

**Village Green**

**Maes Y Ffynnon**

**Bonvilston**

**Public Enquiry**

**Bundle**

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**Application Bundle for Registration of the Village Green  
Maes Y Ffynnon Bonvilston**

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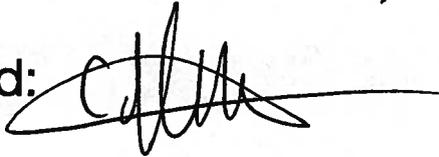
# Application for registration of Village Green

FAO: Debbie Marles  
Head of Legal Services  
Legal Services Department  
Civic Offices  
Holton Road  
Barry

Originally submitted by Susannah Thomas on  
23/04/2019

Resubmitted by Ceri Hunt

Signed:



On behalf of:

Maes Y Ffynnon Residents Association together with St  
Nicholas and Bonvilston Community Council,  
Bonvilston, Vale of Glamorgan

Date of resubmission: 23/05/2019

Submitted to: Civic Offices, Holton Road, Barry

**Commons Act 2006: Section 15****Application for the registration of land as a Town or Village Green**

Official stamp of registration authority  
indicating valid date of receipt:

Application number:

Register unit No(s):

VG number allocated at registration:

(CRA to complete only if application is successful)

**Applicants are advised to read the 'Guidance Notes for the completion of an Application for the Registration of land as a Town or Village Green' and to note the following:**

- All applicants should complete questions 1–6 and 10–11.
- Applicants applying for registration under section 15(1) of the 2006 Act should, in addition, complete questions 7–8. Section 15(1) enables any person to apply to register land as a green where the criteria for registration in section 15(2), (3) or (4) apply.
- Applicants applying for voluntary registration under section 15(8) should, in addition, complete question 9.

**Note 1**  
Insert name of  
registration  
authority.

**1. Registration Authority**

To the

Vale of Glamorgan Council

**Note 2**

If there is more than one applicant, list all names. Please use a separate sheet if necessary. State the full title of the organisation if a body corporate or unincorporate.

If question 3 is not completed all correspondence and notices will be sent to the first named applicant.

**Note 3**

This question should be completed if a solicitor is instructed for the purposes of the application. If so all correspondence and notices will be sent to the person or firm named here.

**2. Name and address of the applicant**

Name: MAES YFFYNNON RESIDENTS ASSOCIATION (MYFRA) †

St NICHOLAS AND BONVILSTON COMMUNITY COUNCIL

Full postal address:

C/O  
21 Maes Y Ffynnon  
Bonvilston  
Vale of Glamorgan Postcode CFS 6TT

Telephone number: (incl. national dialling code) 01446 781597 / 078 53169927.

Fax number: (incl. national dialling code)

E-mail address: lounmol@sky.com

**3. Name and address of solicitor, if any**

Name:

Firm:

Full postal address:

Post code

Telephone number: (incl. national dialling code)

Fax number: (incl. national dialling code)

E-mail address:

**Note 4**

*For further advice on the criteria and qualifying dates for registration please see section 4 of the Guidance Notes.*

*\* Section 15(6) enables any period of statutory closure where access to the land is denied to be disregarded in determining the 20 year period.*

**4. Basis of application for registration and qualifying criteria**

If you are the landowner and are seeking voluntarily to register your land please tick this box and move to question 5.

Application made under section 15(8):

If the application is made under section 15(1) of the Act, please tick one of the following boxes to indicate which particular subsection and qualifying criterion applies to the case.

Section 15(2) applies:

Section 15(3) applies:

Section 15(4) applies:

If section 15(3) or (4) applies please indicate the date on which you consider that use as of right ended.

If section 15(6)\* applies please indicate the period of statutory closure (if any) which needs to be disregarded.

**5. Description and particulars of the area of land in respect of which application for registration is made**

Name by which usually known:

Maes Y Ffynnon, Village Green  
(North end of Maes Y Ffynnon.)

Location:

AS detailed in the map marked 'A' - AS outlined in red.

Shown in colour on the map which is marked and attached to the statutory declaration.

Common land register unit number (if relevant) \*

**Note 5**

The accompanying map must be at a scale of at least 1:2,500 and show the land by distinctive colouring to enable it to be clearly identified.

\* Only complete if the land is already registered as common land.

