

**THE COUNCIL OF THE CITY
AND COUNTY OF SWANSEA
CYNGOR DINAS A SIR ABERTAWE**



DEDDF TIROEDD COMIN 2006 / COMMONS ACT 2006

ATODLEN 2, PARAGRAFF 3 / SCHEDULE 2, PARAGRAPH 3

**CAIS I GYWIRO COFRESTRYAD HEB EI GOFRESTRU NEU GAM /
APPLICATION TO CORRECT NON-REGISTRATION OR MISTAKEN
REGISTRATION**

PARC Y WERIN

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Deddf Tiroedd Comin 2006

Atodlen 2, paragraff 3

Cais i Gywiro Cofrestriad heb ei Gofrestru neu Gam-gofrestru

Hysbysir trwy hyn y cyflwynwyd cais gan Mr Crispian Huggill ac eraill i Gyngor Dinas a Sir Abertawe, fel Awdurdod Cofrestru Tiroedd Comin, am dir ym Mharc y Werin, Gorseinon, Abertawe.

Ceir crynodeb o effaith y cais fel a ganlyn: Mae'r cais yn ceisio cofrestru'r tir fel maes tref neu bentref.

Os caiff y cais ei ganiatáu, yn gyfan gwbl neu'n rhannol, bydd yr awdurdod cofrestru'n rhoi'r penderfyniad hwn ar waith trwy gofrestru'r tir yn y gofrestr meysydd trefi neu bentrefi.

Sylwadau:

- rhaid dyfynnu rhif y cais sef 2735(S)
- rhaid nodi enw a chyfeiriad yr unigolyn sy'n cyflwyno sylwadau a natur diddordeb yr unigolyn hwnnw (os o gwbl) mewn unrhyw dir yr effeithiwyd arno gan y cais. Gallwch hefyd gynnwys cyfeiriad e-bost;
- rhaid i'r sawl sy'n cyflwyno sylwadau eu llofnodi;
- rhaid nodi'r rhesymau drostynt; a
- rhaid eu hanfon at Bennaeth Gwasanaethau Cyfreithiol, Democrataidd a Dealluswydd Busnes, y Ganolfan Ddinesig, Heol Ystumllwynarth, Abertawe SA1 3NS, neu drwy e-bostio Sandie.richards@swansea.gov.uk, gan ddyfynnu'r cyfeirnod SR/D30-00230908.

Ni ellir trin sylwadau'n gyfrinachol.

Rhaid cyflwyno sylwadau erbyn 18 Rhagfyr 2017.

Mae dogfennau sy'n ymwneud â'r cais ar gael i'w harchwilio yn y cyfeiriad uchod, fodd bynnag mae angen gwneud apwyntiad. E-bostiwch Sandie.richards@swansea.gov.uk i drefnu apwyntiad. Gallwch weld yr hysbysiad a'r cynllun cysylltiedig trwy fynd i wefan y cyngor yn www.abertawe.gov.uk/CofrestruTirComin.

Llofnod: Tracey Meredith, Pennaeth Gwasanaethau Cyfreithiol, Democrataidd a Dealluswydd Busnes

Dyddiedig: 3 Tachwedd 2017.

Disgrifiad o'r tir dan sylw: Parc y Werin, Gorseinon, Abertawe.

Commons Act 2006

Schedule 2, paragraph 3

Application to Correct Non-registration or Mistaken Registration

Notice is hereby given that an application has been made by Mr. Crispian Huggill and others to the Council of the City and County of Swansea, as Commons Registration Authority, concerning land at Parc y Werin, Gorseinon, Swansea.

A summary of the effect of the application is as follows: The application seeks to register the land as a town or village green.

If the application is granted, in whole or in part, the registration authority will give effect to the determination by registering the land in the register of town or village greens.

Representations:

- must quote the Application No. 2735(S)
- must state the name and postal address of the person making them, and the nature of that person's interest (if any) in any land affected by the application, and may include an e-mail address;
- must be signed by the person making them;
- must state the grounds on which they are made; and
- must be sent to The Head of Legal, Democratic Services and Business Intelligence, Civic Centre, Oystermouth Road, Swansea, SA1 3NS, or via e-mail to Sandie.richards@swansea.gov.uk, quoting reference SR/D30-00230908.

Representations cannot be treated as confidential.

The date on which the period for making representation expires is 18th December 2017.

Documents relating to the application are available for inspection at the above address, however an appointment is required. Please e-mail Sandie.richards@swansea.gov.uk to arrange an appointment. The Notice and accompanying plan can also be viewed by accessing the Council website at www.swansea.gov.uk/commonsregistration.

Signed: Tracey Meredith, Head of Legal and Democratic Services and Business Intelligence

Dated: 3rd November 2017.

Description of the land concerned: Parc y Werin, Gorseinon, Swansea.

FORM GA13 W

Commons Act 2006: Schedule 2 Application to correct non-registration or mistaken registration

Applicants are advised to read 'Guide to the Commons Act 2006 (Correction, Non-Registration or Mistaken Registration) (Wales) Regulations 2017: Guidance for applicants' and to note:

- Any person can apply under Schedule 2 to the Commons Act 2006.
- All applicants should complete boxes 1-10.
- Applications must be submitted by a prescribed deadline. From that date onwards no further applications can be submitted. Ask the registration authority for details.
- You will be required to pay a fee unless your application is submitted under paragraph 2, 3, 4 or 5 of Schedule 2. Ask the registration authority for details. You will have to pay a separate fee should your application relate to any of paragraphs 6 to 9 of Schedule 2 and be referred to the Planning Inspectorate.

This section is for office use only

Official stamp

COMMONS ACT 2006
 COUNCIL OF THE CITY AND COUNTY OF SWANSEA
 COMMONS REGISTRATION AUTHORITY
 DATE 16-10-17 at 16.33

Application Number

2735(S)

Register unit number allocated at registration

1. Commons Registration Authority

Insert name of commons registration authority.

To the: SWANSEA COUNCIL

Tick one of the following boxes to confirm that you have:

- enclosed the appropriate fee for this application or have applied under paragraph 2, 3, 4 or 5, so no fee has been enclosed:

2. Name and address of the applicant

If there is more than one applicant, list all their names and addresses in full. Use a separate sheet if necessary. State the full title of the organisation or business if you are applying on behalf of such a body. If you supply an email address in the box provided, you may receive communications from the registration authority or other persons (e.g. objectors) via email. If box 3 is not completed all correspondence and notices will be sent to the first named applicant.

Name: PLEASE SEE

Address: ATTACHED LIST 5 No. pages

Postcode: Telephone Number:

Email address:

3. Name and address of representative, if any

This box should be completed if a representative, such as a solicitor, is instructed for the purposes of the application. If so all correspondence and notices will be sent to the person or organisation / business named here. If you supply an email address in the box provided, the representative may receive communications from the registration authority or other persons (e.g. objectors) via email

Name / Organisation:	
Address:	
Postcode:	Telephone Number:
Email address:	

4. Basis of application for correction and qualifying criteria

For further details of the requirements of an application refer to Schedule 1 to the Commons Act 2006 (Correction, Non- Registration or Mistaken Registration) (Wales) Regulations 2017

Tick one of the following boxes to indicate the purpose for which you are applying under Schedule 2 of the Commons Act 2006.

- To register land as common land (paragraph 2)
- To register land as a town or village green (paragraph 3)
- To register waste land of a manor as common land (paragraph 4)
- To deregister common land as a town or village green (paragraph 5)
- To deregister a building wrongly registered as common land (paragraph 6)
- To deregister any other land wrongly registered as common land (paragraph 7)
- To deregister a building wrongly registered as town or village green (paragraph 8)
- To deregister any other land wrongly registered as town or village green (paragraph 9)

For waste land of a manor (paragraph 4), tick one of the following boxes to indicate why the provisional registration was cancelled.

