat less of a draw if it entailed trudging through or round a building site to get there. I consider, taking her evidence overall, it is likely that during the early period, when there was considerable construction activity taking place, Mrs Batchelor was only an occasional visitor to the site, being deterred by the building works, and having closer alternatives for dog-walking available to her (and used by her).

271. In terms of the written evidence for the first 12 months, it covered some 21 people, discounting **Michelle Lindley** and **Dr Enoch** for the reasons discussed previously in section 6. The evidence was lacking in full detail as to the specific areas used or as to the activities undertaken, leading to some of the problems of interpretation discussed above. Nonetheless, I think it is reasonable to conclude that there was some degree of use of the site which went beyond merely using the public footpath in Field B or walking along paths or tracks that might be incipient rights of way, but it is very difficult on the evidence to reach firm conclusions as to its regularity or frequency.

272. Some users indicated that their use was not on a regular basis (**Mr A Flicker** and **Mrs P Flicker**), or was “*yearly or more than yearly*” (**Barrie Waite** and **Andrea Waite**). Others claimed a degree of use that I find somewhat improbable given their distance from the site (**Non Lawrence** of Miskin Crescent referred to dog-walking on Fields A, B, and C “*twice a day*” and **Mark Rowlands** of Heol Cefn Yr Hendy referred to playing games with his children on Fields A, B, and C “*most days during summer and winter months*”). These fields were not (and are not) the only open land in the area, or the only land suitable for dog-walking or playing with children. I am not persuaded that they had (or have) attributes that made them so much of a draw, compared to alternative locations, that they would be singled out by those resident in Southern Areas 1 and 2 for daily, twice daily, or near daily visits.

273. I also bear in mind the evidence from **Mr Howells**, who was a regular visitor to the site. Whilst I note that he was not there every day, because his visits were shared with his son and the shepherds, he was certainly there at least weekly, and at varying times of the day. He made it clear that farming was not a 9-5 Monday to Friday operation, but including visits at the weekends, early in the morning and late in the day. Undoubtedly, he encountered walkers and their dogs on the land and saw children there kicking balls or climbing on the baled grass at times. However, his evidence was that until about 2004 he had been able to graze cattle on the land and to keep his pregnant sheep there during the lambing season, but that both of these activities had then ceased due to the increasing numbers of people (and their dogs) that he encountered on the land. I see no reason to doubt this evidence, which indicates to me that in the early period (including the first 12 months), the level of recreational activity was much lower than it has been in the recent past.

274. I note that the various professionals engaged by the WM (or their predecessors) said that on their site visits and inspections they had not seen any recreational activity beyond walking/dog-walking on the public footpath. However, only Mr Lapham gave evidence which clearly related to the early

period, and in particular to the first 12 months. Since his visits were confined to the working day, and would not include early mornings when a lot of dog-walking tends to occur or weekends when a lot of leisure activity by both adults and children tends to occur, and before 2006 he said his inspections were limited to looking at the land from the boundaries of the overall holding, rather than a field by field inspection, I do not regard this evidence as sufficient to displace the impression I have formed from the oral and written evidence of use that there was some degree of recreational activity in the first 12 months beyond mere use of the footpath.

275. However, the key question is whether the use in the first 12 months was sufficient to amount to use by “*a significant number of the inhabitants of the neighbourhood*”, recognising that this is a matter of impression and that it is a question of how the use would have appeared to the reasonable landowner.

276. In terms of the three people who gave oral evidence of use in that 12 month period, I do not regard that evidence, even taken together, as anywhere close to indicating to a reasonable landowner that there was general use by the local community for informal recreation rather than occasional use by individuals as trespassers. Each of the three was carrying out an activity as an individual, predominantly dog-walking or playing with a dog, at times to suit their own routines. Whilst some saw other people on their visits, Ms Hearle was not certain where that was and Mrs Batchelor said this did not happen as much when there was building going on. Even adding all of the 21 people whose written evidence covers that period and who refer to activities which I consider go beyond mere use of the public footpath, I do not consider that the level of use that can be discerned goes beyond occasional use by individuals. Nor do I think it would be reasonable to assume that there was a greater number of people using the land than those who provided the evidence, since those who said or stated that they saw others could well have been seeing one or more of the other persons providing oral or written evidence of use in this period. I do not consider it

would be reasonable to infer, without any evidential basis, that the people they saw were additional people.

277. At that time the local community (i.e. the neighbourhood) comprised some 900 people at the start of the 20 year period, growing to just under 1,200 people by July 1998, and in that context I consider that to have 24 people making occasional visits to some parts of the site during the course of a year, even accepting that some did so on a daily or weekly basis, would not be use by a “*significant number of the inhabitants*” of the neighbourhood of Miskin. I think it would signify to a reasonable landowner, knowing that there was a public footpath across part of the site and that there were both established and growing residential areas within walking distance, that there was something of an issue in terms of occasional trespass, but it was not (in the early period) at a level which inhibited the tenant farmer’s use of the land, either for cattle grazing or for lambing, and certainly not at a level that would connote general use by the local community for informal recreation.

278. Moving on to consider the next 12 month period (August 1998 to July 1999) there are a further four witnesses who provided oral evidence. **Frank Hossack**’s evidence was that before 2000, when he began to visit a friend who had moved into Newmill Gardens, and as a result saw Field C and became aware of the Maes Y Wennol stile, his visits to the site (via the gate at Field A) occurred on no more than “*a couple of occasions*”. This was clearly very intermittent or sporadic use pre-2000. **Rebecca Lloyd**, though resident in Dol Y Llan from March 1997, did not make any use of the site until Easter 1999, initially for family walks with her 6 or 7 month old baby in a sling. She said that the route from the stile at Maes Y Wennol was obviously a public footpath, and whilst I accept that later on, once her daughter was old enough to be interested in nature, her use of the fields may have widened, her initial use would not appear to have gone beyond footpath use.

279. **David Rees** did use Field B from August 1998 onwards for what was clearly more than just walking on the public footpath, including jogging

“around” Field B and star-gazing. The latter, being a nocturnal activity, is not something that I consider it would be reasonable to expect a reasonable landowner to have observed or be aware of. Mr Rees also, because his garden overlooked Field B, referred to seeing others making use of the Field, and not just the public footpath, but was also clear that the level of use was lower earlier on than it became in later years. **Alvin Fripp** also used Fields B and C for running, as part of a longer route, generally on a monthly basis, and enjoyed football kickabouts on the part of Field B near the oak tree (on the boundary of Field A) “a few times” each summer.

280. Even adding the use of the 7 people who gave oral evidence about their use in the second 12 month period together, the impression I form is that this was occasional use by individuals rather than use by “a significant number of the inhabitants” of Miskin. During the second 12 month period the population of the neighbourhood grew from about 1,200 people to about 1,300 people. Even if the users who gave written evidence for this period are considered (notwithstanding the caveats that must be attached to that evidence, as written material that could not be tested, in terms of the details of where, when, and how frequently the activities took place, for the reasons already outlined), the numbers only rise by about 36 people, to a collective total (oral and written evidence users) of about 43 people. I consider that the reasonable landowner, aware of this activity, but also aware that it was not (at that time) at a level that was impeding the tenant farmer from cattle grazing or lambing on the land, would have seen this level of activity as an issue of low-level trespass by a variety of individuals, which would not be particularly surprising in what was becoming an urban fringe location.

281. I reach a similar conclusion in relation to the third 12 month period (i.e. August 1999 to July 2000). There are no additional oral witnesses whose evidence covered this period. There were some 9 additional users who provided written evidence, so taking the users of the site (or at least parts of it) to about 52 people. I consider that the written evidence needs to be treated with the same caution as previously, and for the same reasons, but in any event, the numbers of users remained small, and the land continued

to be used for cattle grazing and lambing. This would suggest that the activities were not sufficient frequent or wide-spread that they interfered with the agricultural use of the land in the way that the tenant farmer wished to use it. This degree of activity by about 50-odd people was also in the context of a neighbourhood which had grown to a population of just under 1,400 people by July 2000. In my view the reasonable landowner, had they been aware of the activity, would have continued to see it as no more than a low-level trespass issue by a variety of individuals rather than as a signifier that the site was in general use by the local community for informal recreation.

282. Consequently, I am not persuaded that the evidence shows, on the required balance of probability, that in the early period from August 1997 to July 2000, whether looking at each 12 month period on its own or looking at the overall 3 year period as a whole, the user evidence amounts to use of the site by “*a significant number of the local inhabitants*” of the neighbourhood of Miskin village. I do not consider that the burden of proof has been discharged in relation to this requirement for this part of the 20 year period. Moreover, that is very firmly the conclusion I have reached about the first 12 month period, given the very limited numbers of persons giving evidence of use in that period. That conclusion inevitably means that, regardless of the later periods, it has not been shown that there was qualifying use by a significant number of local inhabitants for “*at least 20 years*”. In the light of that conclusion, it is not strictly necessary to examine the two later 12 month periods, but I have done so, and they reinforce rather than dissuade me from the conclusion I have reached.

283. I do accept that the pattern of use changed in later years, becoming much more pronounced, and having direct effects on the tenant farmer’s ability to continue to farm the land. **Mr Howells** said that by about 2004 he had to change the farming practice, to give up cattle grazing and lambing, in both cases because of the greater numbers of people and dogs that he encountered on the land. Whilst I do not consider it necessary to pin-point a precise time after July 2000 when the level and nature of the use of the site went beyond occasional use by individuals as trespassers to more general

use by the local community for informal recreation, I think it is likely to have broadly coincided with the point when the recreational activity grew to such a level that the tenant farmer had to change the way that he farmed the land. This would have been some time around 2004, which also broadly coincides with when almost all of the houses in Northern Area 2 had been built and sold (albeit the Welsh School was probably still under construction).

(iii) Has it been shown that the use by local inhabitants has been for “lawful sports or pastimes”?

284. The evidence of use, as summarised in section 6 above, includes evidence of walking, dog-walking, jogging, running, playing with children, cycling, bird-watching and other nature observation/exploration, informal ball-games, kite-flying, sledging, and blackberry picking. There was oral evidence relating to all of these activities (as well as the written evidence).

285. The WM invited me to discount any activity which was ambiguous in terms of how it might be perceived by a reasonable landowner, so that walking or dog-walking on either the Public Footpath or along a particular path (such as the worn path from the gate at Field A across Field B to the stile at the Chimney Field), should be discounted because it could be consistent with lawful use of the public footpath or with use of an incipient right of way. The WM relied on the first instance decision in Oxford City v Oxfordshire County Council (the ‘Trap Grounds’ case) in relation to how the use of paths might be perceived, which I have discussed in section 8 above in the context of the weight that should be given to the written evidence. I accept that point and do consider that evidence which is insufficiently clear to show that it is not consistent with use of the Public Footpath or with use of incipient rights of way should be discounted.

286. However, even adopting that approach, I am persuaded that there is clear evidence of use of the site for lawful sports and pastimes. Looking just at those who gave oral evidence, the evidence from David Rees, Alvin

Fripp, Emma Heaversedge, Helen Fisher and Ceri Thomas about their running and jogging activities within/across Fields A, B and C clearly ranged beyond use simply of the Public Footpath or incipient footpaths. Similarly, the evidence from **Rebecca Lloyd, David Rees, Neil Thomas, Emma Heaversedge, Rebeka Daniel, Martina Davies, Sophie Seymour, Helen Fisher, Patrick Moran and Emma Wilkins about the games and other activities they would enjoy with their respective children within/across Fields A, B and C clearly went beyond mere use of the Public Footpath or incipient footpaths. The same is true in relation to the areas of Fields A, B and C used for dog-walking (Huw Davies, Deborah Hearle, Frank Hossack, Cyrus Ginwalla**, and **Neil Thomas**) and nature observation/exploration (**Rebecca Lloyd and Shaun Croeser**).****

287. The WM contended that any dog-walking activity would not be a lawful sport and pastime where it involved dog-fouling because that would cause damage or injury to the land. The WM drew attention to Fitch v Fitch (1797) 2 Esp. 543 as discussed in R (Lewis) v Redcar and Cleveland Borough Council [2010] UKSC 11. The key passage is in the speech by Lord Hope at para 67:

“... They [the local inhabitants] must have been indulging in lawful sports and pastimes on the land. The word “lawful” indicates that they must not be such as will be likely to cause injury or damage to the owner’s property: see Fitch v Fitch (1797) 2 Esp 543...”

288. The owner in Fitch v Fitch was the freehold owner of the parcel of grassland and it was his hay crop that was damaged by the actions of the defendant (through trampling and mixing the mown grass with gravel). It is unclear from that case whether the same principle would apply to damage caused to a tenant’s property (for example to his livestock or to a growing crop) where there was no resulting damage to the owner’s interest in the land. Whilst I was provided with evidence from **Mr Howells** that dog-fouling caused him a problem as a probable cause of C-Ovis, which could make the carcass of an infected sheep worthless (which would obviously have

financial implications for the profitability of his farming activity), there was no evidence from any of the WM's witnesses that this issue had any effect on the value of Mr Howell's tenancy, on the rental value of the land, or on the value of WM's ownership interest. Moreover, I note that in this case, dog-walking within at least some part of Field B (and any consequential dog-fouling) is something that any farming enterprise would have to accept because of the presence of the Public Footpath across Field B. Mr Howells would therefore always be faced with some risk of C-Ovis on the land, and needed to manage his farming activities accordingly. Mr Howells clearly did not regard that risk as meaning that he could not graze sheep on Field B.

289. In my view, in the context that TVG rights (where they exist) are rights over land, there is a distinction to be drawn between damage to a real property interest (such as a freehold ownership or arguable a tenancy), which could be potentially burdened by the establishment of TVG rights, and damage to personal property (such as livestock). In this connection I note that it is well-established that blackberrying (i.e. picking fruit from hedgerows) is an informal recreational activity which can form part of a lawful sport and pastime (e.g. Sunningwell at 347 and 357) and yet the taking of the produce of land without any consent is likely to be a tort against the owner of that land. I do not therefore think that any dog-fouling that may have taken place would mean that the activity of dog-walking would not be a lawful sport and pastime in this case.

290. The WM sought to make a similar point about the fact that Mr Howells had recently (after the end of the relevant 20 year period) started to inoculate his sheep (at a cost of £5/sheep/year) to guard against toxo plasmosis causing abortions in pregnant sheep. However, this cost was not incurred during the period I need to consider, and Mr Howells did not attribute this issue to dog-fouling but to cats. I do not therefore consider this issue would prevent dog-walking from being a lawful sport and pastime in this case.

291. Whilst there was some evidence that Mr Howells had, on occasion, needed to shoot dogs that had attacked his sheep, there was no evidence

that this had occurred on any part of the site, or that any such sheep 'worrying' by dogs was attributable to any of the dog-walking on the site.

292. In any event, even were I to discount all of the evidence of dog-walking, there would remain clear evidence of other recreational activities, including walking, running, jogging, and playing with children, that would provide evidence that lawful sports and pastimes have been undertaken across Fields A, B, and C. Those activities were not confined to the Public Footpath or to the worn paths or tracks that might be seen as incipient rights of way. Each of the fields was (and is) an area of open grassland, with no obvious inaccessible areas (other than their respective boundary hedging or fencing). It may well be that the edges of the fields would be more used by those walking or running or blackberrying (albeit **Ceri Thomas** did some of his speed endurance training by running through the long grass) and that the interiors of the fields would be more used by those playing games but I do not consider that the fields were not used as a whole, taking the activities altogether. Whilst none of the witnesses gave specific evidence of engaging in such activities across every 'square yard' of Fields A, B, and C, and Fields A and B would seem to be more popular locations than Field C, I consider that, taking a common sense approach, there was sufficient evidence of use of each of the three fields as a whole, as opposed to limited use of only parts of them.

(iv) Has it been shown that the use by local inhabitants has been "as of right"?

293. In Lewis v Redcar Lord Rodger summarised the principles applicable to whether user was "as of right" in the following terms (at paras 87 to 92):

*"87. The basic meaning of that phrase is not in doubt. In R v Oxfordshire County Council, Ex p Sunningwell Parish Council [2000] 1 AC 335 Lord Hoffmann showed that the expression "as of right" in the Commons Registration Act 1965 was to be construed as meaning *nec vi, nec clam, nec precario*. The parties agree that the position must be the same under*

the Commons Act 2006 . The Latin words need to be interpreted, however. Their sense is perhaps best captured by putting the point more positively: the user must be peaceable, open and not based on any licence from the owner of the land.

88. *The opposite of “peaceable” user is user which is, to use the Latin expression, vi. But it would be wrong to suppose that user is “vi” only where it is gained by employing some kind of physical force against the owner. In Roman law, where the expression originated, in the relevant contexts vis was certainly not confined to physical force. It was enough if the person concerned had done something which he was not entitled to do after the owner had told him not to do it. In those circumstances what he did was done vi. See, for instance, D.43.24.1.5–9, Ulpian 70 ad edictum, commenting on the word as used in the interdict quod vi aut clam.*

89. *English law has interpreted the expression in much the same way....*

....

91. *In R v Oxfordshire County Council, Ex p Sunningwell Parish Council [2000] 1 AC 335 , 350–351, Lord Hoffmann found that the unifying element in the three vitiating circumstances was that each constituted a reason why it would not have been reasonable to expect the owner to resist the exercise of the right. In the case of nec vi he said this was “because rights should not be acquired by the use of force”. If, by “force”, Lord Hoffmann meant only physical force, then I would respectfully disagree. Moreover, some resistance by the owner is an aspect of many cases where use is vi. Assuming, therefore, that there can be vis where the use is contentious, a perfectly adequate unifying element in the three vitiating circumstances is that they are all situations where it would be unacceptable for someone to acquire rights against the owner.*

92. *If, then, the inhabitants' use of land is to give rise to the possibility of an application being made for registration of a village green, it must have been peaceable and non-contentious...*

294. It is also necessary to keep in mind that, although there are three elements to the question of whether user is “as of right”, they operate together. In R (Barkas) v North Yorkshire County Council [2015] AC 195 Lord Carnwath put the matter as follows (at para 61):

“Lord Scott's analysis [in Beresford] shows that the tripartite test cannot be applied in the abstract. It needs to be seen in the statutory and factual context of the particular case. It is not a distinct test, but rather a means to arrive at the appropriate inference to be drawn from the circumstances of the case as a whole. This includes consideration of what Lord Hope of Craighead DPSC has called “the quality of the user”, that is whether “the user for at least 20 years was of such amount and in such manner as would reasonably be regarded as being the assertion of a public right”: R (Lewis) v Redcar and Cleveland Borough Council (No 2) [2010] 2 AC 70 , para 67. Where there is room for ambiguity, the user by the inhabitants must in my view be such as to make clear, not only that a public right is being asserted, but the nature of that right.”

295. In terms of the first element of the tripartite test (‘peaceable’ or ‘nec vi’), there are two matters that need to be considered: (i) the gaining of access to Field A by climbing over a gate, and (ii) the continuation of dog-walking in the fields notwithstanding the views expressed by **Mr Howells** to several of the dog-walkers.

296. Starting with the gate, the WM contend that the presence of the gate at Field A, which was generally wired shut, was a clear indication that anyone who climbed over it was doing so against the wishes of the landowner.

297. There was some inconsistency in the evidence as to whether the gate at Field A was present throughout the 20 year period. **Huw Davies** did not recall a gate in his early visits to the site but I find the evidence of **Mr Howells** that the gate was there from the outset of his tenancy (in 1994) to

be more persuasive. I do not think it likely that a farmer keeping livestock (both cattle and sheep in the early days) on his land would have had a field on the edge of his holding that simply had an open boundary to the next parcel of land (outside of the holding). That said, I do not think it follows that the gate would have inevitably been permanently secured (i.e. unopenable by people) at the outset. For stock management/control purposes there would be no particular need to secure the gate by wiring it shut. A simple closure would be sufficient. Also, I think the evidence from Mr Howells about drainage/piping works is an indication that there was a period when the gate was either removed or left open for access. I also note that **Ceri Thomas** gave evidence that there was a period some years after he moved in to St David's Heights in 2004 when sheep had escaped into his street and it was only after that episode that the gate was wired shut.

298. However, whether the gate was wired shut or was openable, it is apparent that an able bodied person could climb over it without difficulty. Whilst I accept that an unsecured gate is effectively offering an invitation to enter, I do not consider that, in the context of a field regularly used to house livestock, a secured gate which is climbable is giving a clear and unambiguous message that people should keep out. Even an archetypal stile provides a barrier to passage that needs to be climbed over. No measures obviously directed at people were put in place to dissuade or prevent people from climbing over the gate, such as a notice or increasing the height of the gate. Whilst Mr Howells referred to a time when there was barbed wire across the gate once, there is no evidence that this was a long-standing feature or that action was taken to maintain it. Indeed, Mr Howells' evidence was that the gate was wired to prevent stock from getting out. His evidence (in re-examination) that it was wired to stop it being opened "*by whoever*" was in my view an unconvincing gloss on his earlier evidence. It was perfectly obvious from the worn patches of ground either side of the gate, which were apparent at my site visit and in the various photographs, that there was human traffic over the gate. If there was a real intention to preclude that activity I consider it would be reasonable to expect to see some physical measures put in place to achieve that. I also note that **Huw**

Davies gave evidence that in about 2015 he had seen and spoken to **Mr Howells** when at the stile between Field B and the Chimney Field, and then walked off heading towards the gate in Field A, without anything being said by Mr Howells to indicate that he should not be doing that.

299. Taking the evidence about the gate at Field A in the round, I do not consider that its presence meant that anyone who climbed over it to gain access to Field A was not acting peaceably or was acting by 'vi'.

300. Turning now to the various conversations that **Mr Howells** had with dog owners about their dogs, the first point to note is that Mr Howells was not the owner of the land nor an authorised representative of the owner. He was a tenant farmer to whom the owner had given the right to use and occupy the land, in accordance with the terms of his tenancy. In the absence of authority I would have questioned whether, without evidence that the owner was made aware of what Mr Howells said or had authorised him to say on their behalf, I should attribute whatever Mr Howells chose to say to individuals he met on the land to being statements made by or on behalf of the owner (i.e. the WM). Based on what he said, it seems to me that what Mr Howells was doing was looking after his own interests as the tenant farmer, rather than seeking to safeguard the interests of the WM.

301. However, in some of the leading TVG cases, no distinction has been drawn between actions by a tenant, when interacting with recreational users of the land, and actions by the freehold landowner. This is so in Lewis v Redcar (where the golf club was a tenant (see per Lord Walker at para 2 and Lord Rodger at para 80)), and in R (Laing Homes Ltd v Buckinghamshire County Council [2004] JPL 177 (where the farmer had no more than a grazing licence (see per Sullivan J at para 5)). It does not seem plausible, given the legal and judicial expertise involved in these cases, that an argument that the actions of the tenant or the licensee were irrelevant because they were not the landowner, would have been overlooked, if it had merit. I therefore proceed on the basis that actions by Mr Howells in relation

to dog-walking are relevant when considering whether the dog-walking activity was peaceable.

302. Mr Howells clearly spoke to a number of those engaged in dog-walking (including **Huw Davies**, **Deborah Hearle**, **Patrick Moran**, **Edwin Burke** and **Alun Fellows**). The tenor of the conversations differed in the accounts I heard but I am not persuaded they were all jovial conversations exchanging nothing but pleasantries about dog ownership. It seems to me, having heard directly from Mr Howells, that at least in part he was expressing some concern when he came across people with dogs on the land he farmed. However, I consider that the nature of that concern related to dogs that were not under control (i.e. generally were off the lead) when there were sheep either in the same field or in the vicinity. Mr Howells' own evidence was that he spoke to people to ask them to put their dogs on a lead, but not "*if the dog is close to them*", or he spoke to them if they had a dog "*doing something stupid*". He said this was partly because he did not like quarrelling with people and partly because if they did not do as he requested there was "*Not much you can do about it*".

303. There is no evidence that Mr Howells asked dog walkers whose dogs were on a lead or otherwise under control to leave the fields (even if they were nowhere near the Public Footpath in Field B). Nor is there any evidence that people who were asked to put their dog on a lead refused to do so. Consequently, I do not consider that the evidence suggests that the dog-walking activity was undertaken in a manner that was not peaceable but was by 'vi'.

304. Moving on to consider the second element of the tripartite test ('open' or 'nec clam') the first issue where there was some debate was the nocturnal activities such as star-gazing and some overnight camping. The WM make the point that a reasonable landowner should not be taken to be aware of activity on his land that takes place in the hours of darkness. I agree, but discounting such activity from the assessment of the recreational activity makes little difference to the overall impression I have formed that, at least

in more recent years, there was considerable activity that was being openly undertaken on the fields comprising the site during the hours of daylight. This activity would have been apparent to a reasonable landowner visiting the site. Whilst much of that activity was early in the morning, in the afternoons or early evenings, or at the weekends, as might be expected with these types of informal recreational activity, I do not consider that the fact that they occurred outside of a normal 'office hours' working day means that they were not undertaken openly. I consider that a reasonable landowner of an area of farmland close to residential areas would make himself aware of what was taking place on his land at least during the main hours of daylight. This could include making himself aware of how the land is used during the weekends, the early evenings, and the early mornings, because these are times when the most common-place recreational activities of a modern TVG are likely to take place.

305. I note the evidence from the WM professionals (**Lee Lapham**, **Paul Williams**, **Gareth Porter**, **Michael Cuddy**, and **Peter Waldren**) that whenever they visited the site, the only activity they saw was people using the Public Footpath. However, I do not consider that this means that the recreational use of the site for walking, running (etc), playing games (etc) was not undertaken openly. I think it is more likely that these visits on behalf of the landowner were sufficiently infrequent, and were limited to the working day of the working week, that the WM's witnesses simply did not overlap with the periods when the bulk of the recreational activity was taking place. In contrast, it is clear that **Mr Howells** did see people, including dog walkers, children kicking balls, and children playing amongst the bales of cut grass/silage.