**6. Locality or neighbourhood within a locality in respect of which the application is made**

Please show the locality or neighbourhood within the locality to which the claimed green relates, either by writing the administrative area or geographical area by name below, or by attaching a map on which the area is clearly marked:

The neighbourhood is predominantly Maes Y Ffynnon, within the locality of Bonvilston and the neighbourhood of Village Farm, also within the locality of Bonvilston.  
The map attached outlines the estates of Maes Y Ffynnon and Village Farm within Bonvilston.

Tick here if map attached:

**Note 6**

It may be possible to indicate the locality of the green by reference to an administrative area, such as a parish or electoral ward, or other area sufficiently defined by name (such as a village or street). If this is not possible a map should be provided on which a locality or neighbourhood is marked clearly.

## 7. Justification for application to register the land as a town or village green

### Note 7

Applicants should provide a summary of the case for registration here and enclose a separate full statement and all other evidence including any witness statements in support of the application.

This information is not needed if a landowner is applying to register the land as a green under section 15(8).

The Village Green to the North end of Maes Y Ffynnon is the area we are applying to register. This area has been used as a Village Green for 'lawful recreational sports and pastimes' for at least 20 years and since the mid 1950's, by Maes Y Ffynnon residents and members of the Village Farm estate and some other members of Bonvilston.

The Village Green has provided a safe area for children to play games on for decades and this continues today. It serves as an open green space for dog walkers and nature watchers, who reside in the estates of Maes Y Ffynnon, Village Farm and other members of the Bonvilston Community. The Village Green has been used as an area for relaxation and socialisation for generations and over 20 years for the residents of Maes Y Ffynnon and Village Farm in Bonvilston.

The Village Green has hosted events, celebrations and social gatherings for the last 20 years and since the 1950s, as it provides the perfect location for group gatherings, events and parties. There has never been a requirement to seek permission to use the Village Green from anyone or the owner, for recreational sports and pastimes, or any other activity. The Village Green situated at the North end of Maes Y Ffynnon, which flanks the hard stands, where 5 garages originally stood has been used in its entirety 'as a right', for the last 20 years and since the 1950s. There has never been any restrictions on the Village Green's usage, or signs or notices preventing residents from using the area for 'recreational sports and pastimes', or any other activity, in its history.

Please See Attached Supporting Statement

**Note 8**

Please use a separate sheet if necessary.

Where relevant include reference to title numbers in the register of title held by the Land Registry.

If no one has been identified in this section you should write "none"

This information is not needed if a landowner is applying to register the land as a green under section 15(8).

**Note 9**

List all such declarations that accompany the application. If none is required, write "none".

This information is not needed if an application is being made to register the land as a green under section 15(1).

**Note 10**

List all supporting documents and maps accompanying the application. If none, write "none"

Please use a separate sheet if necessary.

**8. Name and address of every person whom the applicant believes to be an owner, lessee, tenant or occupier of any part of the land claimed to be a town or village green**

The Vale of Glamorgan.

**9. Voluntary registration – declarations of consent from 'relevant leaseholder', and of the proprietor of any 'relevant charge' over the land**

None.

**10. Supporting documentation**

LIST OF MYFRA MEMBERSHIP  
Supporting Statement.  
Land Registry map of area - Village Green  
Map of/outline neighbourhood using Green.  
Appendix 1: Land Registry map of area / USP  
Appendix 2: Witness Statements  
Appendix 3: Photographs  
Appendix 4: Evidence Questionnaires

**11. Any other information relating to the application**

**Note 11**

*If there are 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.*

[Empty box for additional information]

**Note 12**

*The application must be signed by each individual applicant, or by the authorised officer of an applicant which is a body corporate or unincorporate.*

Date:

22 / 5 / 2019

Signatures:

*Siobhán Clarke*  
For and on behalf of Maes Y Ffynnon Residents Association

**REMINDER TO APPLICANT**

**You are advised to keep a copy of the application and all associated documentation. Applicants should be aware that signature of the statutory declaration is a sworn statement of truth in presenting the application and accompanying evidence. The making of a false statement for the purposes of this application may render the maker liable to prosecution.**

**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 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.*

## Statutory Declaration In Support

*To be made by the applicant, or by one of the applicants, or by his or their solicitor, or, if the applicant is a body corporate or unincorporate, by its solicitor, or by the person who signed the application.*

<sup>1</sup> *Insert full name (and address if not given in the application form).*

*Deborah Siân Clarke*

I....., solemnly and sincerely declare as follows:—

<sup>2</sup> *Delete and adapt as necessary.*

1.<sup>2</sup> I am ((the person ~~(one of the persons)~~ who (has) ~~(have)~~ signed the foregoing application)) (~~(the solicitor to (the applicant)~~ (<sup>3</sup> one of the applicants)).