- The Commons Commissioner refused to confirm the registration having determined that the land was no longer part of a manor (paragraph 4(3))
- The Commons Commissioner had determined that the land was not subject to rights of common but did not consider whether it was waste land of a manor (paragraph 4(4))
- The applicant requested or agreed to cancel the application (whether before or after its referral to a Commons Commissioner) (paragraph 4(5))

Please specify the register unit number(s) (if any) to which this application relates:

N/A

5. Description of the reason for applying to correct the register

Explain why the land should be registered or, as the case may be, deregistered.

THE LAND SUBJECT TO THE APPLICATION SHOULD BE REGISTERED BECAUSE :-

- (1) IT WAS ALLOTTED UNDER S.164 OF THE PUBLIC HEALTH ACT 1875 AND ALSO SECTION 15(1)(a) OF THE HOUSING, TOWN PLANNING ACT 1919 FOR RECREATION AND EXERCISE ON 31 JULY 1970,
- (2) IT IS NOT FINALLY REGISTERED AS A TOWN OR VILLAGE GREEN UNDER THE COMMONS REGISTRATION ACT 1965,
- (3) CONTINUES TO BE USED FOR REGISTERED RECREATION ON THE DATE OF THIS APPLICATION

6. Description of land

You must provide an Ordnance map of the land relevant to your application. The relevant area must be hatched in a distinctive colour (e.g. Red). The map must be at a scale of at least 1:2,500, or 1:10,000 if the land is wholly or predominantly moorland. Give a grid reference or other identifying detail.

Name by which the land is usually known:

PARC Y WERN

Location:

GORSGINON, SWANSEA

Tick the box to confirm that you have attached an Ordnance map of the land

7. Declarations of consent

This can include any written declarations sent to the applicant (i.e. a letter), and any such declaration made on the form itself. If your application is to register common land or a town or village green and part of the land is covered by a building or is within the curtilage of a building, you will need to obtain the consent of the landowner.

8. Supporting documentation

List all supporting documents and maps accompanying the application, including if relevant any written consents. This will include a copy of any relevant enactment referred to in paragraphs 2(2)(b) or 3(2) (a) of Schedule 2 to the Commons Act 2006 or, in relation to paragraph 4 (waste land of a manor) evidence which shows why the provisional registration was cancelled. There is no need to submit copies of documents issued by the registration authority or to which it was a party but they should still be listed. Use a separate sheet if necessary

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- (1) PLAN OF THE APPLICATION LAND
- (2) RELEVANT EXCERPTS FROM 'REPORT OF THE INSPECTOR HR. ALUN ALESBURY INTO AN APPLICATION TO REGISTER LAND KNOWN AS PARC YWBEN, GORSEGLON, SWANSEA AS A TOWN OR VILLAGE GREEN', MAY 2017
- (3) COPY SECTION 164 PUBLIC HEALTH ACT 1875,
- (4) COPY SECTION 15 HOUSING & TOWNPLANNING ACT 1919

9. Any other information relating to the application

List any other matters which should be brought to the attention of the registration authority (in particular if a person interested in the land is expected to challenge the application for registration). Full details should be given here or on a separate sheet if necessary

PREVIOUSLY SUBJECT TO AN APPLICATION UNDER SECTION 15(2) THE COMMONS ACT 2006, CITY & COUNTY OF SWANSEA (NOW SWANSEA COUNCIL) IS LANDOWNER

10. Signature

The application must be signed by each individual applicant, or by the authorised officer on behalf of a body (organisation / business)

Signatures:
PLEASE SEE ATTACHED LIST
3 NO PAGES

Date: 16th OCTOBER 2017

REMINDER TO APPLICANT

You are responsible for telling the truth in presenting the application and accompanying evidence. You may commit a criminal offence if you deliberately provide misleading or untrue evidence and if you do so you may be prosecuted. You are advised to keep a copy of the application and all associated documentation.

Data Protection Act 1998: The application and any representations made cannot be treated as confidential. To determine the application it will be necessary for the commons registration authority to disclose information received from you to others, which may include other local authorities, Government Departments, public bodies, other organisations and members of the public. A copy of this form and any accompanying documents may be disclosed upon receipt of a request for information under the Environmental Information Regulations 2004 or the Freedom of Information Act 2000.

Me'r ddogfen yma hefyd ar gael yn Gymraeg / This document is also available in Welsh

WG31132

OGL © Crown copyright 2017

Application to correct non-registration or mistaken registration

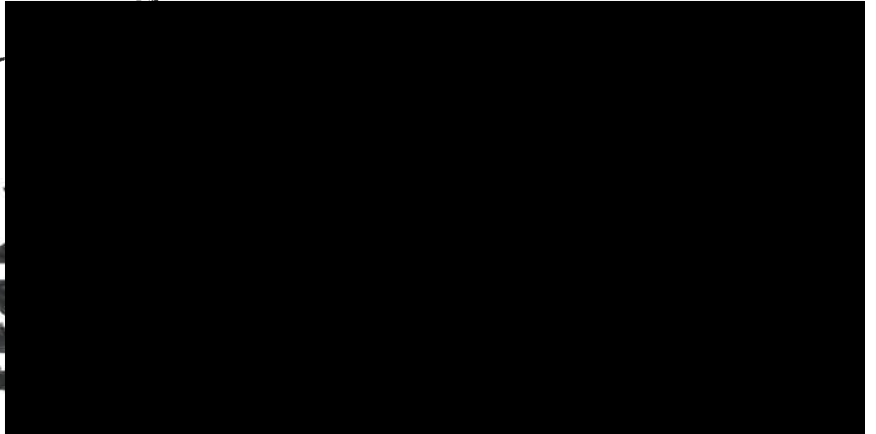
Section 2. Name and address of the applicant

The following are hereby identified as joint applicants to this application:

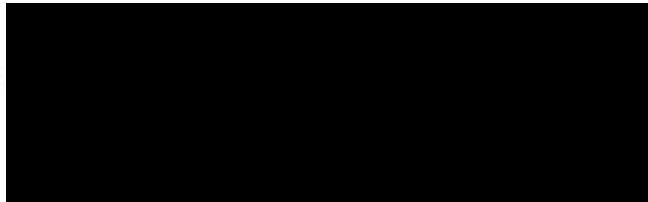
NAME

ADDRESS

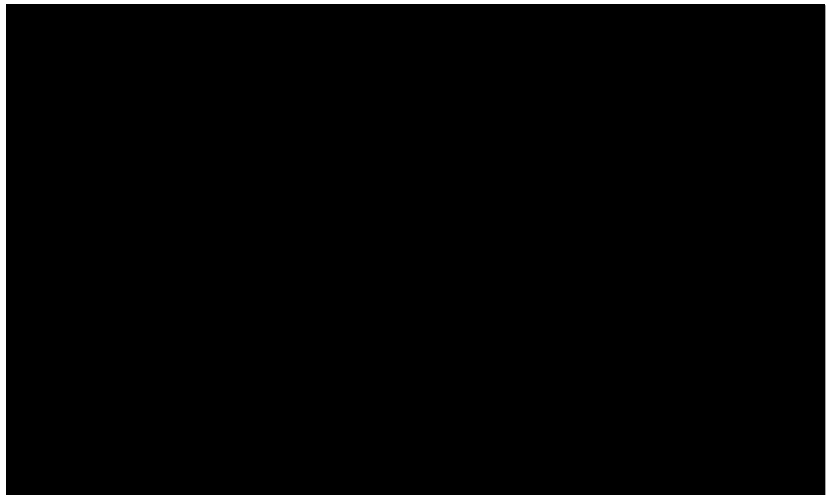
1. CRISPIAN INGALL
LEAD APPLICANT
TO WHOM ALL
CORRESPONDENCES
TO BE SENT.
2. WCY NGILL.