306. There was a separate issue about openness/transparency in relation to the informal gates that a few residents installed from their back gardens to Field A. Having seen those gates, and the lagging/cladding placed over the barbed wire fence, and the informal stile at 12 Oaklands, I find it surprising that neither Mr Howells nor any of the WM's land management professionals noticed them. I consider that a reasonable landowner, inspecting his

boundaries, would have seen these features, not necessarily at the outset but at some point in the succeeding years. Mr Howells' evidence that his failure to spot the stile showed how bad his eyesight had become was not an impressive part of his evidence. Even if the gate in the fence panel at 8 Oaklands was not entirely obvious, the adjacent lagging/cladding made it clear that there was something at this location that would merit closer inspection. The evidence from **Gareth Porter** that he was "*kicking myself*" for not observing these features earlier suggests to me that the various inspections were not as thorough as it might be reasonable to expect from a landowner seeking to inform himself about the state of his land.

307. However, it does not seem to me that the formation of a private access from a small number of domestic back gardens to a parcel of adjacent farmland is unambiguously signifying that there is communal recreational use taking place on that farmland. Such an access would also be consistent with a resident seeking to establish an easement or some other private right for the benefit and better enjoyment of his or her own property. Thus, it is not necessary to resolve whether the informal gates were openly established or not.

308. Thus, leaving aside the nocturnal activities, I do not consider that the recreational activities were not being undertaken openly and were by 'clam'.

309. The final element of the tripartite test is 'permission' or 'nec precario'. I consider that there were a few people living immediately adjacent to the site (such as **Rebecca Lloyd**) who got to know **Mr Howells** (or more commonly his son, Rob) and it could be said that their relations were such that there was informal permission from the Howells to use the site more widely than just the route of the Public Footpath. However, this does not apply to the vast majority of the users. Whilst Mr Howells may have seen some of them during their visits to the site and not told them to leave his land, I do not think this can be construed as the giving of permission. It seems to me that it was more in the nature of weary acquiescence to activities that Mr Howells felt unable to stop. Consequently, I do not consider that the overwhelming bulk

of the recreational use that took place was happening by permission (so that it was 'precario').

310. Lastly, in the context of considering whether user was “*as of right*”, I note that in Leeds Group plc v Leeds City Council [2011] EWCA Civ1447 Sullivan LJ repeated a comment that he had made in an earlier stage of that litigation ([2010] EWCA Civ 1438) about how recreational use taking place on his land might appear to a reasonable landowner. Sullivan LJ said (at para 22):

“Since the decision of the House of Lords in R v Oxfordshire County Council ex parte Sunningwell Parish Council [2000] 1 AC 335 ... all landowners have effectively been put on notice that those using their land for recreational purposes may well be asserting a public right to do so if their user of the land for that purpose is more than trivial or sporadic: see para 31 of my earlier judgment.”

311. Sunningwell was decided by the House of Lords on 24 June 1999. Clearly, the points of law it decided on what was meant by “*as of right*” (i.e. that users did not need any subjective belief that they were entitled to be doing what they were doing and that toleration by a landowner was not necessarily inconsistent with use being “*as of right*”) would not have been known to a reasonable landowner considering activities on the site in the first 12 month period (which ended in July 1998). It might be somewhat artificial to imagine that a reasonable landowner would have become aware of the Sunningwell decision by the end of the second 12 month period (which ended in July 1999, only a month after Sunningwell was decided and before it had been widely reported) but, in the light of Sullivan LJ’s comments that since that decision a reasonable landowner had been “*put on notice*”, I make that assumption.

312. Nonetheless, even after Sunningwell, for the carrying on of recreational activity by other people on his land to be taken by a reasonable landowner to be the potential assertion of a public right, the activity would need to be at a level or nature that it was more than “*trivial or sporadic*”. Sullivan LJ did

not expand on this term but in Sunningwell Lord Hoffmann had referred to user that was “*so trivial and sporadic as not to carry the outward appearance of user as of right*” (at 357). This is not the same as the contrast that Sullivan LJ was making in McAlpine that use which was no more than occasional use by individuals as trespassers would not suffice to establish a TVG, because in that context Sullivan LJ was considering the issue of whether there was use by a “*significant number*” of local inhabitants. That issue was not part of the statutory test at the time of the Sunningwell decision.

313. Nonetheless, I do not consider that Sullivan LJ in Leeds was seeking to suggest that, post-Sunningwell, whenever a landowner saw any degree of recreational activity on his land he should be put on notice that it was potentially the assertion of a public right. Both Sullivan LJ and Lord Hoffmann recognised that trivial or sporadic incidents would not be so interpreted by a reasonable landowner. Trivial incidents could be activities of those loosely following the route of the Public Footpath but not actually keeping to the path as shown on the Definitive Map. Sporadic incidents could be low key or infrequent forays into Fields A and C by a small number of people. Without repeating the comments I have already set out about the early years, I do consider that certainly in the first 12 month period, the user was at a level that it was no more than trivial or sporadic. In that period a reasonable landowner would not have been put on notice that there was an assertion of a public right to undertake recreational activities on the site.

314. Thus, my overall conclusion on this requirement is that in the more recent periods there was a sufficient quality of user to amount to user “*as of right*” but at the outset of the period, and in particular for the first 12 months, there was no more than sporadic use by a few individuals, which would not suffice. Thus, taking the 20 year period as a whole, I am not persuaded that the requirement for user “*as of right*” has been demonstrated on the balance of probabilities.

(v) Has it been shown that the use by local inhabitants has been for a period of “at least 20 years”?

315. This issue is substantially answered by my conclusions on issues (ii) and (iv). Whilst I accept that there is evidence of some recreational activities taking place on the land for all of the required 20 years from August 1997, looking at the quality of that user throughout that period, I do not consider that the user in the early period is sufficient.

(vi) Has it been shown that the use is continuing at the date of the application?

316. This was not a contentious issue in itself. There was no dispute that the recreational use undertaken on the site by local residents in recent years was continuing as at August 2017 (and, indeed, has continued subsequently). However, if the qualifying use has not endured for a period of at least 20 years (which is my view), its continuation at the date of the application makes no difference to the conclusion that there has not been a sufficient period of qualifying use.

Conclusion on the relevant requirements for registration

317. My conclusion on whether it has been shown that the relevant requirement for registration of a TVG set out in s.15(2) CA 2006 have been satisfied, is that I am not so persuaded. Looking at the evidence overall, I am not persuaded, on the balance of probabilities, that *“a significant number of the inhabitants of [the neighbourhood of Miskin village] have indulged as of right in lawful sports and pastimes on the land [subject to the application] for a period of at least 20 years”*. My reasoning for this conclusion is set out above, in particular in sections 9(ii), 9(iv) and 9(v).

318. For these reasons I recommend that the application site (as amended) should not be added to the CRA’s register of Town & Village Greens.

Statutory Incompatibility

319. In the light of my conclusions and recommendations above, the question of statutory incompatibility, which WM argues would inevitably defeat an otherwise successful TVG claim, does not strictly arise.
320. However, I do deal with it below, albeit with some trepidation, noting that some key aspects of the concept are currently under consideration by the Supreme Court in the linked cases of R (NHS Property Services Ltd) v Surrey County Council (UKSC 2018/0109) and R (Lancashire County Council v SoSEFRA (UKSC 2018/0094). Both of these cases were heard on 15 and 16 July 2019 and judgment is awaited. I am also aware that on 1 July 2019 the Supreme Court granted permission to appeal in TW Logistics Ltd v Essex County Council (UKSC 2018/0234) which will also consider the question of statutory incompatibility. There is no published timetable to indicate when that appeal will be heard but it is inevitable that it will not be before judgment has been given in the linked cases of NHS and Lancashire.
321. Nonetheless, at the time of writing, the law on statutory incompatibility is taken to be settled by the decision of the Supreme Court in R (Newhaven Port & Properties Ltd) v East Sussex County Council [2015] 2 WLR 601 and as further elaborated by the Court of Appeal in R (Lancashire County Council v SoSEFRA [2018] EWCA Civ 721.
322. In Lancashire Lindblom LJ summarised what he regarded as uncontroversial general principles (at paras 36 and 37):
- “36. Three general points may be made about the relevant principles, none of them controversial in argument before us. First, it should be remembered that they are the means by which the court resolves a conflict between two statutory regimes, where Parliament itself has not seen fit to do that — in either regime. They must therefore be exercised with care, and only when the need to do so truly arises. Secondly, they are*

potentially applicable in all cases where an issue of "statutory incompatibility" is said to arise. They are not confined to cases where powers and duties contained in a private Act of Parliament are said to trump the general provisions for the registration of town and village greens in section 15 of the 2006 Act. Nor — as is clear from the judgment of Lord Neuberger and Lord Hodge in Newhaven Port and Properties (at paragraph 101) — are they confined to the activities of statutory undertakers. They may also be applied in cases where there is said to be a conflict between those provisions of the 2006 Act and statutes providing for the functions of public bodies within a given sphere of responsibility. Thirdly, however, under the statutory scheme for registration there is no blanket exemption for land held by public bodies for the purposes of their performance of statutory powers and duties. Section 15 of the 2006 Act contains no limitation, or exception, for public body landowners. Parliament has had several opportunities to enact such a provision as the statutory scheme has evolved — for example, in the amendments brought about by the Growth and Infrastructure Act 2013 .

37. As the Supreme Court stressed in Newhaven Port and Properties , when another statutory regime is said to displace the registration provisions of the 2006 Act, the issue will always be one of "statutory construction". Lord Neuberger and Lord Hodge laid emphasis on the land in question being held for "defined statutory purposes" and the 2006 Act not enabling rights to be acquired by the public that are "incompatible with the continuing use of the land for those statutory purposes" (paragraph 93). The inconsistency amounting to "statutory incompatibility" was the inevitable clash between the consequences of registration under the 2006 Act and the harbour company's ability to perform the statutory purposes entailed in operating the harbour, not between the consequences of registration and the possibility of a public body performing on the registered land general functions that might be performed on the land but could also be performed elsewhere. The "statutory incompatibility" was inherent in the potential frustration of the "statutory purposes" themselves. In subsequent passages of their judgment Lord Neuberger and Lord

Hodge spoke of "a clear incompatibility between NPP's statutory functions in relation to the Harbour ... and the registration of the Beach as a town or village green" (paragraph 97). In their observations about the three cases in which land held by public bodies had been registered as town or village greens, they underscored the point that in those cases the land in question had not been acquired and held for "a specific statutory purpose" likely to be impeded by its registration as a green (paragraphs 98 to 100). And they confirmed that the ownership of land by a public body with "statutory powers that it can apply in future to develop land" was "not of itself sufficient to create a statutory incompatibility" (paragraph 101)."

323. Since the issue is one of statutory construction, it seems to me that the first step is to identify the statutory regime which is applicable to the land in question. In this case that gives rise to a further question: should that issue be looked at in terms of the regime in place at the time that the relevant land was acquired by the public body or should it be the regime in place at the time that TVG registration is being considered by a Commons Registration Authority under s.15 CA 2006? It seems to me that it must be the latter because if an 'incompatible' regime had been repealed and was not longer in effect at the time that the registration question was being decided, I cannot see (in the absence of saving provisions to keep the repealed legislation in force for relevant purposes) how the repealed registration regime would preclude the conventional operation of s.15 CA 2006 in accordance with its own terms. At the point that registration was being considered there would be no other statutory regime to constitute the incompatibility. The fact that there might have been an incompatibility in the past would not be relevant if it had fallen away. Public bodies often hold land for many years and the legislation they operate under may well change over those years (the present case is a case in point). Where there are no saving provisions, the public body's powers and duties are to be found in the legislation currently in force and not in some predecessor provisions.

324. Merely because s.15(2) CA 2006 requires the CRA to look back in time when applying its own requirements, initially to the date that the application was made, and then to the period comprising the preceding 20 years, does not in my view enable any repealed legislation to be ‘revived’ in some way (absent some saving provisions), so that it should continue to have effect as if it had not been repealed.

325. The general provisions of the Interpretation Act 1978 which deal with repeals and savings (ss.15 to 17 IA 1978) do not provide a mechanism that would ‘revive’ any repealed legislation. S.16 IA 1978 provides (so far as relevant) that:

“(1) Without prejudice to section 15, where an Act repeals an enactment, the repeal does not, unless the contrary intention appears,—

(a) revive anything not in force or existing at the time at which the repeal takes effect;

(b) affect the previous operation of the enactment repealed or anything duly done or suffered under that enactment;

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under that enactment;...”

326. S.16(1)(c) IA 1978 does provide a saving for rights or liabilities (etc) “*acquired, accrued or incurred*” under the repealed legislation but that provision cannot carry across to any rights or liabilities which may be accrued or incurred under the CA 2006 which, in any event, are not accrued or incurred until registration takes place: see per Lord Hoffmann in the Trap Grounds case (at para 43).

327. At present (in 2019) the site is owned by the WM. The site is vested in the WM pursuant to s.162 and para 39 of Schedule 11 to The Government

of Wales Act 2006.⁷⁵ The WM hold the land for the purposes set out in s.1 Welsh Development Agency Act 1975.⁷⁶ This provision includes the following powers (omitting wholly irrelevant powers):

“(2) The purposes for which the Assembly may exercise its functions under this Act are—

(a) to further the economic and social development of Wales or any part of Wales, and in that connection to provide, maintain or safeguard employment;

(b) to promote efficiency in business and international competitiveness in Wales;

(d) to further the improvement of the environment in Wales (having regard to existing amenity).

(3) Without prejudice to the following provisions of this Act, the functions of the Assembly under this Act shall be—

(a) to promote Wales as a location for businesses, or assist or concert its promotion as such a location;

(b) to provide finance for persons carrying on or intending to carry on businesses ;

(c) to carry on businesses and to establish and carry on new businesses;

(d) otherwise to promote or assist the establishment, growth, modernisation or development of businesses, or a particular business or particular businesses;

(da) to make land available for development;

⁷⁵ See para 10 of the first Witness Statement of Jacqueline Rees. Para 39 of Schedule 11 needs to be read together with para 38 of Schedule 11 to identify the ‘transferee’.

⁷⁶ The property and functions of the WDA were transferred to the National Assembly for Wales on 1 April 2006 and then transferred to the WM on 25 May 2007, as explained by Ms Rees.

(f) *to provide sites, premises, services and facilities for businesses;*

(g) *to manage sites and premises for businesses;*

(h) *to bring derelict land into use or improve its appearance;*

(i) *to undertake the development and redevelopment of the environment.*

(j) *to promote the private ownership of interests in businesses by the disposal of securities and other property held by the Assembly or any of its subsidiaries.*

(4) *In exercising its functions under this Act the Assembly shall have regard to the requirements of agriculture and efficient land management.*

(5) *The Assembly may only exercise functions under subsection (3)(c) above through subsidiaries.*

(6) *The Assembly shall have power to do anything, whether in Wales or elsewhere, which is calculated to facilitate the discharge of its functions specified in subsection (3) above, or is incidental or conducive to their discharge.*

(7) *In particular, but without prejudice to the generality of subsection (6) above, the Assembly shall have power in connection with its functions under this Act —*

(a) *...;*

(h) *to acquire and dispose of land, plant, machinery and equipment and other property;*

(i) *to manage land, and to develop land and carry out works on land, and to maintain works or assist in their maintenance;*

(k) *to make land, plant, machinery and equipment and other property available for use by other persons;*

(l) *...”*

328. S.1 WDDA 1975 has been much amended but I have set it out in its current form. The references within s.1 WDDA 1975 to *“the Assembly”* are now, in relation to any transferred powers, to be taken to be references to the WM by virtue paras 38 and 39 of Schedule 11 to TGOWA 2006, when read with s.45 and s.162 TGOWA 2006.

329. The WM make the point in their Closing Submissions that *“development”* is not defined in the WDDA 1975 and so should be given its natural meaning.⁷⁷ I agree. The WM also argue that where land was acquired with a view to its *“development”* this must be taken to be *“development, in the sense of built, urban development of strategic significance for this part of Wales.”*⁷⁸ This is not an argument I can accept. I see nothing in s.1 WDDA 1975 which limits its concept of *“development”* to only *“built urban development”* or to such development where it is *“of strategic significance for this part of Wales”*. I note that s.1(3)(i) WDDA 1975 allows the *“development or redevelopment of the environment”* and I do not consider this provision can be limited only to the provision of *“built urban development”* within that environment.

330. It seems to me that, in the context of the breadth of powers given by s.1 WDDA 1975 the natural meaning of *“development”*, so far as it relates to land, embraces anything which involves a change to that land. The change may be built development but it could also be a change in the way that the land is used. In this context I note that s.1(7)(k) WDDA 1975 authorises the WM to make its land *“available for use by other persons”*.

331. The key difficulty as I see it with the WM’s argument on statutory incompatibility is that it implies that the powers under which WM hold the land are so limited that if the WM had wanted to *“develop”* any part of the lands it acquired (inherited) at Central Llantrisant for the purpose of

⁷⁷ WM Closing, para 7.8.6(a).

⁷⁸ WM Closing, para 7.8.13.

providing an area for informal recreational use on a permanent basis by local inhabitants, it would have been unable to lawfully do so. Whilst I quite accept that that is not what the WM wants to do with the site, it does not seem to me that statutory incompatibility can arise merely by reason of the public body's current intentions for its land holding; statutory incompatibility must be an inevitable function or consequence of the statutory regime pursuant to which it holds the land. In my view, the breadth of the powers given by s.1 WDDA 1975 do not establish any inevitable incompatibility with registration of land which is held pursuant to those powers as a TVG.

332. I do note that in exercising its powers under s.1 WDDA 1975 the WM are required by s.1(4) WDDA 1975 to "*have regard to*" the requirements of "*efficient land management*", and it might be difficult, if an individual parcel of land was viewed in isolation, to regard making land subject to TVG rights on a permanent basis as an "*efficient*" way of managing that land, but I do not think it is an outcome which would be precluded as a matter of legal inevitability. In any event, the WM need only "*have regard to*" this objective, and could conclude that other factors outweigh it. For example, if the WM were to have wanted to bring about the comprehensive redevelopment of its retained land holdings at Central Llantisant, I do not see that s.1(4) WDDA 1975 would have precluded such a development including an area of informal recreational space set aside permanently for use by local residents and where no building was subsequently to take place.

333. It is therefore my view that the circumstances here do not give rise to statutory incompatibility.

334. For completeness, I should add that that would also be my view if the position was viewed by reference to the now repealed powers in s. 103 of the Local Government Planning & Land Act 1980. I accept that the exercise of those powers required the public body to form a view, prior to any acquisition of the land, that it "*needs to be made available for development*" and that it is land which is "*appropriate to meet the need*"

but it was not required to articulate a view as to any specific form of development that was needed on that land.

335. The evidence provided by **Michael Cuddy** about what was envisaged for the lands at Central Llantisant made it clear that there was no specific document produced setting out any strategy for development of those lands and that whilst “*the future development*” of the site was always in mind, there was no specific development identified because “*do not want to preclude any options*”. It is accepted that under LGPLA 1980 powers “*development*” has its familiar meaning from the Town & Country Planning Act 1971 (now the TCPA 1990) and so would include any material change in the use of the land. Whether or not the specific recreational uses undertaken at present by local residents on the site would be a material change of use (and I note that the professional opinion of **Peter Waldren** was that there was no such change of use) is, in my view, beside the point. For there to be a statutory incompatibility, it would be necessary to show that the types of development authorised by the powers given by s.103 LGPLA 1980 are simply not capable of allowing a landowner to establish a TVG by changing the use of land from its current use (whatever that might be) to a use for informal recreation by local inhabitants on a permanent basis. However, I see nothing in the concept of “*development*” in s.103 LGPLA 1980 (using the TCPA definition) that would inevitably preclude such a use from being established as a material change of use of agricultural land.

336. Consequently, it is my view that, whether the issue is looked at under the powers given by s.1 WDDA 1975 (which I consider are the applicable powers) or under the repealed powers of s.103 LGPLA 1980, this is not a case where those powers establish a statutory incompatibility with registration of a TVG over the land comprising the site. It follows that I would not have regarded that argument as a reason that would preclude registration.

337. However, as noted above, the argument on statutory incompatibility does not in fact arise for resolution in this case. It is my view that, for the reasons already rehearsed, the requirements for registration set out in s.15(2) CA 2006 have not been shown to be satisfied.

338. **It is therefore my RECOMMENDATION that the application site (as amended) should not be added to the CRA's register of Town & Village Greens.**

339. If the CRA takes a different view to me on the question of whether the requirements of s.15(2) CA 2006 have been satisfied, and was of the view that they have been, it would then be my further recommendation that the CRA should defer making a decision on the application until the Supreme Court has given its judgment in the Lancashire and NHS cases, and should allow the parties an opportunity to make further representations about the issue of statutory incompatibility in the light of that judgment, before reaching a decision. However, this will not be necessary if my primary **RECOMMENDATION** is accepted by the CRA because whatever the outcome of that case would not change the position on the question of compliance with the requirements of s.15(2) CA 2006.

21 October 2019

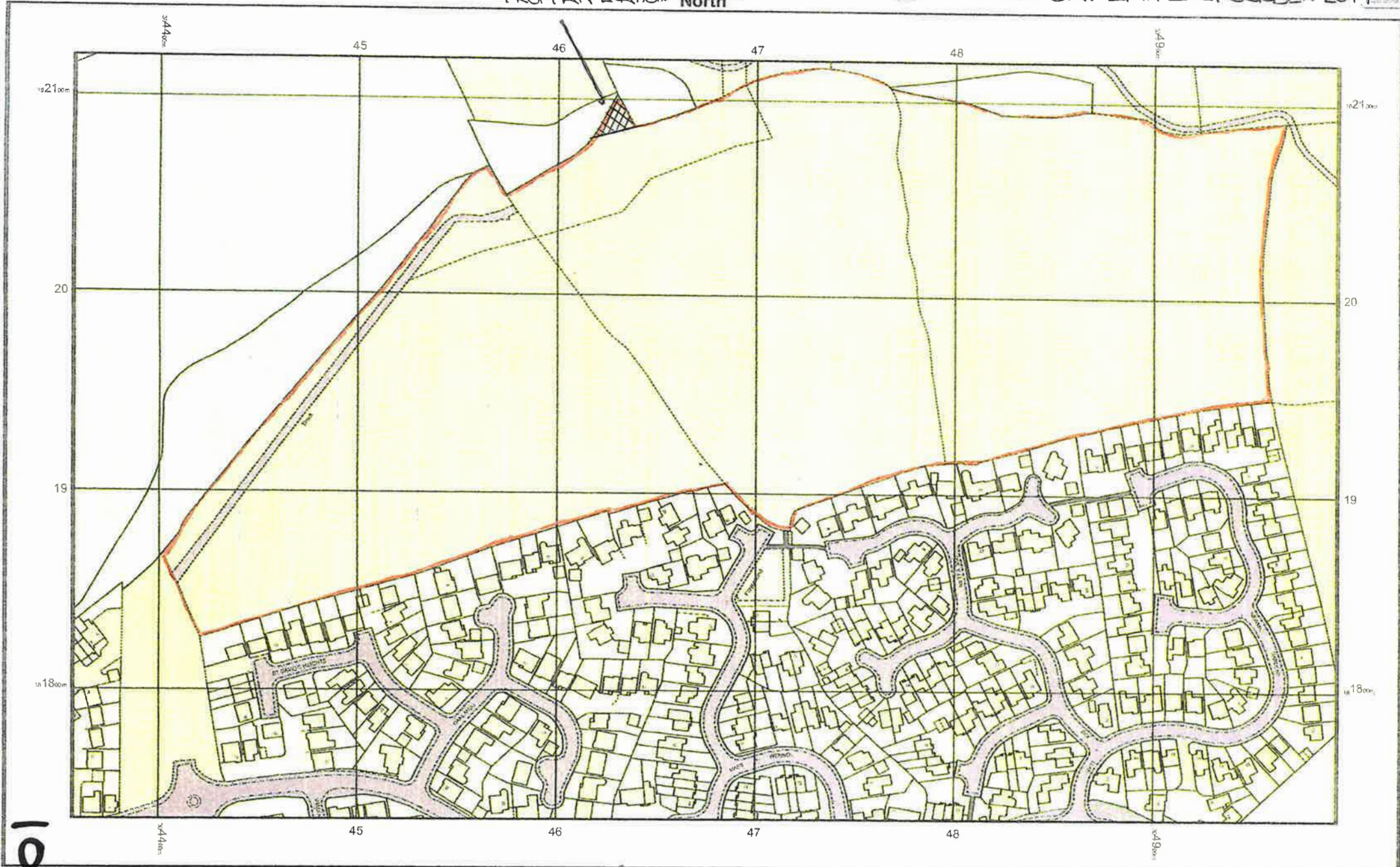
MICHAEL BEDFORD QC

Cornerstone Barristers

2-3 Gray's Inn Square

London WC1R 5JH

AREA TO BE EXCLUDED FROM APPLICATION North



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EXHIBIT A *see above*

Public Inquiry – Day 1 – Talygarn Community Centre – 12th March 2019

- 10am start. Michael Bedford QC (Inspector). Introduction. Explained application. His instructions to prepare report. Explanation of area we are looking at.
- The Objectors will refer to both Welsh Government and Talbot Green Developments Ltd.
- Will be taking a note of those who wish to speak at the Inquiry.
- Applicant representative Rachel Sullivan (RS)
- Witnesses to give oral evidence in file 1. Have a running order. May be subject to some flexibility.
- Objector – Miss Morag Ellis QC (ME) – instructed by Hugh James.
- Will be calling 8 witnesses no set order at present.
- Inspector - village green application not planning or future use of field unless directly relevant. No other witnesses indicated that they wish to speak at this stage.
- Simple explanation of the procedure as set out in the pre-inquiry directions. Applicant. Then public. Then objectors. Written closing submissions.
- There is an affirmation card and religious text. Should be affirmation or oath? Evidence at present will not be on oath. Run through until 5pm today. Lunchtime break 1pm. Mid morning and mid afternoon break at convenient times.
- Timetable – 4 days and 28 witnesses – plus statements and site visit – a lot of material to get through – cross examination time assuming no oral additions it will be variable but welsh speaker take longer about an hour others shorter
- Welsh speaking – only one? – 4th witness – useful if could deal today

- Site visit on Friday – May be different – evidence main thing in 4 days
- Inspector visited site yesterday. Walked site. Whilst on site saw Miss Ellis but no contact.
- Inspector known Miss Ellis many years. Used to work in Chambers. See at dinners. Do not know Miss Sullivan. Does not stop me acting independently. Applicant has no comment on this.
- As both app and obj legally represented no need to spell out legal tests. I am looking at August 97 to August 2017. Miss Sullivan from what I read so far interested in period August 97 to 2000 ie the early years. Nature and extent of use of fields and the broad size of the population of Miskin at that time.
- Inspector - Miss Sullivan In file 2 on page 1 a copy of the application map. On maps in Sophie Seymour (SS) witness statement para 3.7. Funny triangle which is part of TG land whereas 3 fields is WM land. As I read the 2nd witness statement the app is intended to relate to only three fields. If I was to treat little triangle as excluded would there be concerns. Rachel Sullivan no issue. Morag Ellis no objection.
- Will mention points but do not need response to all now. RS in terms of written statements is it possible to identify which written statements cover time periods of use before 20 year period and those which cover from Aug 97 to Aug 2000.
- Secondly grateful for photos in file 2 but not sure I picked up on dates of photo's be useful to have those.
- Then in terms of objector from what I have read I understand there is an issue when the use may have commenced but is there any suggestion that once the use began there was a break in the continuity of use and if so one or more? ME no it is not an issue no foot and mouth orders but not conceding there was a continual use. Debate about sufficiency etc but no period of a complete break.
- Exhibit GP4 written texts say dates to aerial photo's but not clear to me. Similarly document in JR3 land transaction document and part describes various fields subject of transaction and lists field parcel numbers could these relate to our fields A, B and C.