3. CLAIRE HARWOOD

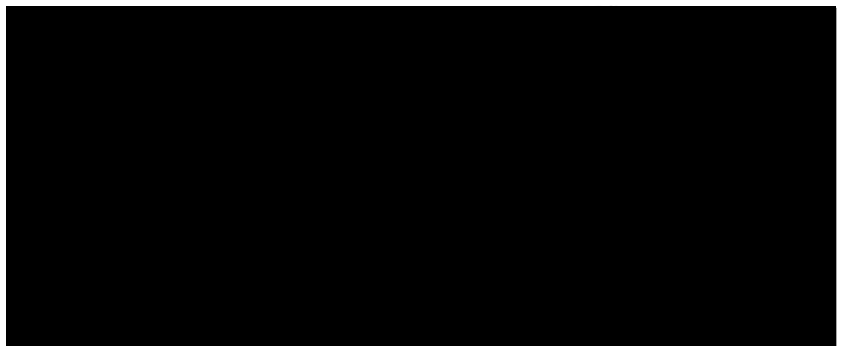


4. Jennifer Morgan.



5. CAROL WILLIAMS

- 6 Claire Lewis



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NAME

ADDRESS

7 Donna Thomas-Peters

8. Thea Thomas-Peters

9 RUTH MARGARET THORNE

10 CHRISTINE SWEENEY

11 SUSAN JAMES.

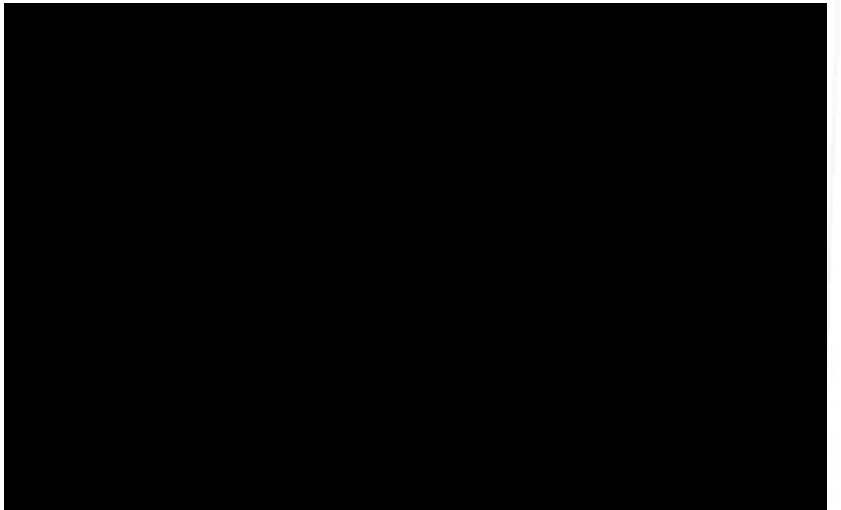
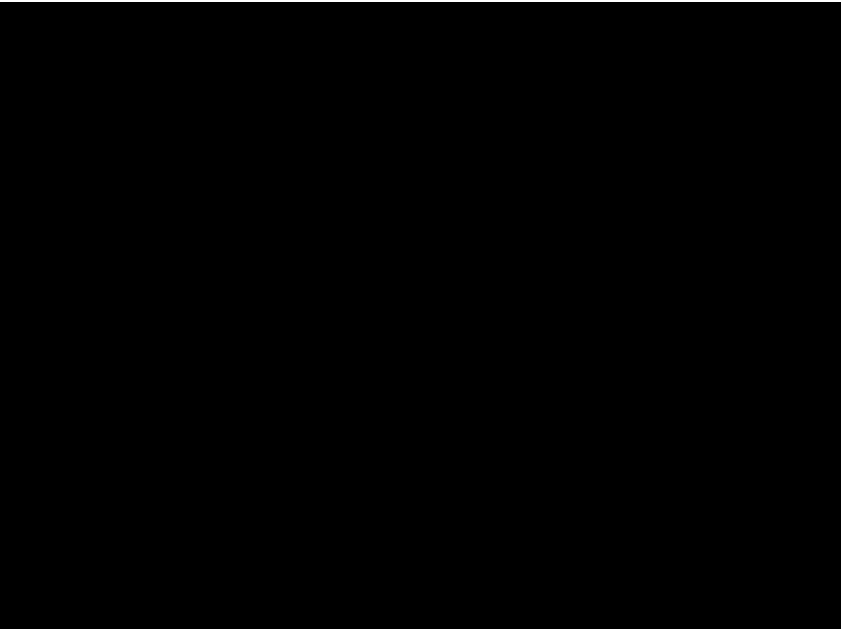
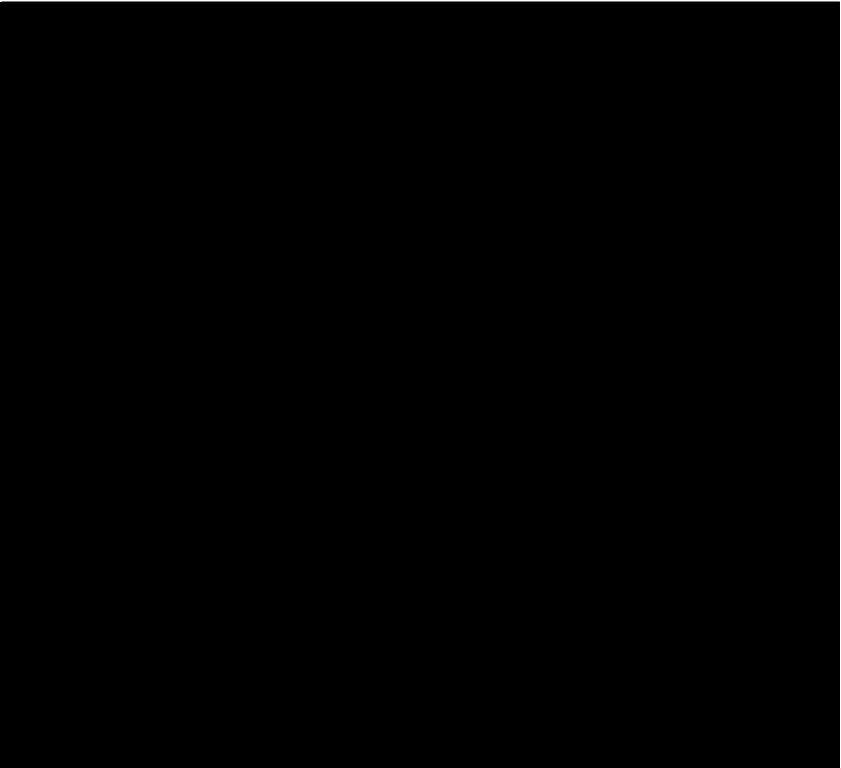
12 MEL WILLIAMS

13 D. W. Cole

14: Mollie James

15. LESLIE JAMES

16. HELEN JAMES



Application to correct non-registration or mistaken registration

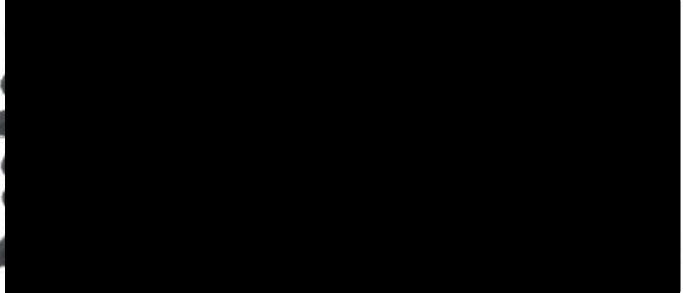
Section 2. Name and address of the applicant

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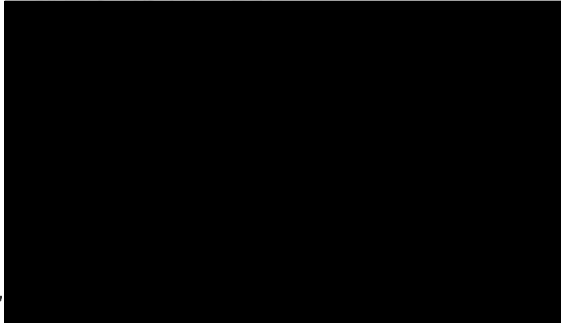
NAME

ADDRESS

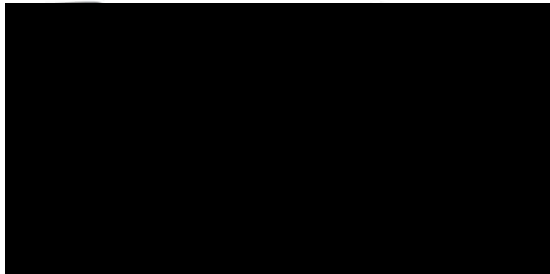
17 JANE ANDREW



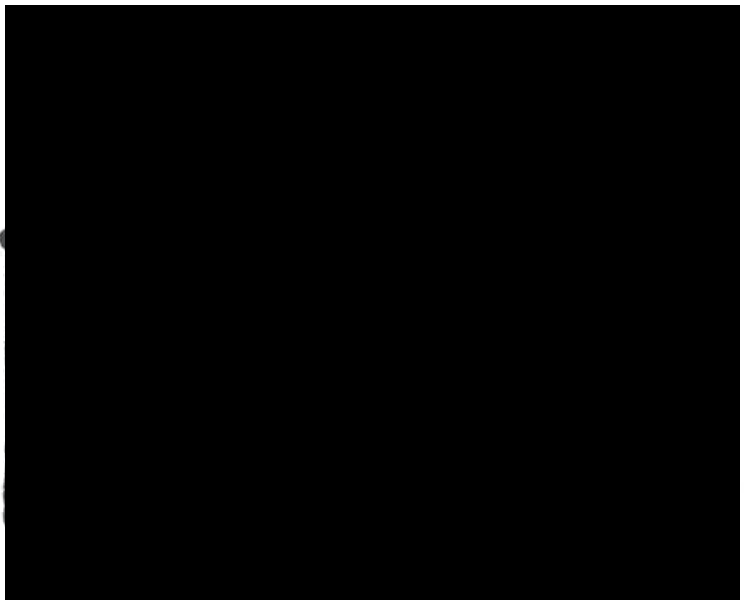
18 JOHN GULLIS



19 LYNNE GULLIS



20 MELANIE THOMAS



21. STEVE THOMAS.

22. STEPHEN JAMES
16 BRINAWEL ROAD

Continued on reverse of the page

NAME

ADDRESS

23. N. Thomas

24. H. Thomas

25. Hanna Edwards

26. Joshua Francis

27. B. Riawyer

28. V. Jones

29. Madeline Powell

30. Carol Penn (mother)

31. S. R. Richards

32. Hilary Thorpe

33. Anne-Marie Rees

34. Chris Jones
Davies

35. Elizabeth Eales

36. Derek Eales

37. Iorwatha Edwards

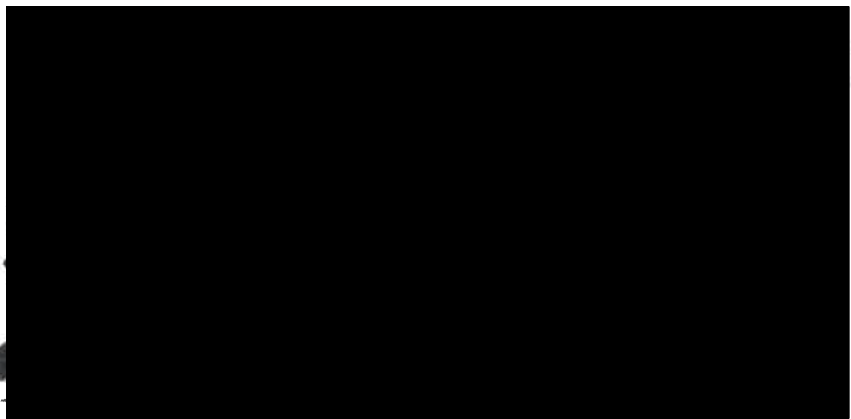
Application to correct non-registration or mistaken registration

Section 2. Name and address of the applicant

The following are hereby identified as joint applicants to this application:

NAME	ADDRESS
#38. JAYNE JONE	
39. Beatrice Jones	
40. CAROLYN CONE	
H1. GILLIAN JONES	
LEA PRINCESS ST	
Julie Dawe	

ADDRESS



Continued on reverse of the page

Application to correct non-registration or mistaken registration

Section 10. Signature of the applicant

The following hereby sign themselves as joint applicants to this application:

NAME

SIGNATURE

1. CRISPIN WIGILL

2. WYLL WIGILL

3. CLAIRE HARWOOD

4. Jennifer Morgan-

5. CAROL WILLIAMS

6. Claire Lewis

7. Donna Thomas-Peters

8. Thea Thomas - Peters

9. RUTH MARGARET THORNE

10. CHRISTINE SURREY

11. SUSAN JAMES

12. MEL WILLIAMS

13. DUNCAN

14. ~~MADAME~~

15. LEICHTON JAMES

16. HELEN JAMES.

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Application to correct non-registration or mistaken registration

Section 10. Signature of the applicant

The following hereby sign themselves as joint applicants to this application:

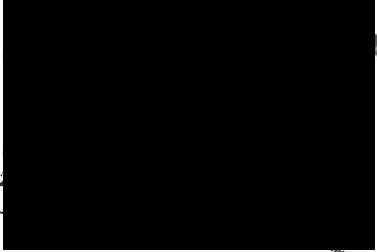
NAME	SIGNATURE
17 JANE ANDREW	
18 JOHN GULLIS	
19 LYNE GULLIS	
20 MELANIE THOMAS	
21 STEVE THOMAS	
22 STEPHEN JAMES	
23 NAN THOMAS	
24 HEDDWIN THOMAS	
25. HANNA EDWARDS	
26 Joshua Francis	
27 BRIAN JONES	
28. Yvonne Jones	
29. Mervyn Powell	
30. Carol Penn Commins	
31. D. D. Richards	
32. HILARY THORPE	
33 ANNE-MARIE REES	
34. (DAUTE)	
35. ELIZABETH DAUTE EALES	
36. DEREK EALES	
37. TORWORTH EDWARDS	
38. Wayne Jones	
39. JAYNE JONES	
39. Beatrice Jones	