- In terms of quality or sufficiency of use read evidence about house sales what I am not clear about is whether it is disputed there were house sales before 20 year period in residential streets near the application site? ME - it is not disputed some house sales among streets 99% certain our position no house sales prior to Aug 87 in St Davids Heights but might be in some others. That is helpful brings me to rebuttal evidence
- RS you seen that in light of what ME said do you have issue with me considering rebuttal evidence. RS - no. RS with your skeleton argument there was ref to a plan was there any other. RS – no. ME with your skeleton argument there was a ref at para 5.5 to a Supreme Court Order Lancashire case. ME – we do not have a paper copy of it here will supply one.
- Helpful if app and obj get head together. I have a helpful aerial photo and RS have identified with numbers the properties to their location. I have a slightly different one from Obj with rebuttal.
- In my visit yesterday there are roads and footway to roads but many of the roads in wider residential area and pedestrian routes through. What is not clear is where some routes are. I know also some rights of way footpaths that go through residential areas. If possible on an agreed basis and using obj plan could you show available pedestrian routes from wider area.
- Not concerned planning merits but there is an area of disagreement in skeleton as to how one should regard a use lawful sports and pastimes if development or not development. Does not seem complete agricultural to recreation. Not clear looking at it from planning language whether there was a period of mixed use. Agricultural and recreation at same time. Would that time of mixed use be or not be development? Mr Petchy 3.2 raises that and rebuttal addresses that.
- I have bundles of documents in same order as parties. Looked through them and absorbed what I can. Any procedural questions.
- ME - as you will have noted from objection reserving position locality and neighbourhood point. Our understanding is now Miskin a

neighbourhood within locality of Pontyclun. In view of CoA judgement in Leeds that it is legally possible to have 2 neighbourhoods with 1 locality I have taken view for our part that I do not wish to take up inquiry with those questions.

- That is helpful. Neighbourhood identified as Miskin. Am I to understand that the objector is not disputing there is a neighbourhood Miskin. ME – yes. Make it clear we do not concede significant user. Not going to take Inquiry time arguing about boundary lines.
- Opening statement? Rely on skeleton both parties
- 1st witness applicant
- Mr Ginwala (?) page 61 – Do you recognise document? - Yes. True? - Yes. Map behind page 62 explain markings – those are fields part of application and sit directly behind where used to live. Do you understand all the fields part of application? – those that are marked. What are the crosses – they are in same area as A and B. Your evidence page 61 of fields which on map your evidence relates to – as I can see it A, B and to the right of B where you have a cross in that field. Page 60 that statement yours – yes. Happy evidence true – yes. Fields – where marked A, B and to the right C where there is a cross. Just clarify one thing on map small b what is it? *Issue at this point over the clarity of the evidence and I explained we had to replicate some marks on paperwork did not come out when reproduced so tried to replicate.* Mr Ginwala explained the marking on the plan.
- RS I was not proposing to take through statement unless you want it done that way. Inspector said we have been through what is in them is true. RS no more EIC
- ME Mr Ginwala? You tell us you lived June 2004 to Sept 18 7 St David Heights and for those of us with big plan. I think you are number 84.- That is current address. *There was then an element of addressing previous property.* When you moved to 7 St Davids Heights the property was new? – yes it was. You were taken to aerial map on page 62 and did that map go with your written statement of 28th July 2017 – yes. Did you also as well as marking map and writing statement

indicted to fill in questionnaire? – I do not think so. How did you get map? – Miss Seymour gave me the map. Why? – so when writing statement knew which fields. What did SS tell you – so you know which fields were taking to. What did you understand process to be undetermined application? – the process at that point was potential for village green application. How did you find out about the intended process – through Miss Seymour, there was a social media campaign, e-mail group. Concerted interest was stop development – not just but protecting fields, in part stopping development protecting green fields, protect it so it remains as a green field. Were you given any information or guidance as to what the principles were/requirements in law? – we had some guidance. It is quite an unusual complicated thing what guidance was given? – had some broad guidance some part written in e-mails. Do you still have it? – potentially. Can't remember details? – not top of head, this early phase. Have you had more guidance since? – no. I would like you to look through e-mails and send e-mails passing between applicants setting out the guidance?

- RS what power does she have to request this. Can see what ME is driving about.
- Inspector well don't know about powers but starting point no property in a witness. Witness giving factual evidence to the best of their ability. Not for a party who called a witness to manage what evidence is. ME can ask if witness agrees to try to provide it that is a matter for witness. Not a matter of compulsion. Request been made we take it from there what comes out of it.
- ME could we go to the map on page 62 again and you might like to take it out of folder. I suggest you look at page 63 as well. I think we can explain milk in the coconut. Does not matter which you look at. Page 63 is signed – my signature. Key says A = home i.e 7 St Davids Heights B= access point, 2 letter B's, A are two B's something different – A is home B is two access point. X to right of field C, going back to 63 main fields of use so is it right that in addition to fields with X you have used other fields? – yes. Which ones? – fields at back of cricket club bottom right of map east of The Chestnuts, that's it. Page 62 map

we have 3 fields A, B and C above fields C is one with chimney and there is public footpath through field B 314, that footpath carries on through chimney field and it goes under A4119 and can walk to show at TG and you can go down and come to Cefn yr Hendy wood through that? – rarely but done it. Walked to shops and Cross Inn – yes Cross Inn occasionally but yes to TG shops, a few times. The other side of the chimney field land falls away steeply – yes used for sledging. You said in one of your answers to RS that when you were a bit confused A and B fields used were you saying of TVG fields A and B you use and others? – A, B and C we predominately use. Fields C does not take you anywhere? – no, use it as a loop with small dog A, B and C. Circular walk? – predominantly point of access St Davids Height A – B – C other times occasionally other access and smaller loop, dog is off lead in field vast majority of times. Sheep? – not often there not as often as used to be. When did pattern of sheep change – can't give exact time. The evidence from our land manger is farmer 200 – 250 sheep in field disputing that? – no not number, when left St Davids Heights saw less sheep. Moved last September when can you say reduction? – used to have sheep in field all time and latterly not so much. Need to push you on latterly – I did not keep a diary, I do not know. Access you said predominantly at St Davids Heights other times Maes Y Wennol – yes. The gate what was the gate like when using it open or shut? – shut, in 2004 moved in and field opposite the primary school was open field and about 3 travellers caravan I spoke to Dave from Barrett then I showed where they were and they came and but in ditch and boulders, suggested lock on gate. There is a photo with barbed wire – not sure I have seen that. Applicant's file 2 page 47 those July 2017 and you using land that time. You say not clear on barb wire – I would not have looked when using gate, when crossed gate it is over middle not looked to see if barb wire. You had to climb over gate – yes. Is it evidence not noticed barb wire – not noticed it. Not noticed gate wired – no. You have had to climb over every time as not openable by you – yes. I am now going to suggest that the gate is giving message that the land owner is not content to welcome you in – I would not agree, if he wanted to stop people then barb wire across the gate not at the side. So you evidence having to cross a locked wire gate it is an

open invitation – over years spoke to farmer he never said not to. Is it your evidence that gate open invitation – no, I see it as a regular course of entry that lots of people use. Even with barb wire sprayed blue – yes, I would further add how it would stop anyone, never been a sign, no one stopped. Have you heard dogs being shot in the fields for worrying sheep? – not that I am aware. You say you predominately went in that way but sometimes over style at Maes Y Wennol and you talked about loops there are worn paths on fields there are worn routes – yes to some extent. Go to page 32 applicant submission there is a picture of spaniel and that is said to be taken on field A 2014 and that is looking East see clear worn route – yes. The logic is that there are more human feet going on those kind of places rather than either side or you would not get that wear? – possibly yes, reasonable conclusion. Look in objectors materials Mr Porters exhibits file 1 of 3 and Tab 7 collection of ground photo's photo 1 is style and you can just see play area photographer in field B, Tab 8 shows photo locations, photo 2 put a line to where style is but clearly turned around but you can see an area of darkening between the sheep, then in photo 3 and 4 you can see red dotted lined which is footpath 314 photo 5 top of Field B and standing inside chimney field and looking back pick up darker colour – yes. Again that marking reflects where majority of feet going – quite probably yes. Then the spaniel picture can see boundary to right of dog and above brighter green field boundary and then just picking up trees of wood and fence line then CRA bundle could you turn to the application plan on page 10 see shapes of fields again do you see in Field A grey line running north west boundary and coming in and called track and then dotted line off track on grid square 45-45 that runs into field B and then goes out north field B and joins pair of dotted lines in chimneys field, helpful if we look at application plan and photo and the map base is OS and showing track and dotted line which shows route into chimney field – yes. If you move on to page 72 behind Tab 11 extract DMS which is on different map base and it is older as don't see housing you can see Coed yr Hendy with lots of things might be routes or tacks and to the north line fp on it and follow left of wood see 313 so that is footpath – highly unlikely you would use wood but I do not go through the

woods. Kissing gate just along from Welsh School – not aware. To the bottom right of wood top of the ‘f’ if you look very carefully at map base on page 72 can just pick up shape of fields but we can see little nose part coincides with ‘f’ the point is that the lines on OS map of app and DMS is showing something marked ‘track’ or ‘fp’ and on page 72 you can see it Joint with 314 – yes. That correlates with app plan even if it does not have 314 – don’t have app plan in front of me but ok. From your point of view and relating to Spaniel we are looking at things on maps which are represented on the ground – potentially yes. You have told me you did not keep dog on lead – yes. What dog – cavachol. You tell us in written that you played games with family in field can you tell me where – fields A and B mostly as field A backed directly on house. What sort – catch, rounders, kites. Age of your children – from 2 to 11. How many children – 1 girl and she is 13 now. The farmer says never seen people playing ball games when on site, father farmer, is it unusual – more unusual for farmer to be there. Father and son farmer and shepherd – I do not know all them by sight, don’t know but introduced himself as farmer and I spoke about a sheep stuck in fence. What sort of age – mid to late 30’s. That conversation was about him chatting and seeking neighbourly assistance – you could view it that way. Not on field at that point on decking in garden – yes. That gentleman’s father said never seen people playing games like rounders how regular – I did not see farmer huge amount. How regular was catch and rounders and such – no set pattern when there was time and weather was nice can’t tell inspector how regular it was, you would be there as often as possible. You are now rationalising. Thank you end of questions.

- Re-examination by RS. Mr Ginwala you were asked about using the field to walk through how many times to shops – 3- 4 times a year maybe wild guess. Turn back to CRA file page 10 you mentioned farmer coming up cutting hedgerow you said hedges at back of garden are they marked – sort of red boundary line.
- Inspector – CRA plan and the track ME asked about which can see as grey on plan through field A when it comes to its western edge it runs out and the next field parcel which has spur off roundabout has no

track, the full stop relative to the gate you climbed over is it in the position the track – as looking it is different position, *he pointed to roughly where gate was on plan*. In your 2nd statement page 60 of bundle 2nd statement and the last full paragraph you says never had permission or been asked to leave seen farmer in field when we were out they stopped and had a chat, is that same occasion as that you described to ME – no separate occasion, was not mobile was local number for farmers home, the photo with woods there was a kid with quad bike and he was riding on field A and into B. Reads more than 1 person – 2 of them. Were they aged differently? – may have been father and son. You say this was years ago – daughter born in that house 2 years after we moved in, I would think she was around 2-3 then as she had a back pack with rail. So 2008/9 – something like that. You were asked about playing of games you could not say how frequent, when asked about shops said 3 or 4 times, in terms of playing games with daughter and friends is this a weekend or weekday activity? – both in summer longer nights in fields in week as well. You mention having dog and taking for walk by comparison to daily walk with dog what is frequency games – our activity with dog in fields so most days in summer it is a white ball of fluff so if too muddy elsewhere playing games in summer was minimum once a week. When you been in fields A and B for walking or games did you see other people – other dog owners and people just out for a walk. From your knowledge would you recognise people – a combination of two but I would say you usually recognise them as not a huge village, in summer as a family one week but when daughter older and could go in on own a lot more. Your child and friend in field more regularly so keep an eye on them what were they doing? – dancing, picnics, tag, chase, chatting and exploring. Just going back to aerial photo you signed and when that was provided to you did it have marks – no. You were provided blank and you put marks on – yes.

- Resume 1.30 ok? Yes
- Finished 12.47
- Resumed at 1.30.

- Change the order and deal with Hugh Davies who will give his evidence in Welsh.
- RE EIC – Take File 1 turn to page 20 do you recognise document – yes. What’s on page 20? – its my letter to Sarah. Can you explain what that letter is – this is a letter that I wrote in response to a request by Sarah that I made of the fields in question. Which fields – those referred to already as A, B and C. I think there is 1 matter to clarify you say many conversations with the owner – yes I do. How many? – 1 I have seen him a number of times but only 1 conversation apart from that is it a true description of use of fields – yes. On page 21-28 there is a questionnaire signed by you looked at it? – yes and yes it’s true. There are 2 maps at page 29 and page 30 starting with the one on 29 can you see crosses – I made the marks. What they show – they indicate the fields that I have been using. 30 and 31 you have marks on A and B and page 31 there is a key does key go with map? - A definitely indicated my home and B there are no boundary lines so B I take it is exactly as saw on original map. When you say original map? – this is a copy and from what I can see here the roads disappear and I taking it that the hedges have disappeared. *Inspector showed him map* – that is correct does indicate gate where I enter and come out of fields. On page 20 you call that the gate by Welsh School – correct.
- ME CE – Have you lived at 3 Heil Isaf Penudly (?) – yes. That means road dips down – yes it is at a lower level than fields. Am I right that Cefn means ridge – usually name for a piece of land that rises or goes up. The Inspector will note the DMS there is a triangle which indicates trig point 300m and you see footpath 317 running along, footpath below 315 then forks and becomes 354 – yes. Above the high point ridge line called 314 and travels through field B – yes, I am familiar with that route. Exhibit RGE 1 page 8 of bundle of statements of people not attending obj and I have coloured footpath across the ridge and below ridge line know as 315 its 354 and you can see just to left Heol Isaf Hendy where you live – yes. We can also note that Mr Davies is listed as number 42 on the plan – yes. Number 108 is your partner – yes. She lives at same address as witness. Can we clarify precisely when you moved to your property. You tell us in first para

that you moved in 1996/97 and in your questionnaire at question 5 page 221 you say known land from 96/97 to date are you able to be precise when moved – I looked this morning and I moved in October 96 that is to say month of autumn. Was it new when moved in – yes. Your answer to question 5 can you be more precise we know you moved in autumn of 96 can you remember why expressed like that – I expressed it thus because I was not sure at the time when I had moved in but I checked it this morning and it was the autumn of 96 but you can take some months after and came quite familiar with this area, couldn't say exact date but since 97 been walking there. When you say these pathways which ones – there is a path that goes from the gates near the school but that school was not there when I first came to know the land. What was route to that gate like – I used to go through old farmhouse. Can you refer to map on 72? – I used to go up passed the farmhouse the houses now they're had not yet been built and at the time the landscape was like the surface of the moon, large round holes, craters, you could walk through the land and then the fields were green lush fields. When going from house would you use path 354 – yes I take it that is the path I would use, if you would look at the other map you can see that the fork has disappeared and the path comes down to Heol Cefn yr Hendy. So 354 – yes I take it. You passed disused quarried were they covered in trees at the time – yes and at the time there was no fence to stop you entering those trees it was easy to approach and enter the woodlands. There are underneath trees was it similar to aerial photograph we see today – yes. Easy to get into – quarries were too deep to approach from quarry area only able to here from Miskin Crescent to Manor Hill and there was gate that would give you entrance. And it is still the same today. Do people use area for recreation – it is a public footpath to fields that used to be which are now housing. Do people use tree area for walking, leisure, recreation – cant say I have seen people there are horses and recently there was a nasty horse I used to avoid that field because that horse. You described walking up 354 and join 314 – the fields were fairly open I do not remember staying on a particular path although I probably did. Those fields took you up to the ridge line - yes. Carrying journey north above ridge line land is dropping and 314

that carries you into field B – yes. Can you remember with what road layout was at this time – they A4119 existed as well as A473 and road Miskin Pontyclun and road Pontyclun Miskin by Leekes and Mwyndy road which if I remember correctly would have followed path but there was not a roundabout it just joined school road and one continued and through village parallel but behind houses. The roundabout did not exist – not exactly sure about that perhaps there was a small roundabout there things have changed to accommodate the houses. What about the next roundabout and the road through Dewi Sant – they were not there at all. What was it that alerted you to the gate entrance to field A – I don't remember whether was an actual gate at the time I don't remember opening or going over a gate but that is over 20 yrs ago and landscape has changed dramatically since then. Given we did not have the road we now have what I am interested to try and understand is what drew you to that entry point, I understand the others but how you go to field A – I cannot help you as I was just walking along I cannot say exactly what road I was walking along I just used to walk about really once you had gone through land with holes came to land that is smooth and green. Trying to understand how you came to it via the west entrance – you came to a hedge as far as I can tell you came to a hedge which would be the one that contains the gate, I cannot tell you as it was open land at the time and I would have taken that route and gone over style but that land was open and it would be difficult to find a particular path that was evident for someone to follow, I was walking a dog not following a line. Turn to map on page 29 RS asked you about and map on 30 and can see some letters this map goes with a questionnaire you filled in – yes. You can see there's a question 2 did you sign side of map A do you know which map – of the maps you have I don't know how I have photocopy they have not been marked with A B and C – they have been marked yes cant tell if black biro. They have been superimposed with crosses and B I suggest in black biro on underlying map which includes earlier marking – perhaps so. Did you write A, B and C – I do not recall but it is my handwriting. If you don't remember you cant remember when – it is evident that it has been done on or after 20th July. My original question was in box 2 did you sign reverse side map A

which map did you have in mind when said yes – the one that I am holding in my hand superimposed A B and C. Is signature on reverse – no on front. The other map page 30 that is signed on reverse is that you signature – yes. Is there yellow hatching on copy – no. Is there on Inspector's – yes. Is it possible that this was map you had in mind for question 2? – definitely responding to 2 was field A B and C. Which map did you have in mind? – this one the dark map. The one that has had A B C superimposed – its obv me as it is my handwriting and identifies fields in question. There are a series of crosses and what do crosses mean – that I have used those fields. There is a cross at bottom which appears to be location by your house – yes. Question 7 asked mark location with X fields A B and C, four fields to east as well so when answering questionnaire given your answer at page 29 is map shows land you had in mind not only A B C but also other fields to east? – what I had in mind was that I had been using them, what I have been talking about the field marked with cross did use them but I understood A B and C were the fields for Village Green. Your use of land includes four fields as well – yes when talking about use of land. You mentioned blackberries on those fields – yes. Where were they – along hedgerows where've brambles. Map on 29 you can see B gate and then there is another B A4119 to the east near cemetery – no. Look at dark map page 29 – yes I can see it now. You used phrase in first para of statement on page 20 since there is a stile by A4119 and gate and fields always thought public access, first stile by A4119 is that point B by cemetery entrance – yes. If you go into B and follow along 314 and you go out of field B to northern boundary by stile you yinks come into the chimney field if you follow path down n/e direction you pick up path 313 and that brings you to a gate near cemetery there is a stile there – it is stile referring to. You can then cross under A4119 and get to shops and Cross Inn pub. Have you used areas to north of chimney field – yes partly. Have you used fields to north and west of chimney field? – yes I have walked through them. Seen others using them – yes sometimes especially if there was snow kids go sledging there. The Welsh School not there originally opened 2005 – yes if you say so. You describe clear paths criss crossing fields is that A B and C – yes. Describe them – there is a path from gate field

A to corner field A and B. Look at Spaniel photo is that what you mean by the path – the path goes from the gate to the corner of B and C but also through the corner of A and B, it goes over the boundary of A and B. You noticing path thought had public had access – yes. When you got worn route means where majority of feet go – not necessarily if you have 200 people and 100 follow each other you will have that erosion if other 100 roam they shall not leave marks so does not necessarily mean that everyone or majority follow that path I would say majority follow paths as courtesy and respect. Did you do that? – sometimes but I walk wherever I choose, first time I would have followed path but then when familiar follow own nose. Dog on or off leash – depending if crops grown or sheep. You described as clear paths criss crossing fields – Yes I am sure it's depends on circumstances if there are sheep using field use paths. If paths clear indicate usage predominantly of those – there are sheep who use fields and paths. We have expert on that, this path is a path with footprints on it – yes there are footprints and traces of hooves. You spoke of respect for farmer when stock and grass for silage at least those times you keep to cross cross paths – yes of course. You said 1 conversation with farmer rather than many do you remember it – yes. Is this time in question 16 exchanged pleasantries and discussed dogs – yes. Farmer young and older – I think 2 and one older than other. Father and son – possible elder taking the lead. Where were you – on style field B. Public footpath – yes. Was that pretty normal route for you – it depends on the path chosen on particular day. Sometimes come back by riverbank – it is along the clun river bank, the river runs towards Pontyclun and possible to walk along 313. You could do that circular walk – yes particularly if stock in field to minimise time dog would be on leash. Why did you just apologise - I apologised as I began speaking in English and switched to Welsh. If not doing river walk where would you go by ref to page 29 did you go through A B C to eastern fields – I have done so perhaps 2 or 3 times a year. Would it be right for inspector to get impression most of use fields AB rather than C and eastern fields – yes that would tend to be true. Heard pattern of use and criss crossing oaths did you do circular walk AB – yes I have done so ABC I have walked around boundaries of AB and C

and the other fields. How often – during the autumn berry picking. You have confirmed used footpath 314 up and down through field B – yes. How often – not as often as path from gate but recently more often because the dog older and fatter, he cannot squeeze through the gate and can't lift him over he is Labrador. You said more recently used 314 more due to dog when is recently? – 6 or 7 months ago. Had to climb over gate – yes. Always locked – yes. Seen barbed wire security posts – not noticed closely but that is how a number of gates fasten in the area. That is a clear message from farmer not to go into field – not necessarily when I had conversation with farmer on style I walked toward gate and he could have told me at any point he did not wish for me to go over that gate. Number of options there he could have thought you were responsible person – yes possibility but dog off lead as no sheep and the questions he asked was quite abruptly that dog not going to chase sheep is it and I said that it never has and he said hmm it looks like it. Does not sound like a farmer happy to have an off lead dog – he could have asked me to put it on lead. How could you be sure that he did not when you have been unsure of others – I am just as sure of what the farmers have told me as what you have just told me. Could farmer be intimidated – I do not feel he was the type to be intimidated by me or the dog. If farmer going about his business top of B did he follow you or stay in that area – he stayed in the area. He would not have seen you at A – you are able to see the gate from the style the path that I took would have lead to the gate. Do you remember path – yes I can show you, the path with the Spaniel. This 2015 – yes. Nothing in form about what he said which did not sound pleasant – we said hello then he asked about the dog. I suggest we get a different impression today – we did not part on bad terms. He was consenting to you being on land – he did not say anything to the contrary. Last question in form page 25 question 29 community activities seen kids camping where? – one is near the the style on the dark side of the style beneath the tree by chimney field, also camping in chimney field. You seen kids in chimney field and remnants of bonfire and debris – yes also in A and B near the style. You saying Inspector will see charred remains in B? - not sure if there now talking about 2 or 3 occasions over 5 years past.

- RS RE – you asked some questions about map page 29 and you said you understood use of land marked with ‘x’ how do you use A B or C – if I take the dog short walk I will walk around those fields I use them blackberry picking and to walk through towards the Cross Inn it’s just a nice place to go walking. How often – if I am at home it’s will be 2 or 3 times every 2 weeks perhaps more depending on weather. Map Tab 2 RG1 there is a marking in key for hedgerow could you show which hedgerows for blackberry – to tell the truth the ones down that behind houses and A4119 side not so much along other as pine trees, not much point going that way any longer as too many people found out it was good for blackberries. The conversation with farmer did he say anything apart from what you told us – no. When you asked about camping you said one of places in near style on far side beneath tree - its is in application site in the boundary between B and C, there is a large tree and at one time there was the remnants of a bonfire and they must have had a good time from what I could see. Tend to? – I have seen remnants of fire twice and a tent perhaps three times.
- Inspector – can we go back to when you first knew this area when first moved in Autumn 96 you said that from some stage in 97 you began walking around and if you go back to address plan Miss Ellis asked you about this area you mentioned an angry horse – yes quite nasty does not like dogs. Presumably horse not always in field – no. Before period with horse 98/97/99 what was reason for going that way – it is not a very long walk and also just exploring the area it was a new areas to me, I used to go to that field to at the time. Just roughly from your house using footpath 354 how long take from house with dog up to field A – 7 to 10 mins perhaps less. Is your dog on a lead through residential areas – he walks to heel. At roadside – depends on the traffic. In terms of areas can walk with dog off lead this area is closer to home for you and certainly today there is a small area where sign ‘dogs on lead’ by play area looks like area with dog off lead and going back to early years was that an area available for walking and dog walking – yes it was part of fields, since built houses it has become a designated area for people to walk dogs and take walks. Before that part of fields undeveloped – yes. Going to those early years Miss Ellis

asked what attracted you to the gate to field A and you answered I do not recall a gate there is one today but it sounds there was a period where there was not a gate – you have it right I have no memory of opening gate. Do you know when it came on scene – after houses were built. Can you give us more help – you heard as previous witness said what occurred around gate put boulders in to prevent people/travellers installing them on fields prior to that don't remember a gate, since that time remember climbing over a gate, while houses were being built did not want to walk around as so much construction traffic there was a period I would not have used those fields or where houses being built because of that. You saying when this area was buildings site did not go up to field A B C – no was not possible full of caterpillar tracks diggers etc. Areas being built 98/99 – perhaps started then but bottom roundabout not there 96. Trying to understand if houses being built 97/98/99 building site before provided I trying to understand how clear you went to fields in 97 if at same time area south was building site – there was no building site when started walking there perhaps started installing road but those fields were still fields when walked there, may have started roundabouts. Are you saying built from roundabout east to west – I believe so am fairly sure. At time of conversation with farmer at style and discussion of dog were there sheep in field B or A – no or otherwise dog would have been on lead. When you walked various routes or paths did you see other people in fields – yes. Were they people recognised – some were some I became friends with. Did they come from Miskin – Dol y Llan, St Davids in my terms Dol y Llan is an estate and from what I remember that was first part to be built. When you saw people in fields only walking on paths or generally in fields – some people run and those on paths others who had dogs if no sheep allow them to roam. Dogs be roaming with dogs – yes. Blackberry near hedges and camping some documents refer to kites – I have see it once. Which field – B. How long ago – 4 or 5 years ago.