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NAME

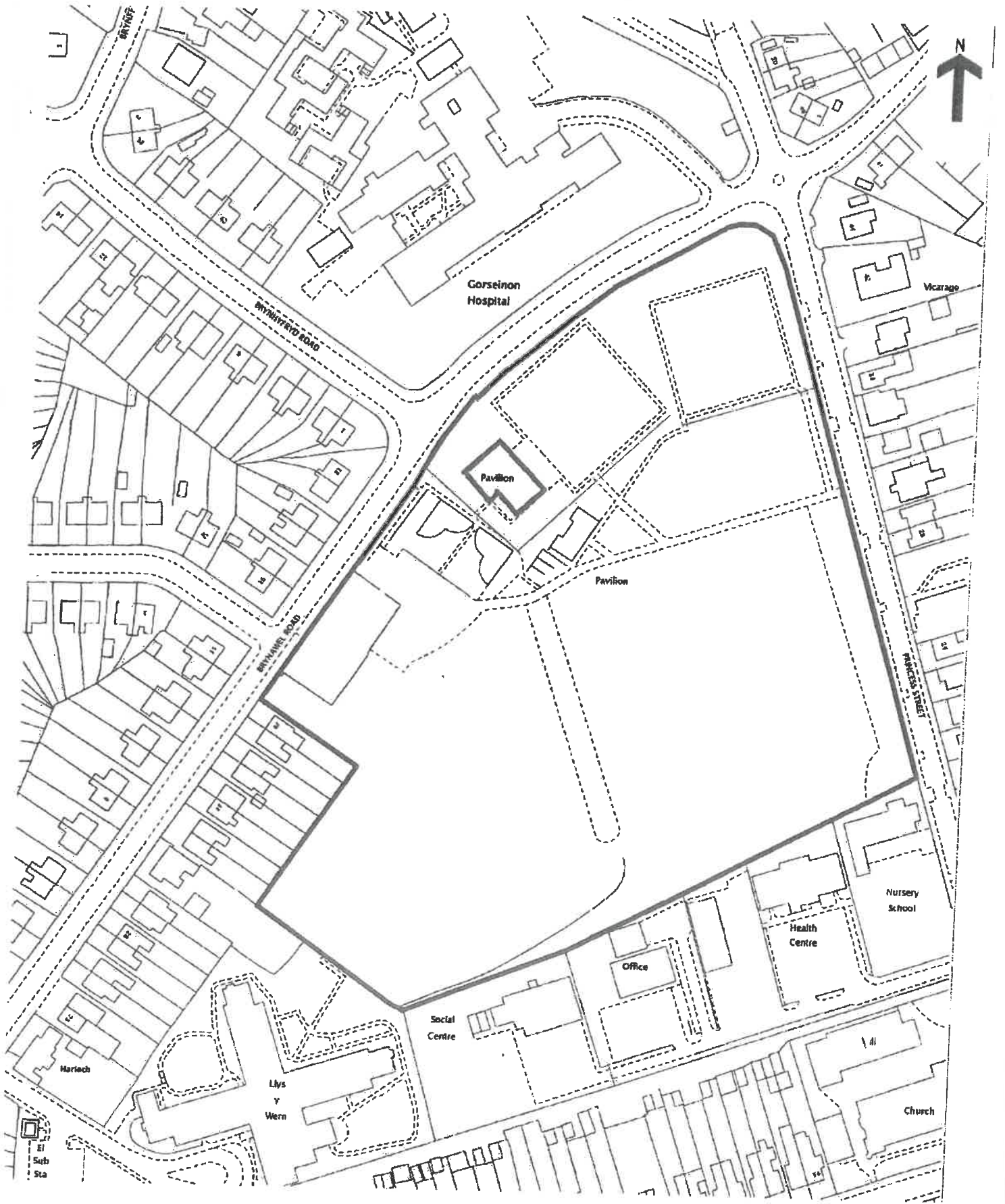
SIGNATURE

40. CAROLYN COLE
41. GILLIAN JONES
42. JULIET DAWIE



PLAN OF APPLICATION LAND
DELINEATED IN RED

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EXTRACTS FROM
REPORT OF THE INSPECTOR MR. ALAN HESBURY
INTO AN APPLICATION TO REGISTER LAND KNOWN
AS PARC YWERIN, GORSEINON, SWANSEA AS A TOWN OR VILLAGE
GREEN
MAY
2017

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- 11.30. One of the 'pleasure grounds' which the 1932 Byelaws relate to is 'Parc y Werin, Gorseinon'. Byelaw no.1 appears to say that both Parc y Werin and a recreation ground at Pontlliw are "in the Parish of Llandeilo Talybont". I have already noted that the Parish Council of Llandeilo Talybont had apparently ceased to exist in 1930, as would automatically have happened at that time, when an Urban District Council was created. However it may well be (though nothing turns on it, in my view) that the Parish of Lland(e)ilo Talybont continued to exist for either (or both) geographical or ecclesiastical purposes.
- 11.31. I also note, from the helpful series of large scale Ordnance Survey Plans produced by the Principal Objector, that by 1935 the Ordnance Survey was showing 'Parc y Werin' as appearing to include effectively all of what I am calling as the "1921 land" and the "1924 land", together possibly with a small amount of further land (within the 1924 acquisition), a little further to the south-west, which has been subsequently developed.
- The 1921 land**
- 11.32. It is clear that the leasehold interest in this land which was acquired by the Council's predecessor in 1921 was acquired for the express purposes of setting up a 'public walk or pleasure ground', or a recreation ground, on the land concerned. The *Public Health Act 1875* was not mentioned in the lease. This may have been because the former Llandeilo Talybont Parish Council was not, strictly speaking, an 'urban authority' of the kind referred to in *Section 164* of that Act.
- 11.33. However by 1930 Parc y Werin had been inherited (through a local government reorganisation) by Llŵchwr Urban District Council, which undoubtedly was an 'urban authority'. It is known that by 1932 (if not well before that) Parc y Werin had been formed as a 'pleasure ground', because Llŵchwr UDC secured byelaws governing Parc y Werin as a pleasure ground. These byelaws are entirely in a form which suggests they were made under *Section 64* of the *Public Health Act 1875*, even though the Act does not appear to be mentioned in them. It is reasonable to infer that they were so made, and I do so infer.
- 11.34. As was fairly typical for byelaws of that time, they do not include any map or plan showing the exact geographical extent of Parc y Werin, or indeed of any other park or recreation ground to which they applied. It was to be a matter of local knowledge and evidence what the extent of a park or recreation ground was, should the matter ever be questioned in a byelaw prosecution (for example). It is again reasonable to infer that they must have applied at the very least to the land which in 1930 the Llŵchwr UDC had inherited from the former parish council, held under the 1921 lease. We also know from the Ordnance Survey record that by 1935 something called 'Parc y Werin' [the People's Park] was evident on the ground to the cartographers covering (apparently) the whole of the 1921 land, and further land to the west.

- 11.35. It was conceded at the Inquiry on behalf of the represented Applicant that if the 1921 lease had remained in effect through its full term, which would have expired in 2014, then the 1921 land would have been held by the present Council and its predecessor(s) under *section 164* of the *Public Health Act 1875*, as a public park or recreation ground, for almost the entirety of the 20 year period relevant to the present case. Accordingly it would have been completely clear, following the principles enunciated by the Supreme Court in *Barkas*, that the 1921 land cannot be registered under the Commons Act as a town or village green, because its use over the years by local people would have been 'by right', not 'as of right'.
- 11.36. In my view this concession was correct, and reflects the conclusion I would have drawn in any event. The argument for the Applicants however is that this situation no longer applied after the freehold to the 1921 land was acquired by Llchwyr UDC in 1944, because (in effect) that freehold was acquired for general purposes, not 'public walks or pleasure grounds' purposes; the 1921 lease was merged into the freehold, and so it and its terms ceased to exist; and other things which happened later suggested that the Council's predecessors did not treat the land as being held as 'public walks or pleasure grounds' – the original *1875 Act* terminology, but which covers what in more modern parlance are referred to as public parks or recreation grounds. I shall consider these points.
- 11.37. As already noted, in 1944 Llchwyr UDC acquired the freehold to the property free from incumbrances, with the 1921 lease merged into the freehold, so the specific lease terms about use and laying out as public walks or a recreation ground ceased formally to exist. The 1944 conveyance itself says nothing about the statutory power under which the freehold was being acquired, although it does describe the land as forming "*part of the Purchaser's pleasure or recreation ground ... known as Parc y Werin...*".
- 11.38. The further historical research carried out by the parties (some of it by means of pursuing Freedom of Information requests) produced a considerable volume of correspondence from the 1943/44 period dealing with this acquisition. Much of it does not add a great deal, but from it we learn that on 9th December 1943 he Llchwyr UDC resolved "*pursuant to the provisions of the Local Government Act 1933, and all or any powers them enabling*", to apply to the Ministry of Health for consent to make the purchase of two freeholds where leases were currently held, one being the '1921 land' at Parc y Werin, and the other being Argyll [sometimes spelt Argyle in the evidence] Gardens, another (small) park or pleasure ground in Gorseinon.
- 11.39. It is this reported resolution which forms the essential basis of what I understand to be the Applicants' argument. Because the resolution itself made no express mention of the *Public Health Act 1875*, but only the *Local Government Act 1933*, and the land was acquired free of incumbrances and not subject to the former lease terms, it is argued that thenceforth the land (now freehold) was held by Llchwyr UDC for general purposes, not as a park or recreation ground.