- Finished 15.40 short break.
- Resumed 3.55

- RS EIC – Mr Hossack turn to page 79-80 is it your signature? – yes. Look at plotted map with addresses – I go along B Heol Isaf Hendy T Junction turn right then left into Miskin Crescent walk along and almost 2/3 along narrow public footpath if you see circle 185 where Miskin changes into Manor Hill adjacent property to left hand side narrow tarmac footpath go up there and enter the horse field and walk along horse field to 5 bar metal gate with small stile and climb over to my left quarry all overgrown with bushes and trees then I would walk through acorn close and the path continue to where Sycamore Close is on the map and follow footpath north and then had option of left along path onto Ffordd Cefn Yr Handy to roundabout by Welsh Speaking School, that one of favourite routes although others I have taken. If you look at 79 again read up couple of lines read 2 sentence starting ‘being dog owners...’ – *read*. Satisfied true? - yes
- ME CE – when you moved in was house new? – yes, my handwritten statement I was not present when typed up but is correct but I did write page 80. This statement 9/11/17 who asked to make it? – Sophie Seymour. This was after VG app made do you know purpose of making statement in Nov – to provide evidence of usage. Why in November when submitted it August? – no. Is this first TVG been involved in? – first one. Did SS explain criteria – yes. In writing or conversation – yes verbally nothing in writing but can’t remember what she said. Were you aware campaign to prevent development? – I was aware intended application of VG, SS explained to me when went to her house on 9th November. To stop development – no to preserve use by residents on a recreations basis. Residents saw that was not compatible with development – wanted to protect our interest. You can’t remember criteria as explained to you – not in details no. How was statement taken as a result of a conversation with SS? – she outlined what was needed in a brief short statement. Was there a template for statement? – no. You say you and partner used fields from occupied in 98 when? – late winter lot of work to be done with garden so from 99 onwards I became acquainted with surrounding area, once main commitments with house completed. Remember when in 99? – no, would be when weather started to

improve. Not quite right in written statement which you did round her house – yes – you began using fields – yes as so much work done. Preferred entrance off roundabout by Dewi Sant – yes. Always? – no, also used Maes Y Wennol and the style became my preferred use, a friend of mine purchased in New Mill Gardens around 2000 and then discovered access also from Maes y Wennol. When you started using that access was children playground completed – I can't remember 20 years ago. Difficult to remember that long ago isn't it – yes. Tab 10 File 1 GP4 go to 211 and 212 pictures aerial photo summer 2000 and can you see three fields and if look carefully see faint lines and white splurge to left that's where play area going in and on next page see it slightly better we know it was completed at some point in 2000 new estate – yes. You describe in answers to RS your route to gate and what you described to her is that what always done? – no it has varied. Over time or what fancied? – over course of time. When did you start doing what described to RS? - since around 2000. I understood that was route to Dewi Sant or is it to style? – difficult to remember lands and road all I know this is way I used to go into field. Were you walking past houses under construction – I cannot recall too long ago. From 2000 you told us that when you met your friend who came to live at New Mill style became access is that right? – It became my preferred access point. Since 2000 predominately entry? – varied. How long style preferred entry – I cannot remember. When you were using gate into field A was roundabout spur there? – I can't remember. Welsh School? – no that was not there. Have you entered from west since school came? – yes. More or less than the style or equally or can't remember? – I can't remember that kind of detail. Can you remember how long it would take you to get from your house to gate both now and 20 yrs ago? – now 15 to 20 mins a good mile and a half. When you were young and sprightly? - take about same time. That central area? – Cefn yr Hendy orbital road and I am referring to land in middle. I will refer to that as Section 106 land. You used that land? – it is a little uneven foliage different but good for recreation with dogs. Well used? – yes it is. Has it been there all time you been there? – to my knowledge. Would some of your trips with dogs explore this area – yes but horses so always aware of horses and

my dog which is a small jack russell. During your earlier explanation used horse field decided to go up further? – yes when visit fried could see field C and decide another area to explore and he moved in around 2000. Had you gone on to A, B and C prior to seeing them from friends garden – I just remember couple of occasions gone to gate on west side of field A gone over that a couple of time I became more re-acquainted and more confidence in following months and years. But really it was seeing area from friends garden made you visit – yes. We heard from witness this morning describing fields behind cricket grounds – I have been there too. Regularly? – I mix the two depends on the ground conditions I like Miskin Manor Cricket Club and I like the fields. If Inspector wants to get a handle on how you distribute yourself – both have merit if I want to let Rosie my dog off lead then fields A and B can't do that for Miskin Cricket Club as driveway carries traffic to Pavilion and there is also the presence of sheep. What about when sheep on application land – I keep her on a very short leash and make sure no livestock in close distance, I will actively avoid sheep at all costs. In terms of time got area behind cricket club, section 106 land and application land dividing time what has been your pattern – difficult to answer, weather, land surface, go around village and hard surface when wet. Between three areas when weather better? – I will go onto fields ABC. You told us enjoyed cricket and section 106 so not always application site – I mix them together. Do you mix them relatively evenly? – yes, I am very fortunate that I am equidistant from application but bit further from land but I know short cuts, I crossed s.106 land to visit SS house. 6th para down on your statement you say my enjoyment of the fields never been deferred... sounds legal? – those are my words. What do you mean never been deferred? – put off. You told us when stock/sheep always keep dog on tight lead when you are on land have you seen the pathways – I would say myriad of different footpaths. Do you follow – I intend to but follow dog so I do not restrict myself. When sheep not throwing ball? – no. When sheep around stick to warn paths? – not necessarily. Have you been told it is very important to say not stuck to paths have you received that advice? – no neither has the dog. When there are sheep there you know farmers rights and that farmer has

exercised those rights – not aware of that. When sheep tight leash – yes. Sheep grazing at will over fields you told us respectful and responsible and concerned sounds counter intuitive that you would be walking areas with sheep you avoid them? – I do as much as I can to avoid them. We are on scenario with sheep there and when they are there I suggest you keep to the paths – so if sheep are on footpath I will go around I will avoid them. Seen paths and people using them? – yes. You been on them? – yes. Given your responsible attitude you know have right to be on PROW? – yes. When sheep around don't wander all around correct? – correct. Field A seen worn paths? – yes. Page 32 applicants bundle there is a picture of spaniel do you recognise where that is – yes. Rosie has lead? – retractable. You walked path? Yes. Leads to Field B and can go to chimney – yes it's a landmark. Higher ground good views? – yes. In that direction moving away from houses more scenic – yes its beautiful. You can take it longer walk if wish and walk river? – I have never done that. Use wood? – no. Gone beyond chimney field towards cemetery? – no chimney field as far as got. When on application site can you give us an idea how many time you doing route to chimney as opposed to other routes – cannot give definitive answer varies week by week or month by month. Attempt to estimate it? Most attractive part of site? – I agree. If it most attractive part of site you visit it more? – yes, I understand that we are talking northern point of field B. Field C do you go more or less than more attractive part of B – depends if enter field at Maes y Wennol can go in number of directions I do them all. If you go immediately left or right close to houses – yes. Field C lower – yes. Do you go there less often very muddy to get into – I tend to stay away from C if sheep in vicinity when happy sheep not there and if surface good go in there, about the same as A or B. Avoid C when dirty or muddy – yes.

- RS RE – asked about mixing three walks together equidistant from three how often visit application site average week? – once or twice. Line is statement regarding deferred what was previous career? – police officer. Could that be why phrased like that? – just word explained situation. What do you mean avoid sheep? – keep away

from them which is distance. Does it affect route choices? – depending on their location.

- Inspector – dog walking daily? – yes it is. Asked about options so 7 days week and so use these fields once or twice out of seven so gives feel for that. If sheep in field keep dog on lead section 106 land been described doesn't have sheep till you get to application site you would not see sheep till get there? – stuff growing in s.106 bit is totally different, vegetation denser, thicker, more difficult to throw and retrieve for dog. So has some drawbacks – yes and pitted and uneven. For you better to go extra distance – yes. You mention present dog only two years old so when making these walks at first from 2000 on fields not present dog – always had same breed of dog. So what you telling about present dog apply to predecessor? – yes she was Sophie. I can ask objector for detail but Tab 7 if find there is a page 101 on 3 cover sheet and over page says 102 see on far right gable of house and then sheep in field which field is that? – I do not know. In terms overall walks seen other people do you recognise? – no can be from general locality I see some but don't know name. Amongst people you see are regulars – yes. What is your experience of other people? – throwing sticks so not staying on paths.
- Finish 17.15.
- Aim 9.30 start tomorrow. Neil Thomas will be first tomorrow.

Public Inquiry – Day 2 – Talygarn Community Centre – 13th March 2019

- Start 9.30am
- Inspector – housekeeping – update on joint plan showing available routes to fields from wider residential area I noticed in obj file 1 of 3 in Tab 5 at page 10 the coloured version of plan looking at yesterday but has overlap in red broken lines that look to be route on DMS as right of way from south and that is helpful but we have not got something which shows in the immediate housing estate the alleyways and cut through so it would be helpful to have approved plan – ME no work done on that overnight and need app to lead on it we have all reached position that we need to finish on another date – Inspector we shall see and app date of photos – RS in hand – Insp identify periods – RS in hand – Inspector there was the Supreme Court Order *handed out by ME* – ME Supreme Court hearing listed for July 15/16th – Insp a brief mention yesterday SOCG re highways works – RS with me in hand – Inspector order for witnesses *a statement handed out which Inspector noted*
- Applicant first witness Mr Thomas
- RS please take file 1 turn to 121 do you recognise document – my statement and signature. Could you read out para starting ‘I use fields...’ *he did this*. In written months says sled where – we just play normally on fields normally field B where it slightly dips down. Happy statement true -yes
- ME CE. address is 36 Oaklands – yes. You are 188 on plan – yes. 183 Elissa Thomas – my wife. You moved in April 2010 – yes. There are also some other Thomas’s Catrin and Ceri – neighbours. You produced photographs which we can find in app bundle page 137 to 141 these two your children – yes son and daughter. Age – daughter 5 so 4 in photo. Born 2014 – yes end Jan. So 3 in photo – yes. Son – 14 October 2004 was born. You tell us in 3rd para of statement that you are doing

various things on field and children used in different ways daughter is only just 5 so can't be doing anything prior to 2014 and not at stage of independent play yet – no. What about son when he goes to field is it family trip – he comes with us a family but alternatively plays with friends and take football and kick around. You not there then – not always. You can't always see – no. If we go back to photo you gave us a photo location on page 141 is it your writing – my wife's. We can see faint outline shape and all photos field B – yes. One and Two are taken very near style at Maes y Wennol entrance – yes. In photo 2 face paint girl behind there is horizontal line is that path – does not look like path looks like rough track. There is a line of path across Field B – there are rough tracks not a path. Not aware of PROW – I was not aware public footpath. See signs – never noticed. Never noticed worn path – there is a track did not study signs. From position wife marked on for photos the positions of photos 1, 2 and 3 are on or pretty close to footpath 1 and 2 on it 3 5 6 close but never considered that point – are we talking rough sketch, where is footpath. You tell me – I am telling Inspector there are a number of rough tracks through field if standing by side it is coincidental really. If you go to Obj bundle 1 of 3 Tab 7 photo one recognise – yes style from Maes y Wennol park into field, children use playground. If on family walk might be some play in playground before entering or leaving field – yes sometimes daughter likes to play on swings. Need amusing on family walk – my children love being outdoors and running and playing in the field and it more an attractant than the park. I am putting an obvious scenario of familiar life and there are different attractions and I am saying playground part of trip not that you never go onto field in photo 2 see an area of darker use – yes. That is the worn path between styles on B seen it, have you seen it on line – see number of worn paths. It would help Inspector if can focus on questions – there is a worn path on photo. Have you seen this path – I may have I can't tell from angle of picture. Go to photo 1 the style you can see on post on right there is yellow arrow and photo 5 there is other style see yellow arrows those are way marks but you never noticed – no. On 141 of photo's what I am suggesting is all photos taken on or near the worn path PROW – I now know that. All those photos on or near worn path – apparently so

yes. The worn path is the one seen in photo 2 – ok. Can you remember if taken in course of family walk – not family walk recreational playing activity in field son kicking ball around in field. Can you remember circumstances of photos – at end of day photo children playing field. Can you remember when taken – I can remember my daughter playing in field at time as she had been to friends birthday party, son plays there so often I can't remember that particular time he was kicking ball around. Page 121 did you type it – I did it at PC at home. Who asked you to make statement – Sophie Seymour. What purpose – to support the fact I use the fields. What purpose – at end of day it is important we have village green. Did SS explain tests for TVG – no I googled them. When snow lots go sledging to field at north chimney field – not a great area we stay on field as smoother surface. You go quite often to see that – living in area 9 years so no way not wandered to look around. You enter and exit via style at playground have activities focused field B – quite a lot but other fields equally took drone to field C. When – can't give concrete days. Years – can't give dates.

- RS RE – File 2 your photos page 137 children how many – 3 but only 2 in photo. Other child – 15 year daughter. *ME did not volunteer information. Inspector question was not general but re-exam on evidence presented not what has not introducing additional evidence if ask then I allow ME. Only clarify more than one children.* RE I will ask as I do not know answer how does eldest use field – she has fascination for animals nature seen animals birds etc and draws to gather information. *Inspector finish rest of re-exam.* Look at picture and describe where style is in your photo 2 – I believe where sold houses down by that area.
- ME no further questions on that point.
- Inspector going back to aerial photo so 188 fairly close to corner Oaklands am I right you cant get either to style or gate into field A unless main road – yes. Your house to style you have to walk along Cefn yr Hendy main road and then either come in at Maes Y Wennol – there is a little lane that drops in Maes y Wennol. You then get to style looking it seems longer to go via style than over gate – one is longer

but do not have to go over a gate. On photo 2 there is question over what can see in background on my site visit I will be able to relate that back I will look when visit. Photo 5 that is one of daughters – youngest. To side dog – my dog. The orange by side of dog on ground what is that – not sure if I am honest I think it might be a ball slinger. In terms what we are looking at is photo looking north – yes towards Llantrisant. Smothering of a slope field B – I think so. People in distance wearing blue – yes. When using see others using fields – most definitely a lot my neighbours and people I know walking the dog. In terms of footpath plans that you had discussion and you accepted worn path putting route in mind when you see others using field are they using route of worn path or other paths – it varies in photo people in blue not using path, I guess there are some who use path, from my experience see people using field. Drones you said Field C why – the reason it was further from houses and any sort of overhead cables and seemed much safer there is much greater area you can fly without risk fly onto houses so safety reason.

- ME could I ask one further question photo 1 and 5 you said 5 younger daughter born Jan 2014 she is in photo 1 and we get impression development in 1 in 5 are you sure that is younger daughter as date is identical and child looks older error of date - do not think so they should have date stamps on camera. Inspector ME makes fair point it seems difficult that child in 5 is same state as 1 as one looks bigger – unless find date stamp clarify. You would agree photo 5 is different child or different stage of development – is my daughter length of hair same resolution of photo and angle one running bigger coat I don't know make your own judgement it's my daughter. Inspector helpful if could clarify that.
- Next witness Emma Heatherset? RS EIC. Why second statement – when met SS in July 17 put original together I explained how used land and it was typed up and signed it whilst present and words written down, Nov 18 I clarified the use of the fields and I also added a Statement of Truth. Can you read 4th para *Read it*. Also page 67 to 74 a questionnaire is that your signature – yes. Two maps follow page 75 explain marks black crosses above houses – there are about 5 x's 3

marking A B C and chimney field and one beyond as they are the ones I use regularly. Happy with statement true – yes

- ME CE – On big monster plan identify where you and husband 5 Shadowood Drive – since 2014. Before that at Dol y Llan number 28 was that new – not when moved in moved in 2002. Page 66 this is 1st statement in 2nd para between 02 – 17 I have resided in Dol y Llan 3 yrs and Shadowood 12 years are they wrong way around you got them or typist did- I was in Dol y Llan bought Shadowood 2004 when I said 2014 earlier that was a mistake. Sure – I have the Deeds. You filled in questionnaire and annotated the two maps – right. On page 77 there was a map rather difficult to understand in bundle but idea is A home address where Shadowood and B access point and signed and dated that on 76 so the access point is Maes y Wennol – I used two access points. On 77 you only noted one. Inspector B is to northwest of A. You only put one – it is one I don't remember how many access points I used. If used two when not marked two – it is an access point. Now telling us used Maes y Wennol as well – yes I have. *Inspector to be fair the statement does say about gate and then talks about Maes Wennol.* Page 69 access you said via gate singular – yes I did Mean? – there is a gate from down past St David's and style Maes y Wennol. Page 73 question 41 have there been any styles or gates please mark on map just pause and look at page 75 its very dark we got letter B access point and in question 41 has gate been locked and you said yes – yes. The gate or style at Maes y Wennol not been locked – referring to gate from St Davids. Consistent with map page 75 and 77 – yes. So is there any mention in questionnaire of Maes y Wennol entrance point – did not ask specifically. Is there any reference to style in questionnaire – struggling to answer. Page 69 question 13 how you gain access – by a gate. On maps you put B at position of gate – right. In statement on 66 where were you fill questionnaire – at home. The first statement – I think I did it at SS house I know did 2nd there. Both at SS house and SS typed them – yes told her and she typed. In 2nd para your access by gate is that gate to field A – yes. Is that gate you were talking about in form that was locked – yes. Climb over – yes correct bound up with wire cant miss it. It is obvious locked in order to

keep people out clear message – no, no signage, no notification restricted access, heavily worn, I would deny that. I am saying you don't seal gate with barb wire keep people out – I deny. Conversely if happy coming in don't bind – don't agree just make sure sheep can't escape. You describe dog and children how many – 2 are aged 10 and 7 eldest Oct 2008 and youngest Dec 2011. Describe activities how old – since born sledge with son and new born daughter in back pack may have photo's but not in evidence. Where sledging that occasion – play snow in field A and slight decline on B top corner gradual slope down good for 3 year old. Ball games not new born – no new born cant play ball games. When older one now when did you start playing games – about 2 prior to that in backpacks walking with dogs. This sledging with baby you meant – older child about 3 younger a baby. No photos from you – no. How many dogs – 2 dogs 2002 2 dogs moved Shadowood lost 2 in last 5 years and now have new dog. In 2002 two dogs - and they lived until 4 ½ yrs lost one and other 2017 now have new dog. You say page 66 they on leads – yes. Page 66 use fields run around walk dogs on lead and sledging in frequency occasion – yes sledging occasional. Run around fields explain – if I had dogs with me when older just 3 fields. A lot – no I run half marathons and just right for elder dogs. How – circular start at gate along wood line and loop around and may come back over style it just depended. If came back Maes y Wennol come back pavement – yes. You marked chimney field would you sometimes go walks or runs on chimney or other – when I did not have dogs over the river there is a footpath to cemetery. Back along river – I could run much further on. Big network of footpaths – yes. How come back – could be same way of Cefn yr Hendy road. Have to do road practice for half marathon – yes. In 2nd statement page 65 you describe variety of practice my uses varies not with sheep with new dog has it always been variable – yes because stages of life don't necessarily run with young children but fields consistent use. One of witness yesterday said run on line – if training but field would be exercise and not training. You say para 3 tend to walk 3 fields do you mean A B C – yes, only time access other fields if long run. 3 fields dog walks and children – yes, play games as well. Where – Field A in the middle away houses and trees when wider family came to visit a few

times a year. Where from a long way away – yes. One more thing need original file came from reg authority about ¼ way through and its some material submitted by Rachel Farrant. You run through chimney field have you seen other people in there on your runs – only when snow, only time I can think of, can't think of seeing anyone running. Not seen child playing – lot of broken glass and rubbish. Suggests congregation there – all I know broken glass can't comment how got there. Noticed any bonfire remains – no. When you last go chimney – when snow so Jan/Feb. Was that sledging – yes. Have you seen that kind of thing – yes I have seen sledging there.

- RS RE – you asked about running in field and you said exercise where – in A B C routes varied start at gates by St Davids them run along it just depended to be honest with you. You answered about other activities said ball games play with family where ball games field A – middle. How often – depends on weather every couple of months, with dog every day, use changes over years.
- ME clarify with ball games middle wider family visits. RS my understanding was ball games and family visit distinct. Witness yes separate events.
- RE who we for ball games – me dogs, me children, me husband and children. Every couple of months – one dog every day though in past with others dogs fairly regularly, children couple of months not jus A could be B and then use playground, varying usage depending on what stage we are at.
- Inspector – When first moved to this area you were at 28 Dol y Llan and that was 02 – 04 and then Shadowood drive 2004 when at Dol y Llan were you then making use of fields or only after Shadowood – when in Dol y Llan had dogs and used fields would use the style at Maes y Wennol then, may have been constructed on St Davids Height at that time may not have been aware of gate then. Seeing other people you explained chimney field only time is sledging and you use longer run so far as A B C concerned have you seen others in those – yes very regularly. In terms of dogs and children recognise or strangers – some I recognise children I recognise don't know everyone

but people I recognise. In terms how they using is it different – pretty much same children I have seen playing and adults with dog and adults with children, mixed use in time I been there broad spectrum. In terms of people where they going explained your use what about others – it varies I see them all over, see crossing into field C over hedge row it is a general use. One thing I did not fully understand, your young dog don't go when sheep present, with older dogs say used to use fields with sheep present, in first statement say walk dog on lead, when taken dog to fields always in leads – if sheep are there with old dogs on special leads.

- Break 11.35 – 11.45
- Next witness Miss Hurne RS EIC Statement *witness read section*. Still two dogs – just lost dog
- ME CE – Pinpoint house number 93 – yes. You tell us you used fields on nearly daily basis to walk dogs – accessed via style. There is footpath style – yes on post. You new ok going on as public footpath – yes. When moved in the area other side of road Ffordd Cefn yr Hendy – yes has woodland around. When you moved familiarise yourself with it – tend to avoid as with dogs. Keen to focus on 98 the road was not opened – trying to remember but cannot. In relation to road from roundabout to roundabout via Welsh School not completed until Sept 2000 but not finalised – I remember Oaklands there and Maes y Wennol came after I moved in. The little playground – that was not there. Went in 2000 after you moved there – public footpath style and fields always been there. Can you recall how you got to style in early years – cant remember, I remember using the fields as I always have, I bought house as fields safe for cats and play with dogs. Why did you assume that those fields which were in use for farming/agriculture – when I moved in did not note public footpath. A few question said new footpath – when I moved in did not log footpath I logged fields around. Private land – clearly there was access as would not broken fence, over a style into field, it must have been Maes y Wennol, accessing fields rather than footpath. Why enter fields – style. You thought invited in – what I saw were fields could play with dogs. With sheep – occasionally. Then – I cannot remember. Style always access –

to the best of my memory how I accessed field not break through hedge or gate. Your access always Maes y Wennol – as far as I remember. Never used via Field A – not accessed but occasionally left, used quickest way. Over other side of field there is another style to chimney field you go there- not for last 10 – 12 yrs cant keep an eye on dogs there steep slope to river but avoided with dogs have nosed at chimney. See sheep A B C – yes, mostly C. Is that more recent or though time – can't remember but definitely recent years and not always there. When sheep not there aware of cutting and baling grass – not seen doing it but seen bales, just have not seen it. Cutting hedges – recently, very recently but not before. Phrase how long spend time say 'doing field B only' mean – lots of walks if no sheep play on fields for ages as two collies off lead, only safe place can play off lead, doing field B quick walk taking hoop. You walking and throwing to fetch and come back – yes. Worn path – there is rough ark where people walk. Still grass but obv more worn – yes, people use it as footpath as well. You said you walk along and throw you moving in direction and throwing something incidentally to fetch – will be playing with dogs, you sometimes have to fetch hoop back playing with dogs. Do walk along and throw things when walking – it varies I play in field with dogs. Where – all over the fields. Equally A B C or more B – more on B and A but that is because sheep congregate field C. Off lead when sheep in C in B and A – playing with dogs away from sheep wont go near sheep one dog is scared. Said seen farmer once – many years ago, had not had one of dogs very long so estimate 2007 but cant remember exact date. How know farmer – told me. Conversation – yes. Dogs with you – yes. About dogs – yes, off lead, no sheep. What conversation about dogs – farmer mentioned be careful when sheep on field and I said never take dogs near sheep and he also said that he would shoot dogs, my border collies very well behaved. He was making clear he did not want dog – no expressed concern dogs sometimes attach sheep. Comes up to you – he asked if they were sheep dogs I said no just border collie. Asked sheep dog then makes clear not want dog on field – he did not say that. Why say shoot – because he said that he was not afraid to shoot them. Opening on fields between B and C – dogs stay with me, one terrified

of sheep. I am suggesting making clear to you – no. Farmer made it clear anxiety about dogs where he keeps sheep – when there are sheep on fields at that time no sheep. The farmer made clear anxieties strong concerns about dogs on field where keeps sheep yes or no – no what I think he was saying was if dogs interfere sheep not afraid to shoot them but did not ask me to put on lead. If a farmer commences a conversation with two loose dogs and he is on field where keeps sheep and he reminds you he has right to shoot dogs if worrying you does it sound to you if he was happy with dogs – he did not ask me to leave or put them on lead.

- RS RE – where did that conversation take place – it was in chimney field and it was when I first got Danny.
- Inspector going back to when first move in number 93 you are not house that backs on – no. If you come out as things are now if you walk down the road am I right there cut through – yes. In terms of that cut through behind is children's play ground that does not come in until 2000 so when first there playground not there was cut through there – what I can remember is when houses being built those back onto field on our road they were still being built and there was always access but think pathways later on fairly certain it was via the style, I do remember that we were not the last house to be built. You been using fields going back to early period you move in May 98 some building activity going on thinking about early years in terms of taking dogs on almost daily basis for walks were you the only person you saw doing that or were you seeing others – I met quite a few people, you just triggered memory I had small dog before these dogs and I used to lift over the style so must have been there. I had thought you had 2 dogs when moved in but is it case 1 small dog – I had 1 small dog lost her shortly after, the small dog was a big yorkie cross. Why lift over – she was a wuss, it would have to be very safe for her to be off lead. You were seeing others dog owners when first moved in just field B – I think it was across all fields. In terms of seeing other dogs and dog owners so these people in locality – there may have been other but certainly the locals. When playing you play with hoop – with border collies always hoop with other dog ball.

- RS next witness Mrs Daniel (?) page 7 and what is that – 2nd Update statement. Your signature - yes. Why 2nd – made one earlier I can't remember why. Turn to 18 – original my signature. In between questionnaire – remember filling and my signature. Two maps 16 and 19 do you remember what maps are – 16 is where marked field A and B, Page 17 my house is a and b where is access, Page 19 those I use regularly A B C and chimney field. Also photo submitted page 12 – my niece on bale. Page 7 read para “I moved to above address...” Originally Miskin – no from Cardiff.
- ME CE the enormous map you 36 and 26 Maes y Wennol – yes, moved in Aug 2000 it was new. Page 36 Waldron exhibit 19 page 36 which ties with what told by Mrs Daniel, position 36 eastern end field A. You date use from 2002 – would very occasionally go in from when we moved in 2000 but more after son born Feb 2001 went in after could walk in 2002, the access was visa style and children's park 2002 completed I remember clearly as Jamie was first to use it and I remember the houses down to play area was last thing as that was where site managers office was. Page 18 there is a short statement which you made in your house typed by you and then do maps at page 19 and 16 plus the key at page 16 belong with questionnaire or first statement did you do them together – I believe statement at home then went to SS house same day and did questionnaire at her house. She invited you – there was a meeting held in Miskin to discuss planning and use of space and I could not attend I contacted SS to show I used the fields as non dog walker thought was one of few non dog walkers and offer important application. At time of planning app – July 2017. Public meeting opposition – more about information. The 2nd statement was that prepared at SS house – the second at her house I believe I typed it on her laptop. Did she ask for 2nd statement – I commented how short my first was and she asked me to think about a bit more clarity in using fields to support application. Told us fields use ABC and chimney – yes. Map was of a piece with questionnaire and statement – yes. When doing those things you were doing on basis of use ABC and chimney – yes though I would rarely go to chimney field. You can access on footpath – yes via style, though last

year probably not at all this year twice. What about back to 2002 – using fields A and B for walks and living in Miskin quite a while when came across chimney thought interesting told child it was where Repunzal lived. Pause there and when did he grow out – I would say 2005-6. Might you still play there – not that often as did not ruin fantasy, used to ask to climb but would not let him do that go there few times a month but use other fields more one of may activities. Fields A B and chimney – yes, C occasional in 02 – 06 as he was fascinated by animals we would look at sheep but avoid if lambing and avoiding sheep poo not much fun. Lots of sheep droppings over all fields – yes and dog but not so much dog as most owners responsible. When on field keep him quite close to you – yes, holding hand or running close, he would take lead most of time. If going to chimney would you follow line of style – not always. Sometimes – yes but more often that not fascinated by big oak tree and he would run towards tree go under, sheep shelter under in summer, then field A as liked to look at back of house and he would run around, not run around A loose if sheep there, tire him out then far end to go back in field B, northern part, walked parameter of B to style, see big gap where hedge disappeared. See indentations – that where sheep go, sheep tend to go same route, I would vary but walk close to parameter, never been in forest, get to end of field go through and walk to style for chimney field see if see Repunzal the Maes y Wennol or sometimes over gate at A. Playground – he would get bored as use it so often. He did use playground – yes. Made use of land to south of housing s.106 land – yes. How – 10 yrs ago friend had dog came to visit from London sheep in field at time we went in woods and friends dog rolled in fox poo, remember Merlyn on BBC they filmed it in wood so we went to see where it was filmed. Popular at the time – yes. Filming – after to see if you could spot where. How long popular – 2 year. So 2010 – 12 he would want to be there for some – he was old enough to go on own and with friend top of street I went on trip once. You said in page 18 enjoy sledging – when snow. Where – field B where slopes and gone to chimney field step bit only one day in 2010 and I was shocked at how steep go very fast and with river at bottom not very safe. How old Jamie when sledge on field – can't remember

he was little a toddler we had small sledge I would have run and he would have sat on sledge. On page 18 you say popular route with ramblers and dog walkers – over style to field. There is a wider right of way network this notion of route speaks of a line – main road goes passed roundabout that has got various markers on it so on of them is walkway cuts through top Maes y Wennol that route then walks down Maes past play area to style to get into field B they will then walk randomly left or right or to chimney sometimes similar pathway sometimes not, I do now always stick to the same route. You say ramblers boots and backpacks – yes do not know them seem some on Duke of Edinburgh Pontyclun Y Pant spoke to them. *Tried to show location of Y pant on big map not on there but gave rough idea of location.* In 2nd statement on page 7 the 4th para say mostly use A and B always pattern, consistent – C I started to use more recently started hobby running and been doing trail running to learn to trail use even rough ground use of C has increased before 2018 a few times a month now few times a week. You described sweet scene with Jamie to look at sheep from boundary – go into C if sheep not there. Even accounting new hobby your assessment in 1st Dec last year are A and B – correct, more true years before 2018. Picnics how often – depends on summer usually twice a week from 2002 to 2011/2 when Jamie young take hamper blanket game sunbathe take toys took cat run with cat, Jamie only child and close relationship but if he wanted company take toys and cat he still lives at home. Kite flying when – so frequently I do not have dates caught first kite when 4 (2005) used regularly till last year. Weather dependent – with field wind comes up from North end so can fly kite often wont do it when rains surprising how windy, maybe weekly summer months also in autumn and spring, enjoyable pastime. Sure about frequency as farmer said not seen kite flying not saying you are lying but trying to get handle how often – depends on weather. Only seen farmer twice how you know – on tractor and bailing hay and feed sheep while he doing agricultural things. Photo of niece wondered how precise of date – camera phone recoded date it was on field B. Where – further north we went out because would take photo of Jamie on grass and I wanted to take one of Lilly.

- RS RE – you were asked how often had picnics you said something else – depends if sheep in field, they wander were in field A this morning. Picnic – twice week if weather allow.
- Inspector – one thing wanted to ask house backs onto field some of windows can see Field A directly – also see from garden, hedge in garden is boundary, hedge my height, see beyond hedge. If in house can you see it ground floor – yes kitchen, breakfast room, conservatory. Back 2002 and years to 2005/6 working – no at home, I ran own business from home until 2010 limited business, could be with child. In other words you on a daily basis could observe what going on in field A – yes also see a bit of Field B. Back 2002 – 5/6 daily experience seeing people Field A is your recollection was it infrequent – regular see people every day some same sort of times every day others you just see in day often with children often with dogs, leisure activities through day, majority of dog walkers be before or after work school times, cant think of a day not being used. Leisure activities – just having walk, with friends mooching about. Young adults older children – yes, also any age going walk style makes it very accessible. Areas field A – everywhere, the tree is so muddy as you see foot prints and hoof prints. Oak tree can you get through hedge from A to B – yes no hedge by oak tree. Field B is pattern you described in A same or different – same. You moved in 2000 so fields with son was once able to walk this observational element does it date back to 2000 when move in – yes. If I was to take a view what you described dated back to 2000 onwards that would be fair – yes but slightly increased as built more houses when they built school see more children. You not dog owner when you say see people are they people you can place as locals – yes, an example in 2011 I started Uni in Cardiff when went there first day saw last witness and said that I had seen her we did not know each other then but had seen them in the fields. Kite flying – fields you or saw others is there any particular fields – predominantly A and B but sometimes C, if not doing it could see kite from house over hedge.
- Adjourn 13.40 to 14.20

- RS EIC – Mr Patrick Moran (?) File 1 turn page 82 – my statement and signature. Read out 2nd and 3rd para *he did* . Happy with document – yes.
- ME CE – 37 Bryan Dewi Sant no. 128 on big map that is area furthest west and 128 and 72 is that your wife – yes. New when moved in – year old moved in Oct 2006. In statement Nov last year you divide up use AB and C and talk about access gate in A sometime style in B proportions – 80% A gate 20% style, gate always wired was period coming loose but not loose anymore. Someone re-secured – yes. Could not say when and try and break down – more than 5 yrs ago. Talked about son just one – yes 2009 born he is now 9. This gate secured – more barbed wire it was after he was born but pretty small probably before school guess 2009 – 2012. Even though gate more barbed wire continued to climb over it – yes made it easier. If gate deliberately wired shut that send message don't want people coming in – not in my view and no signage. Farmer good reason keep out – my interpretation livestock in rather than out. Presumably came loose stop people climbing over – my view keep stock escaping. You have a dog history – had 2 till 2017, 1 when moved in until 2017 sheepdog. After – gap of 4 months and then 2 new dogs 1 cockerpoo and 1 sheepdog. 2018 – no summer 2017. Moved in Oct 2006 and say used fields straight away figure of speech – when move somewhere new look for places to walk would be in the first week. Your house close to s106 area which is public open space – we do use it occasionally not as much concern about dogs running out onto road not as big and A B C there are openings onto road. Others use it – yes. Fewer using fields – fewer using A B C peak times of day. Peak times day- peak walking times 7-9 morning. Fewer dog walking that time – I do not use the middle field at time. Perception fewer people using at that time – yes my perception. Two dogs had 20 months then 1 dog leads on leads off old dog – happy to take through fields off lead, new dogs off lead when no sheep. Old dog never lead on in field – hardly ever can't think why needed it unless another dog I was wary of or sheep in field at same time I would put him on lead then.

When describe balls and sticks off lead – yes. If other dogs or sheep use lead – I would not throw ball or stick if sheep in same field that would be unwise. Nor if dog you were bit suspicious – yes unfamiliar dog. You report an occasion you met farmer field A 2006 you say taken aback asked why sheep dog on lead – happened top of field A saw by gate so put dog on lead. Why – I suspected that farmer chat use of field so good idea put dog on lead, respect. Which other fields use – good walk top of valley above Treherbert, bottom field in Miskin past chimney and past chimney bottom field. How often – once a week that field. How access chimney field – same percentages to access go through forest 80%. Fairly clear worn path field A – not sure path well worn field A as I recall it closer to forest. When first moved in you were aware of path – only as much in line as crow files to that style and along edge of forest, look for birds in trees. The picture getting is of a line *see on plan* – think line closer and sheep lines through field I would use, use of field not confined to lines on diagram. The farmer in truck – last year saw him on quad bike only other time seen him. Seen farmer put on lead – assumed making bee line for me as no sheep on field. You read situation as this is farmer heading for me I better put dog on lead – yes as I think most dog walkers would do. Had the dog been running on field A at that stage – yes. Farmer came haring up – not screeching up, he asked why had sheep dog I was taken aback said I always had sheep dogs. Said he told me he had shot dogs that worried sheep – that was pretty much end of conversation. Reinterpret as a clear warning from farmer to not allow dog to run round loose because of risk – not interpret that at time but he said that he had shot dogs. It's a strange opening gambit – I remember it clearly the first question why sheepdog then second but not said can't use field. Best insulation is put on lead I put to you – umm. So can't get tempted – well yes. Risk loose dog in sheep field may succumb may play worry or chase sheep canine nature – not all canines. *RS can't say what farmer was thinking ME I will deal in submissions.* Witness – my interpretation ok you in field but put you on guard. Not follow warning – did not go same day but going back since not told not to have dog off lead. Photographs

page 18 of app docs got 4 photos and location page 19 on location page is that your writing or someone else – someone else. Accurate – 1 yes 2 further up line 3 further into field 4 further into field. The photo 2 is March 2018 dates – on phone. Bottom 2014 – yes. Photo 1 is that old dog – yes. Off lead held by collar for photo – yes. March 18 no question as outside period. Where son and dog boots and paw mark further along – bottom corner north corner field A. Worn ground less vegetation that bit made by walking in are – human dogs and sheep walking. Carry along through gap carry along come to chimney field – yes. Done that – yes. Several occasions – over last 13 yrs yes, entry to chimney field is predominantly through forest. When boy smaller excited – just because called witches hat and only structure in area also forest and birds in trees line field A. Understanding of time walking as cake how divide time and using wood to chimney against walking to chimney through field help get picture – hard priority as dog walker give good run if ABC available run around them take priority but if leisurely stroll use forest or lap of Llantrisant predominant use is field and need them to run the dog. Field C page 82 you say from 2016 field C then same pattern of use why change – going to previous discussion that is where farmhouse is and sheep down there or field near farmhouse made sense not to use field started to use it when run around field, do now as know not causing trouble. Has someone else said should not go the C – no come to conclusion myself.

- RS RE – Just ask seen farmer quad bike where – I was south end field A must walking back with dogs north end field A on quad did not come to speak to me. Dog with you – 2 dogs. On or off lead – probably off.
- Inspector – your photo's number 4 what going on – playing golf, plastic ball, plastic cup, dog would not have been with us then. You son – yes, plastic ball and club but I have also taken golf club in. Rough - not ideal, just practice chip shots. Other people discussion with ME less people here than perceived on middle field that gives sense but not how busy fields were how often if in field A see another dog owner or walker when you there – unusual not to, if

short blast for dogs expect to see 2-3 dog walkers. You sound frequent user A and B amount of activity you seen other people what sort were you seeing – seen families with kids with balls mainly field B seen kites flown seen people walking through field with binoculars seen kids camping not fan because litter, seen overnight camping. That field ABC not chimney – bottom field B away from houses where it slopes away.

- Next witness Mr Coeser RE EIC turn page 5 and 6 recognise document at page recognise – that is my statement. Questionnaire question 5 underlined – I did that activity and excellent bird watching. Happy statement page 5 – yes.
- ME CE You tell us move 3 St Davids Heights December 2016 No. 31 aerial plan and 30 is wife – yes. You say in statement that one of first thing did follow path at end of road into field – corner between 11 and 10 cut through there down to gate. In. questionnaire you say by Welsh School that what you mean – yes. See worn path to gate – yes. Once over gate see rough lines – yes. Seen those in real life – yes. When on field did you follow worn path – for first time but after that use been more over the field wherever the bugs and birds are, I watch them, activity in hedges and grass and bird of prey. Walk along wood line typically – typically no I try to vary it I walk woodline, sometimes middle, sometimes top. Into wood – no been there once. Notice little line – don't recall it. Barbed wire on fence cut – noticed fence not looked closely. Always accessed climbing over gate – yes. Always shut – yes. Wired to post – yes. By barbed wire – yes. Isn't that good indication not welcoming visitors – not say so keep things in, I grew up on farm keep animals in, no signage, seen people all the time. See people so assume. My question different a gate like that not invitation – I would not think twice, open field, saw people walking. Sign stop you all that would – on that land yes, style at Field B. How often – once or twice. Page 6 questionnaire how come by it – think dropped through post. Did it come unbidden or was it preceded by you asking – think involved in local friends Cefn yr Hendy so new about it. That was oppose development – yes. Did you help compile questionnaire – no.

Wondering where map is – don't know there would have been one. You did not put bundles together did you – no. You refer in statement to bird watching by oak tree is it this one – yes.

- No RE
- Inspector – as well as interested in wild life you mention dog owner and spent time with dog playing in field, in terms seeing other people – I go really early when sun coming up but if I go later or on weekend always see someone don't think walked fields in broad daylight and not seen someone. You prefer crack of dawn – either last in afternoon but typically first light. When you see other people do you recognise – get to see regular people. Are they people see around neighbourhood or only on fields – some look familiar some at train station or if running along road in Miskin.
- Quick break for 10 mins I want to get us back on track dealt with 9 people not dealt with Roderick or Lloyd yesterday and still 8 not heard on list tomorrow and one will be SS so more questions her. I would like to make sure no overspill aim to run till 6
- Break 15.30 – 15.40
- Mrs Martine Davies RS EIC – page 32 start 33 can you tell us what is – statement. Signature – mine. Back to 32 why 2 – more details. Read out first para 2nd statement *read*. Happy everything in statements – yes. Also questionnaire and two maps – accompany questionnaire the markings are fields A B C and next one two B's are access points
- ME CE – live 29 Manor Hill pick you up plan number 44 with Matt Davies husband – yes. Before lived Maes y Wennol 2005 -10 – yes. Then moved Manor Hill Nov 2010 – yes. Find old house for us – lived corner of bend roughly where 137 blue number other side of road, was half the 102. Moved to that house in 2005 – yes. Got children – 2 children youngest 13 and eldest 15. Eldest born 2003 – yes, youngest beginning 2006 January living Cardiff before. What I've year moved in – beginning July 2005. When start using land – can't be precise pretty mush straight away take 2 year old to park then go into field. Pattern of use since moved further of land is less

use of land now living Manor Hill – that is correct and children are older. Since 2010 you been using field monthly on average – yes. Over course of year but more in summer – yes don't use it when sheep in there or just stick to two fields. 12 visits a year – yes estimate. Do you see sheep and not go in – yes quite regular occurrence. Dog – first dog 2011. More than one – now have two. You don't go in field when sheep or bring dogs in – if sheep in field C so I would walk dogs A and B but if more spread out somewhere else. Dogs on lead – that varies. Only dogs since 2011 so talking over last few years – that is correct. Between 2005 and 2010 at Maes y Wennol did you dislike sheep then as well as now – yes never particularly fond. I deduce you would not take girls on fields if sheep there – no I wouldn't. You may not be able to comment on this have you been able to form impression whether greater number of sheep around now than when at Maes y Wennol – not comfortable answering that. In first para page 32 say go 4 times a week that is subject to sheep presence – yes but average when sheep not there every day not when sheep were there. Have you used other land public open space (s.106) - yes since having dog but prefer A B C are flatter and dog has mobility issues, drive dogs there. Mobility issues – 2nd dog had spinal surgery about 2 yrs ago since then he is mobile but feet drag don't like road walking as drag feet drive to fields to use grass. Slow – not much walking not slow moving about 40 minutes is max then tired. Go in through style – yes. Carry him – yes. Dog – Boston Terrier very little lift them over, That is field B there is public footpath sign at style – believe so familiar with yellow arrow. Line going up and that is visible on ground and is worn path – I am familiar with path as that is where girls do gymnastic, can't vouch for style on other side as never used it. Gymnastics cartwheels etc – yes you good line to do that. You described in statement family walks and field B most often – yes most time in that field. Described use made of line said did not know style on northern boundary ever been chimney field – been up to field but never been in field. Other ways use field B – flat best gymnastic but also play tag run across whole field and run around not confined to that line. Not mentioned tag or ball games –

running round as kids do. 3rd para latest statement access break down – 2010 Maes Y Wennol access when living there. Since Manor Hill when going up to fields say you drive up where you park – by playground. When does gate get look in – only small amount of times I think used it on occasions before dog had mobility issues very irregular but have used it would be post 2011 when had a dog. Other two fields to what extent C – C more since had dogs there is more space to run around in. What about A – varies if walking them do all three if dog struggling stick to A and B. Sheep sometimes in A and B – yes don't seem to be as often. Mr Porter our witness land agent and knows land he puts number of sheep as large 200 – 250 considerable flock – I can only sat as found it comfortable to walk on A and B when sheep on field C. Eldest daughter old enough to be independent – yes old enough should be walking dogs today.

- RS RE – said not comfortable answering if sheep more often than when in Maes y Wennol – seem more there recently find myself having to drive back more often, increase probably in last year or so.
- Inspector – explained ages daughter and oldest 15 and one dog needed to be driven for walks not understand how bit in statement with daughter bringing dog as she would not drive – she would cut through fields but often only take one dog as not comfortable with other dog. When you are on fields when living at Maes y Wennol 2005-10 and people you saw how often you see other people – during period say usage varied throughout day when kids at school not so many but after school see 3 or 4 often people do what I do access park and field. Recognise – absolutely quite recently ran into an old teaching assistance, people from local area I presume as see regularly.
- 16.20 quick break 5 mins Resumed 4.25
- Mrs Lloyd RS EIC – open page 81 recognise document – my statement. Can you read first and 2nd paragraphs *read*. Happy statement – yes.

- ME CE – you moved 9 Dol y Llan May 97 if you look in Waldron date page 15 find subsequent transactions early not recorded but New Mill 2002 recorded. Dol y Llan new – we had first ever house there. New Mill Gardens 122 – Karen Lloyd no relation. Bottom right hand corner New Mill Gardens. Dol y Llan just along *marked on map just below 139 on blue dots*. First ever house and for quite some time building around is that fair – yes. You make it clear in statement that your use commenced 1999 so a few years after what triggered it – in 97 my father suffered brain haemorrhage so spent most time in Morristown hospital, daughter 98 Sept, so not until 99 acquainted myself with land. When started to explore when in 99 – probably April 99 walk with daughter in sling, not first time as walked around but first family walk. How get into land – walked through building go on and climbed over style at Maes y Wennol. That style still there – can't remember if way sign but was style there. Obv public footpath – yes. Moved to New Mill 2002 that looks out over Eastern field which is not part of application – that's right. It's fair to say never lived overlooking app land – that is right. You just got one daughter – daughter is 20 and my son 18 in May born May 2001. They live at home – daughter uni and son at home. Talk about children use of land in 2nd para at from 2008 – 13 play game on fields with friends in group so not overlooking what doing – no, I or another parent would be with them. I got impression children went on their own is that right or was it supervised group – both in 2008 son was 7 not on own but if daughter was there and older then go unsupervised. I know long time ago but at that era before dog how often go to the fields – as often as possible weather dependent this time of year onwards at least 3 times a week. Entering from style – yes. Then where – A and B did not really go into C, well not as much. C 2 or 3 times a year – probably more in a year. The nature of use A and B were you using one more than other – not say so. Pop over style there is a worn footpath is visible now as it visible when first went – can't remember. In recent years seen more other people on field – I am there more now see more now. When building site not people around – no. One witness had impression had impression more people after Welsh School built

agree quantities – I can't say. Your activities in A and B say children did in groups – in 2013 was 12 so comfortable play with friends, would have been comfortable with him on own when about 9. There was a period from 2008 on when you talk children being there and 2010 then with son so cant say you saw it – talked I assume if had football water. Played games as family – yes. What – daughter rolling and catching netball, son rugby, cricket wickets. Summer activities – spring on, son like toy tractor so take it up. See tractor – in field E and F not ABC. 2012 got dog went twice daily new departure spending more times what times day – morning and late afternoon, over style, both on or off lead. You say of sheep grazing keep dog on lead – if sheep grazing on short fixed lead. If sheep there remain on paths – on spaniel not walk well on lead get over style if sheep in B turn into A if in all 3 keep on lead and cross to chimney down to river but rare in all 3 fields. Walk to river nice walk – yes. Do it out of choice – no dog needs long walk, criss cross, sit and stay, hunt ball, hedgerows and long grass. You talk about conversations with the farmer Rob son of older farmer have you seen him – yes he is one referring to in para above. When saw older farmer you said when sheep around keep dog on lead and avoid sheep – when saw farmer dog on lead. When he saw he waved and said hello – don't know if he recognised me. You got impression content for you to be there – yes. You got tel no. Younger farmer you said saw dog running around after sheep he gave number when you at New Mill – yes. Narrow down – years ago Alsatian dog running around, gave number, I have had to ring him. Which field dog worrying sheep – E or F behind house. Called several times sheep on backs or sheep carcasses is that all E and F have you seen sheep in trouble ABC – No. Last para dead sheep with lamb in E or F – yes. You are helping farmer out responsible and helpful so not surprising if farmer felt you were an asset to have around – yes. Noticed worn paths in field A – see Maes y Wennol and in field A I seen it on ground as well. Page 32 in field A looking east to chimney do you recognise path – yes. Have you walked on it – yes. If you got area like that more pressed down logical that line used more than other parts – yes. You used line more than other parts – with my

dog no. Pre-dog era – possibly. This links quite nicely to B and up to style and chimney and fields beyond path track following route – there is. Seen people doing that – seen people in A but could not say seen them on that path. You gone to TG shops via field – no. Tab 10 obj 1 Of 3 aerial photos now the resolution is not great but would appreciate help if able start 2000 on page 211 this area shows 2000 see white splodge shape which became playground *they discussed other photos for better aerial photo*. If we go to 2001 in the Waldron rebuttal and 213 in GP4 if we look at these two can you pick out playground and we know footpath runs up to northern boundary but can't see in 2001 photo can we – not on this map. It was legally there but not picked up visually. Know gate at Field A – vaguely. See pale line into A – yes. Not seeing 2001 – no. If inspector formed view lines showing usage of fields given fewer numbers in 2001 as housing still pretty new lot not there not surprising ground is less marked as less developed and fewer people – this is only 1 photo. Take first value – more visible 2013. I am suggesting reflects reality more use of it now than in early 2000s if you want to look at photo back from 2013 even worse photo but some track or line.