- 11.40. The relevant power in the *1933 Act* was taken by both parties to be *Section 157*, which allows local authorities to acquire land by agreement for the purpose of their functions under that or any other act. No ministerial consent was in fact required to exercise this power. My attention was also drawn to *Section 158* of the *Local Government Act 1933*, which allowed the purchase, *with* ministerial consent, of land which was *not* immediately required for the local authority's relevant purpose(s).
- 11.41. The Applicants argue that because the land was thereafter held for general purposes, it was no longer a public park or recreation ground which local people could use "*by right*". If they carried on using it, they were now doing so "*as of right*".
- 11.42. However it is important to note that on 10th January 1944, just over a month after the reported resolution, the Clerk to Llŵchwr UDC wrote to the Chairman of the Welsh Board of Health (in answer to a query), stating that "*the statutory [authority] of the Council for the proposed acquisition is derived not only from the Public Health Acts 1875 to 1925, but also the Local Government Act 1933*". Somewhat ironically, it turned out (as seen in the later correspondence) that no ministerial consent was in fact required, because the Council was not proposing to borrow any money in order to buy the two freeholds. I should perhaps also note that, strictly speaking, the reported resolution of the 9th December 1943 was not actually to *make* the relevant freehold purchases, but only to make an (apparently unnecessary) application to the Ministry for consent. Presumably the actual operative decision in fact to make the purchases was taken later, following the correspondence referred to, although the parties have not been able to unearth a formal record of that decision. It must have been taken *after* the Clerk's clarification of the relevant statutory authority on 10th January 1944.
- 11.43. The conveyance of the freehold(s) pursuant to that decision was dated 24th June 1944. My conclusion, having regard to the balance of probabilities as far as the evidence is concerned, and the presumption of regularity ("*omnia praesumuntur ...*"), is that a proper decision was taken to buy the freehold, relying on powers including the *Public Health Act 1875* – which in this context must mean *Section 164* of that Act.
- 11.44. Everything about the local authority's then conduct is consistent with this: the land was already held and laid out as park/recreation ground, and there was not the slightest indication of any intent to change this; the use as park/recreation ground did not in fact change after 1944, but (the evidence clearly suggests) carried on as before; the price paid in 1944 did clearly appear to represent a "years' purchase" approach to the previous rent being paid under the 1921 lease, rather than any kind of 'hope value' relating to other potential uses; the byelaws for Parc y Werin would (on the face of things) have continued unchanged, and there is no indication of any attempt to alter that position.

- 11.45. I found the submissions on behalf of the Principal Objector as to this particular aspect of the matter entirely convincing, and my conclusion is that after 1944 Llŵchwr UDC continued to hold the 1921 land at Parc y Werin as a park or recreation ground under its *1875 Act* powers.
- 11.46. The Applicants advanced an argument that by virtue of the *Local Government Area Changes Regulations 1976* S.I. No. 246, the byelaws would have ceased to have any effect after March 1976. This argument, as advanced to the Inquiry, appeared to me to be based on an apparent misconception that the 1932 Byelaws were somehow related to a local government area then existing, consisting of the Parish of Llandeilo Talybont, whereas we know from the evidence that this civil parish and its Council had ceased to exist in 1930, two years before the Byelaws came into existence.
- 11.47. The Byelaws as enacted clearly related to the area of the old Llŵchwr UDC, which continued to exist until in 1974 it was replaced by the new Lliw Valley District (or Borough) Council. In any event it seems to me to make no difference whether the Byelaws ceased to have effect in 1974, or 1976, or indeed earlier or later; and I note that the Principal Objector made clear that it did not seek to argue for the continued effectiveness of the old Byelaws during any part of the relevant 20 years under consideration in this case.
- 11.48. Subject to what I say below, it is clear in my judgment that the 1921 land carried on being held by the owning local authority as a park or recreation ground under *Section 164* of the *Public Health Act 1875*, after 1944, and indeed still after the local government reorganisations of 1974 and 1996. The (local) public using this land were not trespassers (or even 'technical' trespassers), but were doing so 'by right', in my judgment.
- 11.49. Against this clear view the Applicants sought to argue that the High Court decision in *R (Malpass) v Durham County Council* [2012] EWHC 1934 (Admin) should lead to a different result. Insofar as relevant here, that case appears to hold that where it was unclear (and the Inspector in that case had found it to be unclear) under what power a local authority had acquired and then held a piece of land, it did not avail that in a much later deed a local authority had put on record its view that the land was held as public open space or public works (but not gone through an appropriation process at that later time).
- 11.50. In this present case however, the evidence clearly points (in my view) to the freehold being acquired in 1944 in order to carry on the land's already established use as a public park or recreation ground, and I so find as a fact.
- 11.51. An important further fact on which the Applicants place great significance is that in the 1970s the Lliw Valley Borough Council took a decision to permit the temporary stationing of up to six caravans for residential use, as a temporary measure while some houses were being repaired/renovated, on an area within the

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

- 11.52. The Applicants argue that this therefore shows that the local authority knew or considered that it held the land at Parc y Werin as general purpose land, with which it could (subject to any other relevant legal restrictions) do what it liked, rather than as a park or recreation ground. Or, putting it another way, that it is further evidence suggesting that the local authority's predecessor in 1944 really did intend to, and in fact did, acquire the freehold to the park for its general purposes.
- 11.53. It undoubtedly is the case that no records have been found showing that Lliw Valley Borough Council properly considered, still less carried out, an appropriation from park/recreation use to the temporary use for caravans. However it is equally the case that they carried out no formal (re)appropriation in the other direction when the temporary caravans were removed, and the land restored for many further years to its use as part of the park/recreation ground.
- 11.54. It is difficult for me to judge, on the basis of any material presented to the Inquiry, what exactly was in the 'mind' of Lliw Valley Borough Council when it agreed or decided upon the temporary caravans, other than a short term solution to a current practical problem. Although the matter was dealt with as a matter of town and country planning, I do not know what if any legal advice the then Council received or considered in relation to its powers (or lack of them) in relation to changing the use of land it owned for a particular purpose. I do not know (for example), and nor did any of the parties to the inquiry claim to know, whether Lliw Valley acted in the belief (or on advice) that it had powers to make such temporary use of open land it owned, or whether it just went ahead in (legal) error, and without any proper advice.
- 11.55. What is clear, it seems to me, is that it is logically impossible to conclude that it made some kind of implied [or 'to be inferred'] appropriation from open land in park/recreational ground use to use as a residential caravan site, without also concluding that it must have made a similar 'appropriation' in reverse, when it removed the caravans and restored the original use.
- 11.56. It does not seem to me therefore, as a matter of judgment, that the 'temporary caravans' episode has any bearing on my conclusion that, from at least the 1930s, the 1921 land at Parc y Werin has, on a proper view, been held by the Council and its predecessors for park/recreation ground purposes under *Section 164* of the *Public Health Act 1875*. I shall deal later with the question whether the purported 'appropriation' of July 2015 – which included a small part of the 1921 land – raises an issue of 'statutory incompatibility'. It has no effect on my conclusions on the "as of right" issue. The 1921 land has *not* been used "as of right" by local people, in my judgment on the evidence.

- 11.57. Argument was also advanced on behalf of the Applicants, based on the fairly recent judgment of Dove J in the High Court in the case of *R (Goodman) v Secretary of State for Food and Rural Affairs* [2015] EWHC 2576 (Admin). I have considered carefully both the arguments advanced and the judgment of Dove J. The gist of that judgment seems to me to be that it cannot properly be assumed from the mere conduct of a local authority, in terms of its management of land in its ownership, that it has validly "appropriated" the land from one undoubtedly lawful previous ownership purpose or function, to a new one reflected by the more recent land management practice. For an 'appropriation' from the previous valid purpose to have occurred, the authority has to be seen to have gone through a process which either was, or was closely akin to, that required under *Section 122* of the *Local Government Act 1972*, of forming the view that the land was no longer required for the purpose for which it was previously (lawfully) held.
- 11.58. I am afraid I do not see this judgment of Dove J as in any way helping the Applicants, as far as the 1921 land is concerned. Indeed it tends to confirm my view that the temporary stationing of two caravans on a small part of that land in the late 1970s and 1980s was a mere footnote or (less than fully explained) 'quirk' in Lliw Valley Borough Council's management of this land. It did not mean that Lliw Valley Council had 'appropriated' any of the 1921 land away from park/recreation ground use to a temporary housing use – nor indeed that it 'appropriated' the land back to park/recreation ground after the caravans went. The purpose for which Lliw Valley Council lawfully held that land during the whole of the period relevant to this point was as a park/recreation ground, on my assessment of the facts in this case. As mentioned above, this view is supported by the clear fact that, after the caravans went, the land did in fact revert, without any apparent record of formal decisions being taken, to its park/recreation ground use.

The 1924 Land

- 11.59. As noted above, the formal history of this land, in terms of statutory powers for its acquisition and subsequent ownership, is almost completely distinct from that for the 1921 land, even though at present the 'plots' merge seamlessly into one another, and appear to be in exactly the same use, a situation which the evidence suggests may well have been the case for very many decades.
- 11.60. This land was acquired freehold in 1924 by the Swansea Rural District Council, another predecessor of the Lliwchwr UDC which was established in 1930, and hence eventually also of the present Principal Objector Swansea Council. I have already noted that this land was acquired by Swansea RDC as part of a very much larger purchase of land in this part of Gorseinon pursuant to a "scheme" under the Housing Acts 1890-1919 for the provision of "houses for the working classes" which had been submitted to the Ministry of Health. The conveyancing documentation from 1924 records that the purchase was approved by the Ministry of Health. No record has been found of the contents of that 'scheme'.

- 11.61. It is clear from the evidence I received that much of the land acquired under the 1924 Indenture was indeed developed for housing, with some other associated development. However I have seen or heard no evidence that "the 1924 land" within the present application site was ever developed for housing purposes in the sense of ever having houses or domestic curtilages etc. set up on it.
- 11.62. Indeed, as noted above, by the time of the 1935 large scale mapping by the Ordnance Survey, the cartographers marked indistinguishably as 'Parc y Werin' an area which appears to include the whole of the present "1921 land" and "1924 land" within the application site, together with a small amount of further land to the west (but which was also included within the 1924 purchase). It is not entirely clear however, from any evidence which I received, whether at the time of the 1932 Byelaws Lluchwr UDC would have regarded 'Parc y Werin', as referred to in those Byelaws, as including the "1924 land" within the present application site.
- 11.63. The 1935 Ordnance Survey also showed as open, undeveloped land, but marked in the way usually associated with 'rough grazing' or similar. another long strip of land, running along the entire southern boundary of the present application site, and then rather further west. This strip of land was also included in the purchase under the 1924 Indenture, and in the event I heard a considerable amount of evidence in relation to it.
- 11.64. It seems to have remained largely undeveloped for several decades, and indeed this was still the case at the time of a clear aerial photograph of 1967 which was produced to the Inquiry, when the land had the appearance (from the photograph) of fairly rough scrubland – a description which accords with such oral evidence about it as was given to the Inquiry. However the more south-westerly parts of the present application site also had (in the 1967 photograph) the appearance of fairly rough scrubland, as opposed to the more manicured, or at least 'managed' appearance in the photographs of the remainder of the site to the north-east. Some of the oral evidence I heard also corroborated the view that around that time the south western part of the present application site was fairly rough ground. The 1967 aerial photograph did however give the impression of some demarcation existing between the present Parc y Werin and the other strip of land to the south of it, as did (rather more clearly) another large aerial photograph from a probably slightly later period which happened to be hanging in the lobby of the Inquiry venue.
- 11.65. It is right to note also that the series of large scale Ordnance Survey maps which were produced to the Inquiry, dating from more recently than 1935, did not show a consistent demarcation line between more managed land and rougher land to its south and south west, several times (notably in the 1969 survey, but also in others) showing rougher ground extending northwards into the present application site.
- 11.66. However it is a notable feature of what has happened immediately to the south of the application site that since the late 1960s the entirety of this strip of land (also included in the 1924 purchase) has been gradually developed with a series of

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

- 11.67. A reader unfamiliar with the background and arguments in this case might wonder why I devote so much attention to a strip of land outside the application site under consideration. This is because the Applicants seek (in effect) to argue that this particular strip is a strong example justifying the view that the land acquired in 1924 has been held as a whole by the present Council's predecessors more in the way of being general land kept available for the purposes of potential development, rather than being land some of which (that on the application site) has been made available for recreational use by local people 'by right', or by permission.
- 11.68. It is certainly true that no record remains available of what specifically was envisaged in the 'scheme' submitted to the Minister in 1924 as the intended use of the 1924 land, within the application site or elsewhere. However such evidence as there has been leads me to the conclusion, on the balance of probabilities, that the 1924 land within the application site has been consistently provided as a matter of fact, for use by local people for recreational purposes, even if (as noted above) some parts of it have for some of the time consisted of rather rougher ground than the rest of it. Indeed the evidence is convincing that over very many decades "the 1924 land" (in this sense) has been made available for public use in much the same way as has been the '1921 land', as discussed above.
- 11.69. I accept the point however that this in itself does not necessarily mean that the 1924 land within the application site was being held by the Council's predecessors for a purpose or purposes which gave the public a right or permission to use it. It is necessary to consider more deeply what this land was actually being held for over the years, and whether there are any inferences which can reasonably be drawn from such facts as are known.
- 11.70. Plainly, as noted previously, much of the wider area of land acquired in 1924 was in fact developed for housing estates, as one would expect. The Inquiry's attention was however drawn to some of the specific provisions of the *Housing, Town Planning Act 1919*, which was (it seems) the most recent and current piece of housing legislation in effect when the 1924 acquisition was made. *Section 1* of the *1919 Act* set out some specific requirements which a "scheme" for the housing of the working classes had to satisfy, when it was put forward for approval, initially by the Local Government Board, latterly by the Ministry of Health. These requirements did *not* include anything about open spaces, parks or recreation grounds within the areas to be developed [*Section 1(2)*], but did allow for schemes to contain 'incidental, consequential and supplemental provisions'. Once a scheme was approved, it was binding on the local authority concerned [*Section 1(3)*].