- Inspector just wondering whether these points better ventilated your witnesses. Not disparaging ability to be helpful. ME I take your point.
- RS RE – you were asked about when you first moved in said more people there now when I first went there, were there people using fields – did see people more variety of ages there now, I will. Be going there now so there will be people in fields. You mention people in field A what doing – runner, mainly dog walkers and families children in long grass, there is an area gets quite boggy see children playing in muddy area.
- Inspector – when you first moved in at Dol y Llan you were first occupier of first house completed presumably road get to front door do you know how far road go – I can't remember, remember New Mill Gardens but cant remember how far up it went. When

you in Dol y Llan get to style through estate or main road – I was going through Dol y Llan.

- Last witness having child care issues not got in touch others may take some time.
- Housekeeping more looking at photos but I think all got dates. ME not integral dates. Inspector don't need dates in tab form.
- Discussion on issues and closing.
- Close 5.40

Public Inquiry – Day 3 – Talygarn Community Centre – 14th March 2019

- Inquiry start at 9.30.
- Housekeeping – running order. Other matters first – ME useful chat RS helpfully indicated does not require Jackie Rees to attend, those instructing me in discussion re plot numbers, thought we had established position, look at file 1 3 in mapped form Mr Cuddy's exhibits MC2. Inspector b4 get to exhibit the fly sheet says development plot coloured yellow is that what is intended as that does not cover any fields. ME what you are reading is to tie lot numbers to the fields instructions are being taken if she can shed more light on question I propose she prepares a short further statement hopefully of common ground ought not be contentious. Inspector – goes to your argument on statutory incompatibility need to show a paper trail. ME whole acquisition carried out under the same power, work in hand and should not across RS helpful non requirement of Jackie Rees. RS – we have running order down witness Geoffrey Sergeant would like evidence to be taken into account but not able to attend. ME in view of certain points made by RS regarding reluctance of attending but particular offstage thing happened I do not think RS suggesting handling witnesses an issue. RS no primarily a personal matter. ME clarify as way SS put matters in 2nd and final statement. RS – SS first , David Rees, H C Batchelor, waiting Anna Wilkins to confirm attendance, definite 7 hopeful 8. Inspector there are 2 carry overs from 1 and 2 but had Ms Davies who was due today. ME timing tomorrow RS does not expect long cross exam other than the farmer and there will be supplementary questions in chief without Jackie Rees tomorrow is looking full but comfortable. Inspector good can sort out closing but if all evidence given much better position. ME site visit attendance – Inspector I do not need advocates it is for me to see the site I do not mind who the person is for applicants or objectors. ME I will not be at site visit.

- First witness 9.45 applicant SS
- RS EIC – bundle 1 – page 118 – can you tell us what is – my initials statement and signature. 119 – map also submitted at time my homes address A and access points B and fields of use A and B. Page 100 – this is 2nd and final statement completed this year. Why – I felt needed to elaborate to hopefully assist inspector and give further information. Read from 3.2 *started reading*. What mean began to look into prospect – started googling and looked at what VG entailed *continued reading* How statements taken – hired Catholic Church in village let it be known holding meeting they would sit opposite me I would explain what doing I would ask questions majority written by me some preferred to write themselves check info get them read it and if happy sign it and I was asking them to mark on maps the fields which use most I like to think we got more focused as went along *continued reading* Have you re-read statement – yes. Page 117 there is timeline and statement true still case – yes.
- ME CE – 15 Miskin Crescent nearest blue dot – house near 190 we were just slightly east more central. Moved 2017 to 8 Oaklands no 169 – yes. You are backing onto field A - yes. No.s 16 and 17 Burke – the Burke’s people I bought from. When moved in April 2017 did you inherit gate in back fence or inherit it – I inherited it I do not know when they put it in. ME we can check their statement in due course. Typed statement 118 and my copy is poor and version by reg authority is better and letter dated July 17 and map on 119 is almost same date subsequent day was it submitted along letter – yes in application. Crosses in A and B and you confirm your use main those fields – yes. 3 access points with one being garden gate – yes. When Oaklands garden gate – initially was style then gate, there is quite a drop down from gate and not till few years later thought using step ladder so that is why initially Maes y Wennol. Other docs App Form 44 in CRA Bundle and Stat Dec have them to hand and then you then more recently produced 2nd and final statement on page 100 and timeline on 117 that is dated 4th Feb 19 in questions I am going to ask your 2nd and final is part evidence you and part comment and part legal submissions I am not going to be asking you comments on other

evidence or law of submission and nor am I asking about events on land after Aug 17 or planning permission but does not mean agree with way you looking at case in app form 44 we have got at page 7 particulars of the tenant farmer the details are erroneous as we can see from his witness statement he is down as Robert Howells with address whereas Form 44 said to Robert Hughes different address glitch – yes when made app we needed to identify tenant all anybody knew was name Rob in Tonyrefail tried call no answer we used google and possibly Companies House that was only name came up with similar details when submitted to CRA who advised farmer declared no legal interest in land planning application live so checked that but agricultural holding cert is blank so I am at a loss to tell you his name. Timeline next 118 – validation august 17. Quite clear end of 2016 what intention was – yes application been made. As background the land had been allocated in development plan prior – I am aware of that. When moved house you knew planning application was in course made – I was aware when moved to Oaklands. Objects of friends committee – have a constitution which can supply but preserve fields. Major and essential part is to stop development – our aim clearly incorporated that, yes. Look at other not open space questionnaires – our first questionnaire was referred to by Sean Croeser yesterday Adduls should have it.

- *Queries and clarification over questionnaires.* Sir if you find Dr Dilwyn Enoch – Inspector got it page 187 of file 3 has 9 questions but not text after. Inspector if I look at 188 in file 3 Dr Enoch that is 16/7/17 so is that the first – SS very first. Inspector then goes to Mr Croeser no date if we go to Adul has plan on 2nd page 2nd version – yes. 3rd version – Mike Domini 156. Aerial photo before question – correct Domini put x on computer bit other xxx there. Are you saying ABC hand written X on photo and also electronic red x and pin point but you saying blank questionnaire it was supplied with aerial mark with ABC and red X in field – yes in questionnaire itself I ask which they move most heavily and they answer in question 1 the purpose was to give photo to clearly identify fields. How was person who used questionnaire did not use all how identify – I ask in questions and Katie Edwards 180

which may be 4th version of questionnaire asked to identify fields and she answered A and B. Before get to open space 4 questionnaires – we used open space at same time but extremely lengthy and could not put through every house in Miskin and try to make it easier for people and we felt simple 1 page questionnaire best way to get peoples attention and complete hindsight wonderful thing and we should have got it right first time but believe asked same questions to get to same thing and the statement of truth came much later to give written witnesses greater authority aim was assist process. I notice Edwards page 180 December last year is final version – is final version of hand written one in Oct Nov did online which is 277 would have gone online Oct – Nov last year. Did actual wording of questions change or is it simply supporting information – I believe they are same maybe a word changed, questions are still there.

- ME while on forms put a few more questions could we look at Enoch 187 this is earliest version – I believe so. July 2017 and if we remind of timeline page 117 July 17 planning application submitted for 2nd time – yes. You describe about public meetings and friends committee set up do you give us date – not in timeline I have a record June or July. On back of public meeting called about the development – yes number of meetings with local Cllr I had not attended all but some. The form emerges in context of planning application which Friends of Cefn Hendy set up in opposition – in early days we did not know if trigger events in Wales so looking to gather information and provide evidence of recreational use for planning department. Fighting on two fronts – if you want to put it that way. TVG complex – yes. Look at wording in questionnaire, you use military metaphor – not military action. Campaign against development in opposition to development – I stand by words I still believe land should be preserved. Page 188 end of form wording campaigning language – I stand by those words. We are using language campaigning – yes. First question phrased by ref to map and found out with Mr Croeser no map attached. *Inspector same as CRA file – yes, SS they went out with maps stapled some returned without. Check for which map went out with questionnaires. They went out with maps.* You spoke designing form shorter than OSS

were you doing letter drop every house Miskin with questionnaire – yes. How many send out – I am trying to recall whether every single house had questionnaire every house had flyer. Can you check that – just my memory, I was doing it with assistance of others but in my memory. How many replies get – all in evidence. You saying produced every single reply and every part of reply – I believe I have I do not believe any have gone astray I am not infallible I believe I have put in what was returned to me, I certainly put in some not favourable to cause so everything come to me. *Inspector intention was to submit all responses – everything I have received to point of application went in that came to my door.* Just trying to establish facts, the flyer do we have a flyer in bundle – no, I can bring in, short flyer, contact details. With questionnaires or separately – over the same weeks, sometimes with it. *Were either flyers or questionnaires posted – hand delivered, I think older streets more likely to have had questionnaire than newer streets no list kept.* Don't know how many questionnaires – believe 1060 houses in Miskin printed as many as could but did not keep number. Bring flyer tomorrow – I will. Flyer with questionnaire? – some. *Only one trip – there has been subsequent trips, did Miskin newsletter updating people and bring that in.* People completing questionnaires in objection to planning, people just got questionnaire and flyer and did not set TVG law – no. You told us all got map some detached but was there anything else to explain to unsuspecting Mr Bloggins who subsequently receives questionnaire to help him understand TVG – questionnaire 1 no TVG advice, 2 no TVG advice, 3 electronic no information but if double sided some information on back, Donnelly went in this submission. In relation to applications supporting app have advisory note – 1 and 2 no. The application 1 or 2 – they must be. In inquiry bundle have you found advisory note – no, the advisory note it contained info raffle, fund raising and aims with VG. At moment not asking about contents if you can find one in bundle – don't think so. Printed note on back of some questionnaires but not inquiry bundle – accurate. You still have words – should be saved on lap top. Next question which of doc in inquiry bundle had extra words on back page – don't think I can say with firm clarity.

- Little break 11.10
- Recommended 11.20 – ME in the submitted inquiry bundle were they prepared by you and helpers – yes. If you go to Tab F 207 you will find Rachel Farrant statement with map this statement dated 25.07.17 so precedes application and I have same statement in CRA file in inquiry bundle statement signed by Rachel Farrant and there is then a map which is not legible in inquiry bundle but in CRA is much clearer total 9 x's two b's and an a then in the inquiry bundle explains what they mean 210 child on haystack the writing annotating is that yours – yes. Is it you who correct Maes y Wennol to Oaklands – correct. 211 child with kite your writing – yes. Dates? – from Rachel who provided photos but the dates may be here writing she provided the dates whoever wrote. 212 created by you – by me. CRA bundle you will see statement and child on haystack just and then chimney then kite then screen shots of video field down to river no photo location document – no. Why in inquiry doc no chimney and no sledging on other field – I did not include them as outside of land as felt needed to focus on land in question my judgement is that it was unnecessary as outside and did not gain. *Inspector not excluded not directly related to fields in question don't think question of it being excluded the photo location plan I had asked in Directions I don't see problem.* The issue is have to look through both suites of documents and you know one of objections was to point out that there was evidence on face of use of other fields and you comment on our objections at 361 but you knew one point of defence was that one could not be certain whether activities related to claimed land or in part to other land – yes. A part of that is that there is a public footpath across field B and activities taking place on chimney field – yes. Disagreement extent chimney and ABC – yes. For CRA to get full view it is important for them to know activities taking place on chimney and sloped field – is fair and that was why we used map early on to show main fields of use we are not saying people do not use other fields or rights of way but focus of activity is ABC and not denying use on any other field. One problem way forms morphed with pre-marked crosses that cuts down likelihood of respondents saying have respondents using range of

fields – I think question is what are activities on claimed land. That is question but to decide what weight to give to written statements relevant for authority to know so fortunately I have happened on this one and I have done best to see if duplicated anywhere else was it isolated decision – I believe that would be it but I have to check page by page. It would have been more complete to include all or make reference in final statement *Inspector letter makes it clear and explicit when it refers to ruins and sledging this point seems disproportionate to issue. ME I did not want to leave that just to closing.* 3.58 of 2nd statement page 112 where talking gate in Field A you say not used it very much but familiar – yes. You describe as continuing fence or boundary so climbing over is like climbing over farmers fence – not sure what trying to say. If your perception is correct then climbing over fence – trying get clear that not an open and shut gate but secure piece of metal. Private gates you have one Mr Porters GP1 Tab 7 photos 9, 10, 11 are we looking at your fence alone 9 and 11 sand 10 others – 9 and 11 clear mine red fence, 10 not central on but begin by red brick under gable. It's not readily apparent gate – not in these photo's. You photo in use with step ladder in your bundle your bundle of photos begin page 32 and go to page 42 of 2nd bundle Nov 18 we have picture of gate opening up with step ladder you described then next page in garden July 17 – yes to support app and be clear where gate was. Grey thing in Mr Porters that is a bit of polystyrene tubing and purpose is to enable users of fence to avoid cutting on barb wire – previous owners put it there. To prevent cutting hands – reasonable assumption to make. When using climbing over barb wire fence and combination of step ladders and Burke with clever design is get over and not be harmed - yes and garden higher than land of field. The gate is not immediately apparent as when not in use it looks like fence – with casual glance but can see cut there. Compatibility with farming in 2nd and final statement do you have training in agriculture – farmers daughter grew up on farm till 18 was arable, had horse, donkey, chickens, occasionally cows very brief visit by sheep not ours. No expertise sheep farming – no. Take out farmers witness statement turn to 12 he tells us about his sheep numbers and said I have land used but toxoplasmosis on land, dog mess cause – I understand it is.

What he is saying is dog walking impacted his land – he can cut land for silage. Agree have to change use Mr Howells says encountered toxoplasmosis on land so all in lamb are kept in other fields – indicate dog walking. Yes but shows not compatible with agriculture *Inspector there is a public footpath. ME is that the use not confined to public footpath. Inspector base position is public footpath and his evidence is that had to change system for last few years to be fair to applicant I am putting point to her. Inspector I was not quite clear where you suggesting a change dog walkers always been on part of land.* Para 11 he deals with what he describes problems with dogs running across land and he says constant problem – not supported by what everyone else is saying. Tracks page 329 final statement the photo you refer to support 329 look at dates pictures you taken – my photos. You say believe tracks made by people – I see sheep and humans using tracks, as tracks still evident when sheep off land for some months clear after grass is cut so humans must be part of that. Mr Porter describes east west – they would be broadly east west to northern and southern run throughout field A. There are also marks made by farm vehicles – only seen tractor tyres last two weeks prior to that never seen. Not disputed tractors used – not disputed. Page 11 of your documents relates to 107 in statement and you tell us that your dealing with fact building going on residents talk about way to access field and 2001 with plan with access points – Alvien Fripp oral witness, I understand access points A B and C in 2001, I believe circle indicates you can see a path coming around. ME will ask Mr Fripp.

- RS RE – nothing
- Inspector – in 2nd statement para 3.3 at end of para says these questionnaires earliest speak of fields not solely ABC then 3.4 ask to mark fields used most so am I to understand from your perspective Cefn yr Hendy Fields A – M – yes, I would refer to them as Cefn yr Hendy Fields. That includes chimney field I, and then slope to river L, M. So effectively its all the fields until come to A4119 eastwards sloping till you come to river not include grass other side of river and where you see Bob’s Fishing not south of that – yes and north going into Pant Marsh not included. So when read Cefn yr Hendy Fields fair

to include globally – depend on questionnaire or statement. I take it if they marked X's or stated but if just referred to fields I take it that could be all or any A- M – the first questionnaires 1 and 2 that would be general to that network. 3.11 opening gate you say more in nature of fence I understand in part point no notice saying keep out but an able bodied person can climb but not like a style or facility climb over just wondered as a member of local community if you see that feature what does it tell you about the person who put that there expect to do I understand point about livestock – I find that quite hard to answer I don't know what he would be intending to impart only say since lived in village tracks to and from and seen it being used, I do not know what was there before, put gate up when have livestock. When come to boundary treatment at back of garden put barb wire along which is slightly less friendly but no barb wire across gate – when seen on site visit see to right of gate there is stock proof fencing which does have barb wire on top, there is barb wire to gate but not over. Worn earth on inside and outside – yes there is. If know answer helpful 3.56 say I have statement from residents who moved in prior to 97 and reveals housesale completions in 97 not disputed then one witness moved in and began using fields June 97 we heard yesterday of witness that use of first person began in 99 but from people live on housing estate immediately south of three fields is there only one person in your understanding before Aug 97 or are there others – believe referred as an example, I think possibly Lionel Blake June 97 (55 – 56). Newsletter hand delivered to outlying – not delivered to farm Miskin Eggs but every other house, nor hotel or health club. Next question raise it not expecting an answer objector can think about we have in rebuttal Mr Waldrens PW18 and page 9 – I could not guess number. Like a number whilst significant number an issue but think of number of persons of community in question.

- ME count page 9 or take in middle band of houses – Inspector if that could be done as well be helpful.
- Break 12.40.
- Resumes 1.20

- RS EIC Mr Rees page 83 and 84 – my statements and signatures. Read first and 4th paragraph. OSS questionnaire 88 – confirm signature and 2 maps page 87 field B big cross my main field of use page 85 A and B with X A is house B is style for entry.
- ME CE – 156 me wife and daughter 155 and 157, I back onto field B. You filled OSS questionnaire were you part of Friends Group or through letterbox – at time of completing not part of friends, this is July, earlier that month there was a meeting arranged by Community Council and I met SS there, I was asked to fill out questionnaire based on usage. On page 87 big cross field B no markings yours – no just cross and signature. I can't see in my copy but did you put cross – not 87 but did in 85. In form itself deal with words question 13 how do you gain access you crossed out did – there is nothing in that I have always used the style. You moved into 52 Dol y Llan Aug 98 - bought from new was supposed to be April. When do you go on to land question 24 and 25 often do you 3 times per month, first statement page 84 you talk about para's you say use filed sledging and other sledging areas are those steeply sloping – when daughter 3, 4, 5 used north west corner of B now she is more adventurous certainly since age of 9 use field further north than chimney field. You been with us at inquiry Rachel Farrant screen shots sledging registration original bundle dated 2010 in field to river recognise – yes field north chimney used since 2014. Farrant says also odd times field down to river great sledging where people gather would you agree – yes, field B like nursery slope whereas this is black run, both used but lot more usage in northern field. You can get through by following footpath – yes that is the way I have done it but when snow can't tell on path. But got styles to guide you – yes, you can't necessarily see chimney style from Maes y Wennol style but you know it's in north easterly corner. Back to you page 84 describe a pleasant walk through to local shop avoiding carriageway – local shop would be TG shops I not used it for shops but used it to get up mountain to Billy Wynt top of Llantrisant Hill longer recreational walks 7 or 8 times, I not used it for shops but know people have. The access or connectivity to wider footpaths is via 314 – yes. School route to Y Pant could you show this. Does school

have uniform – yes blue daughter goes there. How many children – 1 born April 05. In 2nd witness statement tell us from age of 18 months on land – yes, only field B, we were going on a bear hunt, her favourite rhyme, go through fields doing parts of rhyme. Where in field use aerial photo – middle – north west field B is bog area. What would you actually be doing – actions walking. To observer look like dad and girl walking through field – yes. Para 2 2nd witness statement you refer to run around field – that would be various things, running around the edges. Would you be following, were you aware worn paths – that has become more apparent with more and more usage but from my memory nothing as pronounced. You say field B usage increased since 08/09 – in numbers I would agree. Numbers are more – yes, activities similar but number more. OSS questionnaire page 91 and question 25, crossing out of did – confused as filling form on my own because if you look at question 37 that is under 20 years use if you go back to 25 I was being explicit about current the reason is my mother who lives in Shrewsbury was ill at the time so period 3-4 months summer 2017 using fields less as being pulled away to deal with appointments. Question 37 – I was trying to say I am a weekly user I would still use weekly now. Weekly on average 20 year period – not once a week a number of times a week. Isn't that stretching – that was where I was coming from. Farming activities 2nd witness statement and daughter is 7 or 8 by 2013 and this field B watching tractors – yes. Where were you – I was conscious bailing activity I was just by oak tree on boundary between A and B on B side, watching men carrying out agricultural activity in a tractor. They spotted and waved – yes don't know if me or daughter think we initiated wave. They knew two of you there and therefore content presence – my assumption. In first witness statement last para describe incident walking through field – that was same incident. Camping 1st witness statement responsible overnight camping where – on a number of occasions there was a tent behind 53 Dol y Llan. How far from fence – from witness table to entry door (solar panel house) 8 – 9 yards. Allowing for vegetation between back fence and flat grass so just a bit further from there – couple yards from bracken. Overnight camping – they were there in morning. How many times – over time about 6 -7

bury not same spot although in general area. Seen camping in chimney field – no. Bonfires in there- no never observed them. Stargazing nocturnal – yes usual Autumn and Winter. Overnight – yes. *Inspector camping began after dark – no cant say that, not seen them erecting tent have seen tend erected, from my recollection the camping not same time as stargazing I have seen tents in the evening and still there following morning.* You say very rarely – not a regular basis at all guessing 6 or 7 times. Timescale camping help us at all when you seen that – daughters bedroom backs onto field so go in to open curtains cant recall anything prior to her being born which was April 05. Was it baby in cot or graduated to bed – can't recollect to be specific, last time I saw, I did not see last summer but believe I saw the summer before, we did out daughters bedroom so it would have been June/July/August. Photographs page 20-30. The kite – not ours. Date of photo – in my bundle Nov 07 can't recollect who flying it. Where is that – it's looking east so trees, if you look out of my house directly north looking down valley and what you got here is that valley so looking north. Can't deduce where flyer standing – no. Other photos all of them post date Aug 2017 – yes just as examples of activities.

- RS RE – you being asked about camping seen in evening and morning daylight or dark – saw them before it was dark so would guess 7pm or something like that, 3 yrs ago daughter going to bed about 8.15 so could see them closing them, 2 yrs ago I saw it remember from her bedroom window but can't recall time.
- Inspector – issue on frequency own use in your 2nd statement page 83 you say in middle after ref to gymnastic went jogging 2x week each week and since Oct to present walked in field – jogging been abandoned. More serious point jogging twice a week – on average. Whilst the photo relate to later your impression view from house is it same as before – types of activity yes. For example photo page 23 and photo 10 running with dog and same occasion 29/10 photo 11 sitting down, on bike, standing and same date page 22 you got some people walking in middle with black dogs, then 8 bending down with small dog, in terms of recent usage is that level of activity usual – recent

uses definitely. Areas of Field B where activity taking place are photos representative of areas being used – it is representative there is no such thing as a standard day sometimes you see more people using the path. If look at photo see people close to path as well as people remote from path – absolutely. In terms of individuals with recognise names have you formed impression of regulars/local people or come far and wide – having lived in area 21 yrs a lot of faces I recognise, or do not know where they all live but I see regulars, I know a number of the names of some of the individuals as they live locally. From your house you told us about what see upper floor window daughters bedroom in terms of ground floor can you observe field B – if you look photo 23 see funny thing in bottom which is top of conservatory and my daughter above that and other side my study so that photo taken from my study and we have hedge behind we keep to 4- 5 foot so you can see some things in middle of field. From ground floor see parts of field – yes kitchen and breakfast/dining and conservatory. Is same true from garden – yes. Going back to area you moved in August 98 period before daughter born and what you saw did you work home – both I deliver management courses and assessing so part working home one day a week regularly sometimes twice. When seeing activity taking place explained lower in early years and increased and explained range constant but numbers differed thinking back to early years was it unusual to look out and see someone or normal to see – not say uncommon but less common, when I first saw house it was slab Oct/Nov 97 first visit but remember standing on slab looking out to field and seeing someone on field playing dog but when moved in did not see as much as I do now. What you saw from slab had you register public footpath – I guessed there was because to visit site office come out of house and cut through and site office on playgrounds so when having conversation with Persimmon it was there I remember seeing style. From slab using dog walker using footpath – could not say. ME clarification dates of photo in SS 2nd statement 3.33 she says that Mr Rees appreciates outside field but on dry Sunday are they weekend – on my statement page 83 the last para the vast majority was Sunday morning.

- Ms Batchelor – RS EIC – Find page 1 do you recognise – yes. Read second sentence on. Which fields – I lived 40 years before houses used to go through quarry and up through whole area. Whole area – I live just by Miskin Pub dot 7, there no barriers, walk dog, picnic, pick sloe's for sloe gin over years lose contact so now don't know many people. More recently page 2 and 3 and 4 maps have your signature can you tell us what those are – go through fields up to others fields so tend to go up to the top, the fields a and b marked with x's. You described how used to use them – I don't use them as often now as dog and I are getting older. Happy with documents – yes.
- ME CE – we seen where you live could I clarify a few other things RS asked you to look at maps in file and 2 pages of maps in file then page 4 and if we go to page 2 we can see in middle at bottom see google see x and a and those been marked on but a is your home the x is? – I would not have done it using computer. That is early years what is x as you described using area for sledging and we went everywhere – I really do not know. If you come up straight line you come to x in middle housing is that meaning you used those areas – yes. Then we come to three more x's and just under and between two left hand x's there is written on a, b, c *no one else had these*. The white crosses are other fields you used during time – yes. Before housing you described ranging over wide area can you be precise how often you got up to that extent of range – husband walked dog twice a day I would not always go with him, he walked in morning, when he was ill we both used the distance walked and how long he took as a measure, he would go out hail rain or shine. Did he become ill around 2007 – yes. When he was doing dog walks – I would go sometimes. Morning walk – not prior to the year he was ill. You could not precisely know precise where he walked – when we went out in the evening he may say we went this way this morning so may go different easy. CRA bundle 72 have old map there's a semi circle which is housing in your area and disused quarries and between house and there horsefield then see wood Coed yr Hendy then you see long footpath with numbers that follows ridge high land you remember when it was like this – yes. Apart from snowy and sledging when you on walks be on public footpaths –

between quarry footpath then you are on fields are open so did not always stick to paths. Would walks stop this area or further north – sometimes further and come back by river. Remember chimney – sometimes passed that. How often walks take you that far north – weather orientated stay local if wet. Seasonally based – yes. Summer walk further – yes. You talked blackberry and sloe picking with children and enjoying playing how old now – twins 40, Anna 44 and Jane 48, twins born 78. Left home just shy 20 – yes. You said current dog getting distinguished – very. Not up to long walks – no. How long has it been – just last year. You tell us 94- 07 going field twice but seasonally dependent – no 06 -7 husband was not well so I would go. Since then has pattern – I went abroad to work came back 2010. Was there time no dog – daughter sat when went to Papua New Guinea and had to have dog put down and had this 2012. When field with current dog 2012 how get there – through quarry, both sides quarry fenced off one side rubbish you don't get into quarry you go around then dog legs and it takes you onto fields. You ever exercise in upper area of green – yes but tends to be a bit muddy. Frequency of use between 2012 and 17 with rescue dog is once or twice a week – yes. How do you get into fields talking about – over the style. You have 3 x's could you describe after you get over style what you do – wander, dog is old and meanders, keep her on extending lead, she is deaf so cant let her off. Chimney field – no longer. Meanders you wander – there is no pattern. Do you always go into each x are – no. Stay in style field – not really a pattern. Favourite field of these – no. Within fields are you aware of where public footpath is – yes. Use line – not really sometimes. How do you move around – slowly. I meant directionally – I just leave lead run.

- No RE
- Inspector – just want to ask you about early period as have good picture more recent but not as many directly about earlier period and period whilst doing things with children, although earlier in time before 20 yr period, after they flown nest you say 94 – 07 accessed fields clearly the area south of 3 fields there a period it was building site presumably you remember that in order to get to three fields

there would have had to be a route available try to get feel for how often you used – a lot of village not through it went around it. Does that mean used gate – I do not know if same gate but there were gates we used to climb over. Area that is now area of POS s.106 land middle land I am wondering attraction of these fields to someone living where you do – there is a lovely view when you get to the top. Thinking back to earlier period 97-00 how long take you – 15 to 20 mins to get there. It was quite an exercise – yes. An hour or so – yes. You say 2- 3 times a week is that these fields or any fields in wider area – probably any of them. When building site not through go round and then in terms of your impression of seeing other people again in this early period was attraction solitude or bump in to people – both although contradictory, if you go a job you meet with dog, when with children meet children. Would that happen in ABC – not so much when building. You were not there as much when building – no, it was a shock when got to end of quarry to find these being built. See local people – yes.

- 3.20 short break 15 mins.
- 3.35 resume – witnesses Mr Fripp, Mrs Fisher, Ceri Thomas just arrived. David Roderick can't make it.
- ME – hope to help shrinking things have more instructions from Jackie Rees re parcel numbers page 248 her clear understanding is that on page 248 alongside heading land at Llantrisant part there are 3 rental numbers let agricultural tenancy those relate to agricultural holdings act tenancies of that time that number relates to those three fields. We can share that e-mail. Inspector helpful if turn it into statement. One thing confusing Jackie Rees evidence try to make clear documentary audit that 3 fields are part of transaction history, acquisition by Inter Continental JR 3 embraces those 3 fields, the agreement does not actually have plan with it in JR 3 and when you go to JR 2 the lot description it has plan but does not have on it anything on it to mark it. JB we have full bundle this afternoon which shows whole bundle. Like to have clear paper trail.

- RS EIC – Mr Fripp – if you could turn page 47 if I could start page 48 could you tell us what document is – my first statement and signature. Page 57 – supplementary statement. Has diagram map – I made it. Read para. Happy true – yes. OSS questionnaire 49 – 56 – signature. Two maps 57 key 58 map 59 what are markings, how you access – access via style Maes Y Wennol.
- ME CE – having found 73 number 74 and 75 is that while family – daughter and wife live in property. You moved into your house it's April 99 so ref is PW19 page 36 and new when moved in – yes. If we look next at page 59 this is a google map you filled in at same time questionnaire – signed yes and dated. On next 2 pages 58 and 59 piece of paper signed by you and that relates to map page 59 – yes. We can see crosses in two fields next to housing and find then three more fields to north – yes. You filled in crosses – yes. Filling in crosses meant main areas you used – yes. You have told us that your means of access style Maes y Wennol – yes. Get into left hand field – Field B. Next door field C then three above chimney fields and one by river and one just outside cemetery via subway – yes. Waymarks through there – yes. Maes y Wennol – yes. Chimney field – has been there. Through chimney style another style on lower land and you can go down to cemetery road – style by subway. When filling questionnaire the fields you had in mind were 5 fields put crosses in and just been talking about – yes. Question 12 page 51 you state are there public paths crossing you say yes – yes between styles Maes y Wennol and chimney fields. Carries down through other fields – yes. That was July 2017 and in page 47 statement 3 Dec 18 and that has diagram you prepared and last para say used B and C fro walking and running no claim A though helpfully marked A in diagram – yes. Go on walking running monthly sometimes more often – yes. Say use footpaths run through land quiet and safe route too TG if go TG is it shopping or work – times recently in snow last year 2018, also last year beating the bounds walk so via that. Prior to 2018 what going to TG for – go to shop, post office but not regular where possible would use car. Use it as emergency route – yes. On page 48 talking about away from traffic I read quite pleasant way getting to TG – also quickest. Up to July 17

trips to TG using footpath wasn't just in snow – not a regular occurrence. You say children played in field great memories winter sledging gathering info photographs – no photo from that it was for school project. *Inspector File 2 page 16*. This is not school project photo these your children – 3 of them we have 4, wife also in photo. Have photo location point x where photographer – approx. On footpath – can't say its on path. If you know land well and know where styles are you work out approximate position is that fair – clearly. Dated photo – from phone. Tell me ages or DOB – not on picture Jan 96 then May 99, March 01, Nov 06. Frequency quest 25 OSS why you go on is monthly average – once a month sometimes more often. Running, you keen runner – quite keen. What is running training route – fields be part not all route, usually at end. You would come up – from river or roads and sometimes Maes y Wennol couple loops. If training run circular route – try to. Running on footpath – no. How – I would come over style and go left down side of field across bottom into C loop and then back to style that would be end of run. Walking – from house down to style turn right along top of B into C then back up past oak tree and over style takes about 25 mins. Sometimes into other fields – not when walk as don't have a dog. Sledging season infrequent – yes. Have you been sledging to north and west chimney field – yes. Picnics seasonal where – can't say wife. Football mentioned where played – in field B. Where - between top part before sloping away, nearer houses past line of oak tree. Informal kickabout – jacket for goals kick around. How often – few times every summer. Aerial photo page 11 File 2, SS tells us map 2001 and mark things on it – I provided photo off google and marked it up. No St Davis Heights, no Dewi Sant, no St Davids Drive, No welsh school, we can see edge of wood and hedge connecting up – I put in red arrow indicates route into A that was there at that point. You said route in always Maes y Wennol – but this is satellite. Route you not using, is it case never used that access – I do not go via that access. Never have done correct – know where it is but do not claim intimate knowledge. Red circle roundabout by school – not in that place. You are right it is lower down shape to left St Davids Heights what mean – show not fenced off at that time used to walk and kids cycle as far as there. Do

you want inspector to learn more from this photo – Maes Y Wennol style playground under construction but roads open access. If you wanted to go around to A at west of field A need to go off road and cross over area of green go through hedge and up – I would follow path see where people walking. Is answer to my question yes – if you walk past circle break in hedge went right could get to access point file A. In early state what was there to draw people on seems counterintuitive *Inspector taking your point marks on ground seems to be route*. Everything you wanted to understand from that photo – yes.

- RS RE Field A once or twice remember when – no years ago, I would say for first 10 years B and C then after that once or twice but not proceeding any further, hole by oak tree.
- Inspector – the photo of your family amusing themselves in snow which was page 16 and ME asked where photographer standing just in terms where people are standing are they on it or not – not on footpath I would say off to oak tree. Other point I understood point about longer journeys to TG and runs when describing Field C at one point said left that's on return run from river that would be northern end – yes. What did B and C have that A did not have – children, B flat and got used to that did not go to A as did not need to. Sheep – the amount of sheep varies and spread out whole network so might have few in one and hundred in other, spread out, from running perspective not an issue.
- RC EIC Mrs Fisher statement and describe style – when first moved in foam pipe insulation on barb wire as we had dog put small fence and gate and more substantial sty to get into field, had to put fence up straight away as had dog. Read 4th and 5th para. Photos from husband, Spaniel friends dogs. Fireworks party where – in my house but let fireworks off in field directly behind house. Statement true – at time, I dislocated elbow in summer so blip.
- ME CE – you moved to 12 Oaklands 2014 no. 68 – 67 husband, 68 you, 69 daughter also son Sam. Page 14 photo of sty looking Field A and got fence in open format and see how works you lean on post to get over farmers barb wire you inherited it – yes. Function is to neutralise

wire – yes. The whole arrangement to climb over fence – yes. Into his land – yes. Do we photo of sty other side – don't think so. *Inspector see 217 is that garden – probably day moved in.* Where do we see – access point not there in left hand corner you can just see boundary wall of next door right in corner white bricks photo does not go left enough. Closes up and looks like fence – a little different as cross piece of wood, we installed that. Point about fence is it appears like a fence when closed – fence had damp piece of wood but has cross so that is what differentiates it. That always access way you and family used – yes. I can completely understand rational fence to keep dog in so why gate in it to climb over barb wire fence clear it is a boundary fence – yes it is. One does not normally climb over boundary fences – yes. If farmer or WG climbed into yours be surprised – yes. Something to say to rest of world keep out – yes, there were stones when moved in and when put sty in if farmer said not to enter would have taken it down. If you going about agri business fact gate in fence not immediately apparent – it was a new structure gone up so may noticed it. You tell us not seen farmer in field – no. So if right he not seen you using sty – wouldn't have thought so. Photo sept 15 cycle cross how often – every year from Sept 14 gone out to practice before season started, don't know why other year. Firework party – evening in Nov in dark. Activities A and B confined to those – yes. Farmer you do tell us not seen him in fields but seen him in truck – yes. Recognise by sight – no, not if just walking around field. Dog walk, run routes – round perimeter A and B run perimeter twice and dog walk perimeter. How often – daily dog and once or twice a week run in morning. Are you sometimes walking on PROW between styles – when you come out A to B sometimes join it. Children built camps – see bracken behind house 217 build camp in there against fence. If they camp not readily visible – yes, you can see indentations if looking. Football – behind house, football goal pass over fence see corner page 14. How often carried over – in summer quite often, boys going through house grabbing it, summer holidays 2014 on. Netball – catches and throwing. Ages two children – born 2004 and 2006 so 12 and 14 now.

- No RE

- Inspector – when you first moved in and what position was with boundary arrangement there was a farmer fence which was wire with barbed wire top row but part of your boundary hosing and stones is that a paving – breeze block for height to give leg up. That was already there – yes. Was that obvious – maybe not other side. Was only your side – yes, teenage boy lived there spent time in woods. Going back to boundary point of ME ok you inherited arrangement to get over garden you go beyond that want proper boundary to keep dog in but you provide fence with gate panel and was sty at same time as fence constructed – yes, we seen from field house with gate into field which is SS house now. You 169 and SS 68 so you cant see her gate arrangement from street so only see from Field A and gate open so are you saying it was after seen other gate you got one so was period after moved in – we went on holiday 2 weeks and when came back put fence up as dog not there for the two weeks. Bought house went away came back and decided fence with gate and sty arrangement had you seen people using field – yes, you see field from kitchen and we have conservatory out back so see lots of people walking past clear view downstairs. So you seen people not farmer and farm workers doing recreation things in field that led you to think ok sty be apparent – if farmer said not want it we would take it down. Your property backs onto A heard from others about how the fields being used and see thing from your house your knowledge 2014 on is that only once a month or daily if you look out – expect see people most of time, majority dog walkers and children running, on weekend people using field yes.
- RS EIC Mr Thomas page 120 – my statement and signature. Clarify how you access fields – come in through the gate on western side of field A. Tell us about gate – it’s a typical farmer gate used to be able to open it more recently fastened. Use to open and close it – yes. How long ago – bought property 2004 for 3-4 years then sheep walking up field and from that occasion I believe it was fixed. Looked statement happy – yes.
- ME CE – 182 aerial photo – 184 Gail Thomas wife only other member family is Howells Thomas 185. Was house new when moved in – yes.

Do you remember what time year – June. Started use fields almost immediately – weeks or month after moving in. Memory of gate have you always that access – always used that but others as well Maes y Wennol, I have come up from opposite direction through chimney field no others. Go in woods – occasionally with dog. In statement you said clearly started using almost immediately – I was clear which field was which was when filled in form. Why hesitation if clear about A B C – confirm talking same field. Talked about finding gate openable so shut but open – sometime open sometimes opened myself. A lot of people described gate non-openable Mr Ginwala was your neighbour says open but reason closing was traveller incursion no mention of sheep why different perceptions – I cant account his interpretation but just by roundabout near school as all land accessible there was suspicion travellers setting up camp so that maybe why he thought so local authority dug deep ditch and put rocks. What about alternative interpretation increased population farmer did not want people entering his land that is obvious conclusion – I would not agree. Why not – seen farmer on few occasions and each time spoke to him not had issue. He might have been concerned other people – yes one interpretation. You say saw him in chimney field once and asked to keep dog on lead. When grass longer you not running or walking through you sticking to worn paths on land – not necessarily. So battering grass – no use field as always used field. Worn grass or trampling it – either, both.

- RE – none
- Inspector you have a property backs onto field A and from garden can you see into A – yes. Ground and upstairs – correct. Been there June 2004 – yes. What sort of boundary treatment did builders present with you – thorny hedge. No fence – on north put fence demarcated between neighbours but back hedge I go into fields to tend to hedge a few times a year. Seeing people in A that are not farmer or assistance what is your experience regular or rare – regular very often daily. You recognise people not necessarily name – think people use it often some you recognise and some animals you recognise some you don't some who are not on immediate vicinity of fields use it. Position gate

western side your statement not mention anything about sheep experience but from what you told us it was openable but secured after sheep got out was the school and roundabout there – I do not think they were, at end of our street no. 10 there is a cut through 5 or 6 berth car park in corner there is an entry point some exit gate if left open through path and cut through. You at home – cant remember I recall it as wife jogged memory of it last night, can't remember if I was there or not but remember it occurring because wife and children remember it. Your recollection in response to that event – I am surmising. Are you saying you have a memory in order of time it was relatively shortly after – I would say what you just said was correct. On issue farmer bailing grass yearly but no other farming activity seen sheep in A – occasionally, seen farmer more frequently in last 18 months or more. Suggesting trampling grass – running through long grass is harder its good low impact training, large field not huge indentations.

- Possibility Mr Roderick tomorrow – RS do not know. If possible live evidence we learn a little more each time. ME have order – no all available tomorrow farmer fit around him. Are you aiming all tomorrow? Preferable. I do not want your evidence not fully aired. Start Cuddy goes back furthest then Porter then William then Lapham then Waldren probably.
- Finish 17.50

'Public Inquiry – Day 4 – Talygarn Community Centre – 15th March 2019

- JS handed me a copy of the information that was requested yesterday of flyers and questionnaires
- Start at 9.30
- Housekeeping – Site Visit helpful to have idea from parties how long it would take I don't want to see just fields and boundaries I want to see housing estates and walk routes from Manor Hill etc, walking beyond app fields not sure cemetery and river. Helpful itinerary from parties at moment think a good 2 hrs but may be longer. I want to do it properly so won't be today. Witness statement on Jackie Rees and may be supplementary statement ME it's been prepared and handed it to RS 5 mins ago and perhaps easiest way come to grips I introduce it before live witnesses. During course of today we need to work out closing arrangements. The Schedule is being prepared by RS. ME map of available routes is agreed RS may be one we forgot. Agreed only one copy someone will copy to others. Finally we have aerial photographs I got dates for photo in evidence but larger one area Miskin one more zoomed in that other do we have date of base photo and is it inside or outside period – Mr Fripp I believe it is 2018. Given material – RS it is a collection of flyers and questionnaires SS was asked to provide yesterday. Inspector look at questionnaire. ME can we agree crosses on first map I make 10 – everyone agreed. ME this one is unused material – RS yes. ME I would like what is written into back to go into bundle. Inspector read out what was written on back of original it does not says who it is from. If I pass that to CRA it can be copied and sent to Inspector and parties ME will photo. I was going to take RS suggestion that SS provide a note deal with after lunch so aided with note as well document you can ask. ME passed original to me at CRA table.

- RS have 2 other documents – copy constitution and one version of newsletter. ME was newsletter a one off – yes. Newsletter is June 2018. They will be passed to CRA to copy. Anything your side ME – yes supplemental witness statement from JS which will weave in and have joint statement from agreed statement and documents.
- The other two witnesses of applicant won't be attending both in work cant leave. I won't be drawing adverse inference from that.
- ME take 10 minute reading pause then run through Jackie Rees Statement then onto Mr Cuddy. We will reach Mr Howells this morning.
- Adjourn 10 till 10.10.
- ME statement Jackie Rees and it might be worth having to hand Jackie's first bundle and our first bundle of exhibits. Gives her employment history. Explains nominee arrangement. Exhibited JR 3. You raised question where could we link lots subject of transaction and in her 2nd statement she rehearses para 1 what she said and in para 2 introduces new documents, she has extracted relevant pages from bound volume of plans, we have originals with us. Inspector how do I read JR6 am I to take it all subordinate papers are subsets of areas on first page as that page has been produced elsewhere ME yes but rest was not. ME turn to Tab 13 in JR 3 1988 agreement and on page 245 the operative provisions para 2 sets out consideration and then defines the land you now have the plan at back of exhibit JR6 page 10 new statement. ME then in Schedule 1 1988 deed 4th entry so go look at title right hand column they are not lot they are rental numbers. Inspector they then tie up in new exhibit. ME if one goes to page 4 in new exhibit same title it does use term lot which equates to middle column on page 248 big bundle and as have established already it breaks it down for convenience into sub lots and it is showing the tenancies and rentals to which the land was subject and the land was taken subject to tenancies including to Thomas and this is set out new document 1.1.17b. Inspector the BPPT and Thomas MS that was 1970s and so was subsisting as annual in 88 and was taken subject to that tenancy. Inspector there seems to be exclusion Field A

ME that is right on the mapping. Inspector tenancy useful in sense as well as having base map there is a schedule of fields which does have os numbers so you can identify which field is which. ME clearly that A was not taken subject to tenancy but within land under plan page 10 lands at central Llantrisant is same language as 248 main bundle. Inspector Field A in largest amount of red. ME clearly not taken subject to a subsisting agricultural holding act tenancy but the page 10 plan is newly produced. Inspector would I be making a fair inference if I look at plan page 10 chunk with broken line and if I go to page 5 the last para am I making fair assumption that this is 21.75 a reason sub plot a – ME yes. Inspector go back to 2nd statement para 2 the lot para 3 the land so strictly not correct when she describes – ME it was B & C subject to tenancy not A. We have purpose of public authority recording the acquisition. ME as is set out in Jackie Rees first witness statement Intercontinental Holding as nominees for Welsh Gov predecessor and comes into public ownership at that time. Inspector helpful as jigsaw fits together. Inspector when Mr Cuddy Tab 2 page 11 Exhibit NC2 ME typos in cover sheets and Mr Cuddy picked them up. ME Page 3 of bundle MC 2 the word yellow should be blue. Inspector is that right? If you go para 7 of witness statement using his terminology I thought he was referring to development lot as whole would it be better if going to make correction strike out coloured and yellow. ME a marked up plan showing the Land. Inspector again is that correct. MC2 to say the position of the land. Further discussion and amendments of cover sheets. ME nothing turns on this but makes statements clear. ME we have better version of a plan – deal with that with his evidence. Plan swapped in bundle MC3 page 6 (*NB I do not have copy*)

- RS confirmed no need to call Jackie Rees
- ME EIC Mr Cuddy – Introduced him – Take witness statement 13th October 17 page 9 Statement of Truth signature – yes. Inspector do not need statement read out. ME typo in para 5 the 3rd sentence you should be ‘recognised’ – yes. Let’s summarise what written and introduce exhibits *ME went through and Cuddy confirmed* – he recalled transaction and went back this was a unique piece of

legislation Community Land Acts strong and powerful tools and power changed a new Land Authority the CLA two prongs one is as set out in para 3 but also strong planning guidance there was respect for proper planning and the new town which did not go ahead has powers the SOS at time appreciated the locational advantages of Llantrisant and he looked at new powers and opportunities which would provide cohesion to what he referred to as natural development of Llantrisant. Inspector I have nothing in documents from SoS not making decision – no – Cuddy you can find it in Hansard 1974. Inspector what I would thought that would involve was powers acquisition on statutory incompatibility. ME the scene is important and my written reps distinguished case from Lancaster and Surrey. Inspector your argument is specificity. At para 7 of statement just read. You then direct us exhibit MC1. Inspector seem two things being said para 7 one was what going on Taff Ely Local Plan and other is property transaction I understand 2nd element from what talking this morning but on 1st element (app doc file 2 page 89) we have got a Taff Ely Local Plan is this different – ME yes this is different one. Inspector we don't have the one being referred to but I do not think I need it. ME Mr Cuddy in MC1 red edged land is plan showing development lot – yes. Para 9 MC2 same red outline and colours the TVG blue – yes. Witness statement talk about various permutations LAW and what it became read para 11. You then record earlier dev control activity in 89 re yellow land, then you refer to planning permission July 90 subject s.106 then revised 23 Dec 93 at para 15 you find s.106 Jackie Rees exhibit turn to it highlight points and replaced earlier s.52 but that does not matter and the land is the land that complies in outline yellow land south TVG site which have been looking at in photo as lower band of housing (page 275 is plan of land) then page 260 Cefn open space and then phase or phases page 274 helpful plan to understand sequence of events. Page 261 and clause 4 developer covenants covenant 4.1 (page 261) detailed scheme for roundabout on B4264 with link road to School Road. Phasing covenant 4.2. 1A could be developed before sorting out the road which is congruent with evidence 1A built first. 4.5 highlight dwellings other than 1A not occupied until highway been substantially completed.

Page 264 scheme for phasing 4.8a providing 12 acres open space. 4.9a open space works same time as appropriate phase. Bottom 265 clause 11 important green line. No commence development green land until 1st Nov 97. Page 267 cov 4.12 not start red until 1st Nov 96. Inspector 4.11 less important for us than 4.12. Next interesting point page 268 cov 5 I put to one early witness and they agreed opening school July 2005 that is what web site says. Inspector anything I need to note on p 276 ME nor for my part. Do you remember it being dealt with – yes. Para 16 talk sales phased basis since you wrote 16 one other witness Mr Waldren done some research right move – I defer to that. Then you talk holding land and the planning at para 20 read. You refer to spatial plan designation then short term lettings then later land which Mr Waldren speak about more detail. Your exhibits NC3 town centre blue and red – yes. NC4 show TVG land coloured up in context of wider town centre scheme – yes. Lastly say enjoying retirement MC5 and this shows land hatched blue – yes. Please read 30 – 32.

- RS CE – you told us role assessing land and Llantrisant acquisition you say para 5 page 2 that was priority acquisition is that whole of land – that would imply whole of land but in particular recognise that some land had some planning status allocated or draft allocation. The entire acquisition same powers – yes always regarded important to Wales. Your MC1 (use one in new bundle) looking at that within red boundary you have Coed yr Hendy – woodland. Is it protected – think ancient woodland do not think protected but we would never develop, chimney grade 2 listed. Parts of land could not be marked for development in sense of building – no, I would mention Pant Marsh had sinc and was proposed to be extended, valley of Avon Clun. Para 7 page 3 then – that is at time of acquisition. Master plan not documentary – overall there was earlier activity in this area Land Authority 1 in TG where we built development which has been obliterated by Tesco. Turn to local plan starts 89 from 91 – 03 page 94. Inspector am I correct obj do not dispute this is green wedge – ME yes. RS two question aware of subsequent reallocation as green wedge – yes. 2nd question important part of acquisition and so to what extent did reallocation affect view – not substantially in attempting to

progress Llantrisant used allocation at time. Taken long time for it to happen on fields – certainly have that is strength and weakness of discretionary planning system. Para 17 refer to plans submitted look at page 265 274 Tab 15 obj bundle where reserved access is roundabout 5 a is that what had in mind – it is. Land north of roundabout marked retail and that marries up obligation in s.106 agreement retail development not happened it seems that land used roundabout now but not at time – intention was if planning granted intention was retail plus access. The s.106 says just retail not retail and access – absolutely, I would say difficult at time to attract small retailer, was impossible to find purchase for that extent of retail. Staying s.106 open space that has happened been there? – yes walked through it may times over 40 years. Can you remember when – no, the open space existed. It is maintained – I can't recall in transaction be obligation to maintain but can't say what regime is, I walked through before obligations undertaken if they were, I noticed sports field has occurred. Para 20 LDP 500 dwellings relates to whole SSA8 – ok, not involved in recent work LDP. Own knowledge land para 30 – 32 when visit – I can't recall difficult to specify don't recall. Most recently – other day but other than that years ago be within last 10 years. Given you can't recall when how much confidence not seen anyone using it – good confidence in that sense as only be there working day in week day. Para 31 tension 1st and 2nd sentence – bad sentence I have seen people occasionally on right of way but cant recall team walking elsewhere. Final sentence would you accept question of law – accept the way it is phrased.

- ME RE – you were taken to plan in s.106 peg 276 in answer to suggestion not intention to use land for access you said this was drawn up s.106 would be used retail and access explain and access – I can't explain in any more detail. Did you see s.106 Plan as inconsistent with intention to develop fields subject to TVG app – no. Can you see roundabout Phase 2a and link road through was intention if so what was it that roundabout – recognised opportunity for access.
- Inspector – your plan NC5 and other plan solid red line all acquired same powers – yes. She asked you about woodland block ancient or

not you said it's something we would never develop – in my view anyway. Look to east see red star that is chimney grade 2 listed – yes, never seen listing. Not expecting to develop – I would have to read the listing. Area of sinc am I to assume the south west quadrant is area – roughly, important Marsh Fritillary Butterfly, rhos pasture. In your para 11 say identify the Land – land in general not just 3 field. I looked at para 9 and then read 11 as specific to 3 fields – no all land, all land to be assessed on important planning issues. We always had in mind the Land allocate for development general or 3 fields – goes to particular site. Is there any documentation you are aware of that demonstrates WDA or LAW formally had in mind these 3 field as natural for development – not as for as I know, general assessment, but not specific document. Again similar point para 18 – is there documentation stage by stage long term strategy – no documentation. Visited site fair to say not involved land management if gone there be some reason connected to duties rather than casual – yes. Thinking how often – in early days not know its site lots of fields been many times a year but not to specific site. You say saw people using footpath – yes, probably with dog I think. We heard about there being paths or worn areas did you notice any other when you visited – no not recall from then but do recall them from recent visit. Para 32 same point no document – no.