- 11.71. However, as noted above, no record remains of the scheme which was approved in this case, or whether it said anything at all about the provision of open space, etc, within the housing area, or more particularly about where within the acquired land such provision was to be made.
- 11.72. However *Section 15(1)* of the 1919 Act specifically allowed local authorities to "lay out and construct ... open spaces on the land" which they had acquired for the purpose of 'housing the working classes', and it is clear from the section that no further ministerial or Local Government Board consent was required in order to do that.
- 11.73. The relevance of this, it seems to me, is that it is reasonable to infer from the evidence that this land (the 1924 land within the application site) was, at an early date following its acquisition, set apart as an open space area within the much wider area acquired for housing, and that this was something the local authority at the time was fully empowered to do, pursuant to the statutory power I have just been discussing. This, it seems to me, is the 'presumption of due process' being applied in a proper way. The land concerned has never really been used for anything else other than as an open space recreational area, within the wider area being developed over the years. More than that, it has been consistently managed for many decades as part of a park or open space.
- 11.74. It does not seem to me to matter that other (large) parts of the overall land acquired in 1924 were in fact developed for housing; that is exactly what one would expect, and does not detract from the evidence that the '1924 land' *within* the application site was in fact laid out and provided as open space for local public use, pursuant to the statutory power to do precisely that.
- 11.75. Nor does the fact that the 'southern strip' of land, to the south of the present application site, has been sold or leased off for other purposes seem to me to affect the position. Most of the plots were sold or transferred to other public organisations pursuant to specific decisions by the Council's predecessors to make such transfers. The most recent development on the 'southern strip', pursuant to a lease to the Gwalia Housing Association, was specifically for a housing use, the original overall purpose of the 1924 acquisition.
- 11.76. There is no evidence, it seems to me, that any of the land within the 'southern strip' ever was treated as an indistinguishable part of the open space, or part of Parc y Werin, only to be later removed from such use without any recorded 'appropriation'. That land always was treated as separate and distinct from either the 1921 land or the 1924 land within Parc y Werin, it seems to me from the evidence.
- 11.77. In my judgment therefore, the position in relation to the 1924 land within the application site is in fact strongly analogous to that of the recreation ground within a former municipal housing estate considered by the Supreme Court in *R (Barkas)*

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

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

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

'Implied Permission', etc.

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

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

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

A.D. 1875.

a special resolution of the members passed in manner provided by that Act, and in the case of any other company, of a resolution passed by a majority of three fourths in number and value of the members present, either personally or by proxy, at a meeting specially convened with notice of the business to be transacted, may sell and transfer to such authority, on such terms as may be agreed on between such authority and the company, all the rights powers and privileges and all or any of the lands premises works and other property of the company; but subject to all liabilities attached to the same at the time of such purchase.

163. Where in any place which after the passing of this Act becomes constituted or included in an urban district, or which by virtue of any order of the Local Government Board becomes subject to this enactment, the Act passed in the fourth year of the reign of King William the Fourth, intituled "An Act to repeal an Act of the eleventh year of His late Majesty King George the Fourth, for the lighting and watching of parishes in England and Wales, and to make other provisions in lieu thereof," has been adopted, the said Act shall be superseded by this Act, and all lamps lamp posts gas pipes fire engines hose and other property vested in the inspectors for the time being under the said Act shall vest in the authority having under this Act jurisdiction in such place.

Watching and Lighting Act (3 & 4 W. 4. c. 90.) to be superseded by this Act.

PUBLIC PLEASURE GROUNDS, &c.

164. Any urban authority may purchase or take on lease lay out plant improve and maintain lands for the purpose of being used as public walks or pleasure grounds, and may support or contribute to the support of public walks or pleasure grounds provided by any person whomsoever.

Urban authority may provide places of public recreation.

Any urban authority may make byelaws for the regulation of any such public walk or pleasure ground, and may by such byelaws provide for the removal from such public walk or pleasure ground of any person infringing any such byelaw by any officer of the urban authority or constable.

165. Any urban authority may from time to time provide such clocks as they consider necessary, and cause them to be fixed on or against any public building, or, with the consent of the owner or occupier, on or against any private building the situation of which may be convenient for that purpose, and may cause the dials thereof to be lighted at night, and may from time to time

Urban authority may provide public clocks.

[Ch. 35.] *Housing, Town Planning, &c.* [9 & 10 GEO. 5.]
Act, 1919.

A.D. 1919. included within the area notwithstanding that the scheme may not at the time of acquisition have been made by the local authority or confirmed or sanctioned by the Local Government Board; and the acquisition of such lands shall be deemed to be a purpose for which the local authority may borrow money under and subject to the provisions of Part I. or, as the case may be, Part II. of the principal Act.

Power to
acquire water
rights.
38 & 39 Vict.
c. 55.

14. A local authority or a county council may, notwithstanding anything in section three hundred and twenty-seven or section three hundred and thirty-two of the Public Health Act, 1875, but subject to the provisions of section fifty-two of that Act, be authorised to abstract water from any river, stream, or lake, or the feeders thereof, whether within or without the district of the local authority or the county, for the purpose of affording a water supply for houses provided or to be provided under a scheme made under the Housing Acts, and to do all such acts as may be necessary for affording a water supply to such houses, subject to a prior obligation of affording a sufficient supply of water to any houses or agricultural holdings or other premises that may be deprived thereof by reason of such abstraction, in like manner and subject to the like restrictions as they may be authorised to acquire land for the purposes of the scheme:

Provided that no local authority or county council shall be authorised under this section to abstract any water which any local authority, corporation, company, or person are empowered by Act of Parliament to impound, take or use for the purpose of supply within any area, or any water the abstraction of which would, in the opinion of the Local Government Board, injuriously affect the working or management of any canal or inland navigation.

Powers of
dealing with
land acquired.

15.—(1) Where a local authority have acquired or appropriated any land for the purposes of Part III. of the principal Act, then, without prejudice to any of their other powers under that Act, the authority may—

- (a) lay out and construct public streets or roads and open spaces on the land;
- (b) with the consent of the Local Government Board sell or lease the land or part thereof to any person for the purpose and under the condition that that person will erect and maintain thereon such number of houses suitable for the working classes as may be fixed by the local authority in accordance with plans approved by them, and when necessary will lay out and construct public streets or roads and open spaces on the land, or will use the land for purposes which, in the opinion of the local authority, are necessary or desirable for or incidental to the development of the land as a building estate in accordance with plans

[9 & 10 Geo. 5.] *Housing, Town Planning, &c.* [CH. 35.]
Act, 1919.

approved by the local authority, including the provision, maintenance, and improvement of houses and gardens, factories, workshops, places of worship, places of recreation and other works or buildings for, or for the convenience of, persons belonging to the working classes and other persons; A.D. 1919.

- (c) with the consent of the Local Government Board sell the land or exchange it for land better adapted for those purposes, either with or without paying or receiving any money for equality of exchange;
- (d) with the consent of the Local Government Board sell or lease any houses on the land or erected by them on the land, subject to such covenants and conditions as they may think fit to impose either in regard to the maintenance of the houses as houses for the working classes or otherwise in regard to the use of the houses, and upon any such sale they may, if they think fit, agree to the price being paid by instalments or to payment of part thereof being secured by a mortgage of the premises:

Provided that it shall be a condition of such sale or lease that the houses shall not be used by any person for the time being having any interest therein for the purpose of housing persons in his employment.

(2) Where a local authority under this section sell or lease land subject to any condition as to the erection thereon of houses, or the laying out and construction of streets or the development of the land, there shall be included in the conveyance or lease all such covenants and conditions as may be necessary to secure compliance with the condition aforesaid within a reasonable period, and to limit the amount of the rent which may be charged in respect of the land or any part thereof or in respect of the houses erected thereon; and the local authority may contribute or agree to contribute towards the expenses of the development of the land and the laying out and construction of streets thereon, subject to the condition that the streets are dedicated to the public.

(3) Land and houses sold or leased under the provisions of this section shall be sold or leased at the best price or for the best rent that can reasonably be obtained, having regard to any condition imposed, and any capital money received in respect of any transaction under this section shall be applied in or towards the purchase of other land for the purposes of Part III. of the principal Act, or with the consent of the Local Government Board to any purpose, including the repayment of borrowed money, to which capital money may be properly applied.

16. For the purpose of assisting in the preparation and carrying out of schemes under this Act, or for the purpose of

Power of
Local Gov-
ernment