- Break 12.25 – 12.30
- ME EIC Lee Lapham – checked statement – ran through typos – read 3, 4, 5. LL when valued previously instructions WG annual inspection Jan/Feb each year initial valuation dated 28th March and changed to Feb we would detail site inspections partly site based partly office based. Looking para 6 which years did you do them – every year 95 to 2017 but I was not valuer 15/16. Para 5 you tell us since you acting for WG always valued asset cat C prop for dev in future – it includes WG and predecessors. When you say prop for dev in future what assumptions made – forms much bigger holding valuation like a pipeline at beginning agricultural and then triggers on values once it is promoted an allocation is development is trigger when planning consent granted that is a trigger in terms of valuation. Aspect cat C

means – annual asset val categorises various land holdings A is built, B course of development and C is landholdings which are in various degrees of planning varies agricultural land to land with planning consent, if farm building apportioned so building A and rest C also D and the E it is a way of putting similar assets into categorisation.

- RS CE – where always C land prop held for dev in future it is wide to cover agri land just being held – in essence just covers land. You asked about inspections and you said every year but not 15/16 I take it you every other year. You as valuer or others from team – me as valuer. Say tracks and right of way but otherwise agri how you think – in context of larger land holding every time we inspected it it was used for agr purposes.
- Inspector – look at file 1 of 3 Mr Howells exhibit tenancy Agreement tab 6 page 95 I understand your responsibility includes c1 as well – yes. Fields C2 inc VG app I am trying to get feel your purpose when you inspect valuation do you need to do anything more than just see fields still there and used for farming – early days as land was vast used to view from site boundaries it is only latterly when allocation came in an on site detailed inspection be undertaken. You walk all boundaries – yes. In those early years as fields within wider holding would you have gone to these fields – in early years all open field so view best vantage point rather than physically walk it. Dealing with more recent inspections when residual holdings shrunk for these more recent go into each field or was it enough to go to part and say it still there – be a bit of both, constantly changing asset so nature inspection check any physical changes so we would go onto field to west as access available and there is boundary where play area is and others not visible for boundary so combination. One residential property in Field A has low palisade garden fence there is a style or sty into field (photo that shows that File 2 page 14) look at blue dots see Sue Spray Tanning 16 and 17 and 169 rear garden has this and person on style climbing back in we told that was provided August 14 so after your 2014 site visit you did not do 15/16 but did do 17 for your purpose would you clock or register it – no we would not particularly identify that, I cannot recollect seeing that. Not something survey pick

up – no. In statement para 6 you refer to tracks and right of way but the tracks what do you mean – just lines on site that have been broken down. For your valuation not need to investigate – we have site inspections and land meetings with WG Land Manager where impacts on value raised but nothing raised about tracks that would impact on valuation.

- ME RE – when answering JS explaining asset category C is it wide enough agri land and you said in essence covers land what does held for future mean – that is how cat c described in valuation cert and vast majority of land is held for future development timing within pipeline only asset in C that do not have development potential are residual assets eg verge or bank everything else somewhere in process of pipeline. With regard to app land, land in pipeline or residual land – land in pipeline. He said went into the field to the west easy access not easy an access – we are authorised to inspect property annual with large agri holdings so we find the points of access which are available. This access in western field can you show on aerial – one by school there is a viewing point and point access fields. Can you remember what was at that point – gate I think. Was gate open or shut – shut. Did you climb over it – yes. He clarified he was authorised earlier on.
- Inspector we heard evidence about gate and we been given some evidence that in recent years barb wire to keep it shut also told period in past not wired shut from your recollection as inspections go back to 95 are you able to say always case from your recollection or have you known when open and walk through – I cannot remember it being open and even if it was openable I would have climbed over.
- Break 13.05
- Started 13.50 - Inspector just been given not explaining questionnaire. ME reserve position till read it.
- ME – EIC Mr Daniel Robert Howells – remember making statement – yes. Went through elements of statement. Seen copy application and photos – yes. All TVG let to you since 94 but tenant of larger area – yes. Toxoplasmosis – we resolved that now by injecting ewes when

project 5 pound per sheep but now allows to use land, can't lamb on there, we used to lamb there regularly, number of years ago, since residents come the dogs have come so can't lamb, dogs and lambing don't mix. Other illness issues – have abortion problem that is toxo and cystovis dogs eating what should not eat then goes through dog and produces cystovis they excrete onto grass cant see it the sheep pick it up and that develops into cystovis develops into cyst and develops on sheep see on carcus. This happens inside but see it after slaughter – yes. If upon slaughter it is found to contain cyst what happens – it is binned. Inspector can you get injection to protect sheep from that – not that I am aware, anyone can pick it up off grass. You were saying some years changed way ran things on field – can walk dog on footpath. All time you had field dogs could walk footpath – yes. What was it triggered change if been dogs on field B before – the reason stopped lambing is amount of dogs increased, when we took it on not used a lot before houses. When you stopped lambing on land – quite a few years, we would not have lambed there for around 15 years. You tell us that land is used to fatten lambs system? – fatten on fields in front of farm house, 3 fields at top take silage off and ewes go on there for a time. Typical year Jan – Dec re 3 fields – cut silage early July ewes in July/August till around Oct till we decide when to sell them then short gap and put to ram by chimney then bring up onto ground after taken first lot of sheep off. How long on 3 fields – move them back and fore, 2 yrs injecting them 17 autumn and 18 autumn. Inspector before injection process not putting pregnant fields on these fields before 2017 understand barren ewes fattened up, in period before injection could you make use of 3 fields before next silage cut after fattened ewes went off in October – ewe lambs born somewhere else and brought onto land over wintering. Inspector when does silage grow – April till July. Inspector when brought over winter when take them off – end of April. Don't keep cattle because footpath – yes. Topping – cutting thistles and brambles that is down by tower by river. Do you do any topping process on 3 fields – no that is when cut silage. Hedges cut autumn by local contractor – yes. Looked at photos don't recognise people – no. Prior 15 yes ago how often cattle – started cattle in 94 when took field off but took them

away because of dangers of it, property visited on a daily visit by family, never seen ball games, drop rubbish and litter, it happens and they drop crap. Socialising – what do you mean. ME explain – yes that is when they throw crap. Where – by Tower and River. Campfires bonfires and camping and rubbish has that happened on 3 fields – not three fields other fields where tower is and down by river. Seen picnics on 3 fields – no. Picnics anywhere else – no. Aware area near river used sledging, cant fence land and as a result constant problem deviating footpath I tell put dogs on lead had to shoot dogs – right and stand by it, I shoot dog if killing not if just off lead I do not want to shoot any dog, I ask people put dog on lead, some aggressive when speak to them, not much you can do about it. Inspector would I be right if you visit not got shotgun – I have gun with me all time. Some questions at gate in field A has always been wired or time not – since took ground in 94 the gate been wired anyone tell you different is crap. Have you had to re-wire gate – I do not think it has been cut we may have to get sheep back in but do not think that cut. Ever find wire cut – yes just few yards down and they climbing over the bloody thing, northern edge by woodland, we put new fence when took land on.

- RS CE – been since 94 – yes. How many fields Cefn Park Farm – about 12 all on map. Your address – Coed Ely. That 5 miles away – yes. Do you have any other land holdings in area – 3 or 4 different places. Do you move sheep all of them – just home and here. You your son and shepherd – 2, sons and some boys help usually me and the boy, each day visit up through other tower ground sometimes and sometimes fields in front of farmyard D. Where are feeders – start off feeding on floor, E F G bins in there. Injection is that all sheep – just ones on fields, 150 this time, it is about normal. Toxoplasmosis – cats, number of sheep varies, vary rare not have sheep on farm. When they are there – we use all the fields so could be spread out, they wander, if weather good up top bad weather drives down when weather good they lie near footpath. Silage have you always cut without problems – no never trodden down too much to cut. Silage – used for feed, ground not changed since 94 although acreage change but our boundary has not altered, size has not altered although acreage on

paperwork might have altered, I spoke the statement it has come out as said, I read it plenty of times I am happy with it. Silage is whole of fields – yes, silage always on those fields but also used to cut down by Tower. No cows 15 years danger to walkers – yes. Why fertilise if not arable – grow grass, also put yard manure on, fertiliser would be out of bag, what you would use in garden, any can go to fares more often than not me, out of 7 days a week visits I be doing 5, I will go right round fields you would not know if I am there, we sometimes go together could be 3 sometimes. When grass is growing still go – go there most days and if we don't go a mate go, we are there 99.9% of time. Rob is your son – yes. A few said that they spoke to him they will have his number – yes won't ring me, when sheep they ring August just gone dogs had sheep he was looking for Pokemon and let his dog go. If sheep gets in difficulty and dies in corner somewhere how long take to find it – won't take couple days. RS brought up photo of dead sheep field E – that is rarity I can't understand that, its dead did not die yesterday, we did not see that or it would not be there. Fences around field along where houses are have you noticed on a couple houses cladding to jump over – not noticed it. One house has style – spoke to people further down but like talking to wall, spoke to person in field C was style not there now. Inspector what happened – I spoke to person next to style, we took it down, spoke to person nice person no problem. Inspector what did you say – I spoke before did not get moved so me and boy (Rob) took it down, illegal to cut boundary fence. In Field A – gate is illegal can't see that when it shut, should not be there, I had not noticed style if I had it would not be there though I do drive past. Photo 2015 – shows how bad my eyesight is, to stop all this crap have to sit there day and night not possible, whatever you talking about, I may have seen youngster kick ball, I seen kids under bales I shouted and was told don't shout at kids, stupid they could be bailed. Told us dogs on lead – if dog is close by don't say it they don't listen. Sheep escaping – yes, have had in varying points over years I can't give date or time frame. Any idea how – I can't be 100% sure how they got out hole under fence. The gate field does that stop them – that is why it is wired. You see people in Field A – people been in every field. Using gate – I have not seen them but they probably do it.

- ME RE – spoke about children by bales and I shouted they said don't shout at kids – I said I'm shouting to save their life. Did they take notice – yes they did. Dogs off lead if you ask – some do some don't. Have you spoken about views on that – not seen anyone cutting fence or would say, should not be climbing over gate but they do, only told people off if dog doing something daft.
- Inspector – roughly in terms of time how long to get from home farm to these fields – 15 mins depending on traffic. Is there pattern to when in day – no could be any time even in dark, could be there just as much weekends as in week. In terms numbers of sheep and fields if you have about 50 acres and have 100 – 400 sheep I was trying to get feel for I have to write report to Council and I have heard evidence telling how often they see sheep in fields and heard something different from you what I am trying to understand is whether number of sheep is high or low stocking sheep, if 50 acres area and you have 100-400 sheep is that not high stocking rate – not far off mark. Farming activities the written statement you provided tasks about fertilising then chain harrowing what is that – a square frame with chains and drag over ground scrapes rubbish and spreads manure does not take off top surface of grass. You are aware public footpath middle field that always been there people who aren't and in other field whether they have dog or not they have no public right to be there why not saying get off land – do not want to quarrel. If they are there and you see them and not damaging do you leave them – 90% in Field B recently gin bottles in field A. If see people in top field you let them be – if occasional person not done anything about them. In top field line through grass but other similar paths in other fields – there could be some walking but sheep also walk that way and follow tracks, to say not right for them to do it doesn't mean it don't happen. Easy to climb over gate – yes no wire across gate, there's was a fence there at one time. If people getting into top field why not done more to stop that – if I fence that they would break it, why climbing over they do not need to, there was fence short time but came through with drainage in field, would have been gate, we put wire there and wired gate, when piping put in fence never went back gate did, if

openable someone cut it open. Barb wire across gate – was at one time but if people climb we don't want them getting cut and blaming us. Never thought notice private – no, no real reason just have not done it. ME wire? – to stop it being opened by whoever.

- Break 3.40 – 3.50
- Take stock 3 witnesses remaining Mr Williams look short although another later finished within prospect to get done.
- ME EIC Paul Williams page 43 – my signature. Case officer since 2011, talk planning app for Sainsbury's, describe outline planning for the TVG land – yes. You area pp granted – yes. Read para 15. Dates of visits – not long after took over project 2011 other 15 or 16.
- RS CE – about para 15, you said 11 and 15/16 – precise as can be. If you do not remember when you went how can you remember did not witness anyone – cant recollect dates but can't recall seeing anyone, pretty sure did not see anyone. How long – 30 mins max on each occasion. In working week – in working day of working week. Of land is that this – this land 3 fields and the 4th field is to the east. What route – I would have visited to look in terms further development so one would have been roundabout site and other at opposite end coming through a break through houses opposite school. Show on map. Other access - would have been field E. Do you distinct memory – purpose would have been to look at entrances, went to look at access and egress points. Distinct memory – of one as visited with joint developers who came from Edinburgh, when with joint developer would be A field, don't deal land management, I recall driving director TGDL and Scarborough but cant recall exact date. Mentioned Sainsbury site am I right not been built – supermarket has not we put in infrastructure and land remediation and then sold to Sainsbury not built on it.
- No RE
- Inspector – not concerned land management looking development planning is highways access going to be feasible – part of it but also having layout designs prepared and looking at proximity of buildings. Did you walk through site – we went through the site. Would have

crossed footpath – must have. Did not see anyone at all – I do not recall seeing anyone on that occasion.

- ME EIC – Mr Porter Page 17 Tab 4 – signature – mine. You still content with statement contents – yes. Involvement – negotiating tenancies with Mr Howells agent and covenant inspections. Covenant inspections – when managing look at different ways if tenant land easier for us to manage but still carry out inspection one is health and safety and covenant inspection make sure not doing what he shouldn't Mr Howells pretty good tenant and number of inspections reflect that other tenants had to increase inspection regime. You exhibit photographs – taken 2017 after app made. Any different from previous experience of site – photo to cover main aspects. Inspector helpful location to wider aerial photo, photo 3 the hedge that runs across photo is that the hedge between B and C – yes what you see is not the footpath. Photographs are they in line with your experience of site – on whole fairly accurate reflection one element that had not been picked up is photo 9 there is something ref in original application gate in fenceline the actual gate is well concealed section pipe insulation other than presence of insulation it is very well concealed. We have some photo that in use App bundle 2 Page 42 panel swings in and uses step ladder you seen fence with opening – not seen gate open. Had you clocked the fact there was a gate – no, it was brought to my attention in application. Another one of these gates photo 14 this one is 12 Oaklands 68 with style – I was on site earlier this week noted it had not noted it previously but that may be as visit late summer early autumn and there is quite a lot of bracken so tend to be overgrown. You looked last week what about design of fence – not obvious there is a gate there – can't confirm if diagonal. Had you spotted this gate rather than fence panel – no. Read 19 – 23. Seen signs of bonfires on TVG – no. On other land – some of lower land, acreage issue in 2008 tenancy included ABC Chimney lower land to river I would walk that land the demise to MR Howells changes 2014 saw evidence of bonfires in chimney field and lower fields. Inspector Tab 9 Appendixes tenancy agreement 77 acres ref is that that area then 209 2016 plan is those the 50 – yes that would be about 50

acres. Page 130 clarify bonfires - drops to river. Sheep and people tracks para 11 read from top page 20. Photo 13 – shown partially basically on northern boundary.

- RS CE – tracks you looked at para 11 and 4 sheep tracks beyond common sense do you have any particular knowledge re creation of tracks – animal tend to be a bit more irregular and narrower based on experience. Mr Howells said about people and sheep – could not categorically say not human traffic or sheep in statement refer to primarily for that reason. Go to exhibit 4 Tab 10 dates 2000 – housing estate and playground under construction. Seems to me from that photo tracks are clearer by gaps in hedges and people and sheep congregate by those gaps – yes. Field A say gap and see whiter line runs down but also what looks like birds foot – what the photo is demonstrating that shows almost immediately post land taken for silage could be some of those tracks as so defined could relate to machinery. There are some tracks could be created and used in one of several ways – it is feasible. Back to main photos cladding pipe accept if trying to conceal not leave cladding – do not know when put in or created kicking myself not picked up on any inspection whether on previous inspection was higher it was overlooked. Next photo 10 take point on bracken but am bit surprised did not pick up style must have been close taking photo – its very obvious on site now and no vegetation growth now and stands out like sore thumb can only assume covered vegetation. Para 11 you say locked – not locked wire, latch is in soil now so struggle to open. Estimated 200 – 250 sheep - but does vary as said by Mr Howells. How arrived at estimate be in one place – that number was assessment when I was putting together Statement October 2017 best estimate did not count every one. Is that whole farm site or ABC – ABC but there are times when gate between and ABC and EF are open. Activities on land – not witnessed. How long inspection – changed over years now just ABC since 2014 so on site about an hour park by playground over style skirt around field. Demise shrunk even demise has fields other than ABC – Howells has full acres but separate agreements ABC one then separate demise DE and third one takes from another party 45 mins around ABC 45 mins

to hour. Seen dogs – people on site have had dogs, seen on two occasions, there during working day, often in rain. Sheep faeces intervene use – my point of view. Para 18 renew tenancies impression as managing agent no major issues – no.

- ME RE – Mr Porter Tab 10 your exhibit aerial photo explain wavy track can you position where know footpath to be on 2000 do you see footpath – I don't .
- Inspector – don't want village green or footpath rights which can arise from long usage so you attuned to be alive for evidence of those is that fair – yes. If I look at your photographs and photo 13 Tab 7 and as I understand it this is taken in Field A looking to gate just above gate see a white blob see white blob – notices of application. If I look at photo see rough grass does not like there has been large amount of sheep grazing yet obv visible pathway from gate and I just slightly not clear why seeing that not say there is incursions by extraneous people of large degree to make path – I accept there is path not sheep track nothing implemented at that point. In applicants file volume 2 page 45 photo – see signs human activity there. If I look at that gate page 45 one and I accept wired so cant open and go to page 9 same volume and that is entrance field B but in terms difficult or ease getting across what tells person that one is saying come in and one keep out – one designated right of way and marked up the other more difficult. So marking and physical features – yes. In App 10 aerial if I go to para 17 and at end sentence says 213 and 216 show machinery on site what feature should I be looking at – if you look top left there is a whiter and later one and 216 fields recently cut Field C. Asked by ME about OS show track/footpath northern side field A I want to ask would I be fair to assume track from gate in field A is not on same line as footpath it track on OS as OS maps appear to come to higher point on boundary.
- ME EIC Peter Waldren – Start PW – three witness statements and you have read written material happy to take matters as read with some questions. Your first witness statement Tab 6 second produces third party reps re planning app and attach minutes statement three that is one deals in some detail with chronology and occupation and also

produce certain title info and address at 13 and 14 we not relying on or taking point of those paragraphs. Explain PW 27 and 28 and what you would like Inspector to draw from that – PW27 that is just google earth and two dates Jan and Dec 01 I don't think either but 2001 and PW28 is 2018 image shows complete development of housing area and tracks. I asked last witness look at 2001 aerial image and he could not see line of footpath can you – no. Turn to PW28 and discern footpath – yes clear. Ignore PW29 and PW30 altogether. You have dealt in 1st witness statement with development plan and the RCT Taff Ely (page 89). The applicant draws attention to designation GW9 of green wedge and page 95 of special landscape area could you help us whether those allocations rule out development – the SLA no just a designation take into account in terms of green wedge same as green belt save that they are reviewed in every plan period, notwithstanding that could have appropriate development. What in the event happened next stage plan - LA chose not to have a green wedge this included TVG application site. A point mentioned about SINC – I do not know if we have LDP map in evidence so SINC includes Coed yr Hendy woodland and north Pant Marsh up to A473 and certain lands east Coed yr Hendy think SINC 101. At land acquisition 88 do you know if register ancient woodland – don't have first hand knowledge of that. The current LDP SSA8 and SINC we know pp granted – granted Feb 2018. Did app site include SINC – not current residential development to north of development town centre and detailed development phase 1 partially implemented and that includes part of SINC it is recognised that development will take place in SINC needed for access. Inspector – not terribly helpful without plan of SINC. Inspector Page 106 current LDP and yellow area that says open space/SINC and striped area which is retail/SINC – that is area I was just referring to. Is a SINC designation a bar too development – no. Statutory incompatibility point scenario if TVG found justified then asked agri to mixed use I would like your expert planning opinion whether mcu mixed use – for change of use to be development must be material and materiality turns on character and effect on neighbouring land I think those you have to consider in my view character is agricultural I have not seen a soul when I been there but

character similar to surrounding fields unremarkable rough grassland with hedgerows and with regard to surrounding impacts not aware that use given rise to complaints so in my view no mcu character remains agricultural and no outward effects. Leaving outside expediency could LPA serve enforcement notice – I can't see how they could.

- RS CE – para 13 1st statement asked about Taff Ely and taken to RCT(TE) just on local plan relevant information what cant see if how it affects fields Llantrisant Plan – ancient history and context. Would you accept green wedge not absolute bar but obstacle – obstacle if you bought land green wedge you may want to bide time till new plan make reps and prospects improve. Planning history summary when red with para 10 1st statement my understanding is only top entry relates to these fields – that is correct. Does it follow from table only 2016 on this land – yes. No other applications – not aware. On the land that abuts where – some of that relates to part also include Mwndy Park proposal which is 2nd entry. Inspector not TVG or does not abut. PW not suggesting planning history of ABC. Been heavily involved with site and suggestion opposed to direction and in fairness opposite could be said in reverse – I am giving evidence of what I have done. Own knowledge of land 3 visits the 2007 and 08 abutting land I have assumed not much time on application field – I had not dealt with application but instructed to appeal so in 2007 I walked cemetery along river into fields from north along footpath would not have spent that long. Did you go into A – don't have clear recollection going into A and I went into C. Say never witnessed anyone – I am certain of that, specifically recall not seeing anyone 11 ½ years ago, if I can get away without speaking to anyone good thing and not seeing anyone very good thing. Did not go into A so could not be sure no one there – no. In 2008 - was with Inspector but don't have recollection seeing anyone, in 2017 site visit was afternoon with daughter and certain did not see anyone. In 2008 not field A – yes. 2017 all 3 fields – yes, on week day the Jan 17 was later in day did fairly circuitous walk up A4119 and entered via northern style believe after school becoming dusky. Accept 3 visits not representative – yes. Witness statement

sets out objections to planning I have had a look and versions I have are redacted so cant make analysis who submitted what you done analysis – no version I looked at redacted. I submit different application in nature with unknown people – I would say highly likely close to application site can't tell you degree of crossover. Rebuttal witness statement I just want clarify seems to me not all Right Move have first date of sale – that is right. Page 15 see most of them have new build 9 Dol y Llan entry 2002 and page 24 example useful but rough. Inspector only going to help me if I have evidence from witness that they made use of site from 97 on simply pointing out properties could have been occupied won't help me I need to know was occupied and making use of application site from occupation. ME I agree with way use right move PW also houses resident person could not use land. 2001 google image page 73 – reasonably confident 2001. Predates St David Heights and route from end of road looks like track through hedge am I right St David Heights 2004 properties sold – yes. Building work 2001 to 4 – yes reasonable assumption.

- ME RE – Tab 23 page 578 extracts adopted LDP in terms verbal description help identify where is – yes and gives clear description and correlates indicative concept plan.
- Inspector – in terms your page 9 and understanding how many dwellings in this cluster of development PW18 ME work in progress.
- Note SS ME only question is under point 2 on colouring. This was resolved.
- Highway matters – happy to sign. Will send in not contentious.
- Miss Wilkins turned up – Inspector happy to hear – opportunity – deal with it
- RS – EIC – Mrs Wilkins
- ME – CE – you talk about activities with children how many – 2 one 2009 Jan one March 14. Living Penrynhendy for first one found out pregnant with other day we moved. In first para you say use fields daily other activity and with children you did not have children when first in Penrynhendy when did you have dog – had dog 2004/5. When

did activities with children start – 6 weeks when started going on land with baby dog walking and carrying from what age did he join activities – when he could walk he would tumble about on the fields/ Around 2010 – yes. Kite flying etc when start – when about 3 or 4 more than a toddler, lost several kites in field. When in Penrynhendy how get to land *showed on plan* – don't go to gym we dog walk and take children out, went in gate way. Big area POS did you sometimes use that – yes. Anywhere else around Miskin for dog walks – regularly use cricket grounds in summer as husband and eldest son play cricket and have used field at back of cricket ground. What about near houses Miskin Crescent and hill and disused quarry – no. Typical summer weekend in terms dividing recreation time – cricket ground purely for playing cricket don't take dog still use fields for this inquiry first thing in morning and evening if no cricket go into fields eldest son learned to ride bike in fields. Jumps – popular mainly boys 10 -15. Gate from your house onto scrubby land – yes. Do you use scrubby land for exercise – no just get a-b not nice. Gate open – no. Sealed with barb wire – correct. Photographs you provided 142-147 on 143 can you see criss cross darker lines – yes think that is where people walk trodden down. See people walking on lines – yes. Do you – not really we have circular walk around field unless stopping to do something. You been to chimney field – yes. Often – no broken glass in area unpleasant smells of urine I presume teenagers use it. 142-143 April 16 in field B date – on mobile phone. Do you sometimes go into fields east – we have done use them when it snows not as much. No earlier photos – no.

- RS RE – no
- Inspector – when back at 10 Brynhendy and explained oldest 2009 shortly after going to site 6 weeks carrying – husband had dog I had baby. Her gets older walking about a year in terms down Bryan and have small child walking or toddler how long it take to get up to fields A gate – my husband carry him as well as walk if ambling 30 mins to park area with style if walking briskly 10-15 mins. POS why not – not pleasant marshy wet full of tufts horrible grass not nice to sit on. When making visits see other people in early period – hard to think

that far regularly see people now I suppose we saw people.

Recognise local people – yes.

- Outstanding docs provided – closing submissions – been a lot of evidence – I like it relatively soon – what would be position next week practical ability to produce – if I said end of next week – ME if your really hit bolder you can leave open with fall back – as non statutory just need to be fair so not stuck with regs so close inquiry subject to docs receive – if I suggest obj by 9am Thurs Obj and 9am Fri App.
- Site visit – a couple of hours nearer 3 – ME suggest half a day diary time – I would like to avoid next week then Inquiry following week so beginning April liaise with parties – ME Mr Waldren from objector and JS will be SS any day but Friday
- Agreed documents 9am Thursday.
- Other matters – no.
- Adjourn inquiry 19.35 no additional evidence. Help if parties agree route for Inquiry helpful if had set of photographs