<sup>3</sup> *Insert name if Applicable*

2. The facts set out in the application form are to the best of my knowledge and belief fully and truly stated and I am not aware of any other fact which should be brought to the attention of the registration authority as likely to affect its decision on this application, nor of any document relating to the matter other than those (if any) mentioned in parts 10 and 11 of the application.

3. The map now produced as part of this declaration is the map referred to in part 5 of the application.

<sup>4</sup> *Complete only in the case of voluntary registration (strike through if this is not relevant)*

4.<sup>4</sup> I hereby apply under section 15(8) of the Commons Act 2006 to register as a green the land indicated on the map and that is in my ownership. I have provided the following necessary declarations of consent:

- (i) a declaration of ownership of the land;
- (ii) a declaration that all necessary consents from the relevant leaseholder or proprietor of any relevant charge over the land have

*Cont/*

<sup>4</sup> Continued

been received and are exhibited with this declaration; or  
(iii) where no such consents are required, a declaration to that effect.

And I make this solemn declaration, conscientiously believing the same to be true, and by virtue of the Statutory Declarations Act 1835.

Declared by the said

DEBORAH SAN CLARKE

at 4 MAES Y FELN  
LONDON Cambridge

this 22<sup>nd</sup> day of May 2019

Signature of Declarant

*Deborah San Clarke*

Before me \*

Signature: *[Signature]*

Address: 4 MAES Y FELN  
LONDON Cambridge  
CA7 7PD

Qualification: Solicitor.

---

\* The statutory declaration must be made before a justice of the peace, practising solicitor, commissioner for oaths or notary public.

Signature of the statutory declaration is a sworn statement of truth in presenting the application and accompanying evidence.

**REMINDER TO OFFICER TAKING DECLARATION:**

*Please initial all alterations and mark any map as an exhibit*

---



**St Nicholas with Bonvilston Community Council**

**CLERK: N. McGarrigle, 2 Maes Illtuds, Pentre'r Cwrt, Llantwit Major, CF61 2SD**

**Website: [www.stnicholaswithbonvilstoncc.co.uk](http://www.stnicholaswithbonvilstoncc.co.uk) Telephone: 0773958 0036**

**Email: [clerk.snbcc@hotmail.com](mailto:clerk.snbcc@hotmail.com)**

---

**19<sup>th</sup> April 2019**

**I, Frank Spriggs, Chair of the St Nicholas with Bonvilston Community Council, confirm that the Community Council fully support the application for Registration for the Village Green at Maes Y Ffynnon, Bonvilston and confirm that the Community Council consent to be joint applicants for the application for registration.**

**Kind regards**

  
**Frank Spriggs**

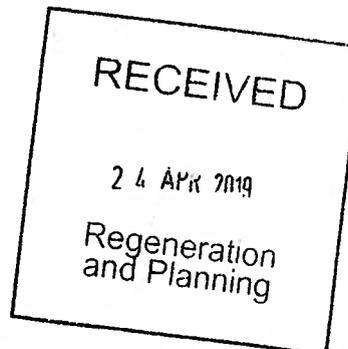
**Chair of the St. Nicholas with Bonvilston Community Council**

**Sarn Bach Bungalow**

**St. Nicholas**

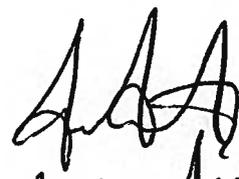
**Vale of Glamorgan**

**CF5 6SG**

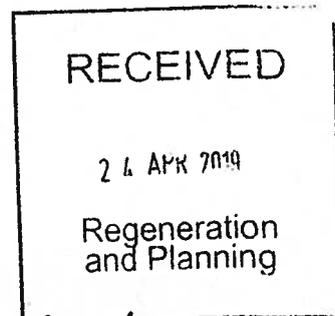


# Application for Registration of Village Green

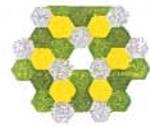
FAO: Debbie Mares  
Head of Legal Services  
Legal Services Department.  
Civic Offices  
Hotton Rd  
Bamy.

Submitted by Susannah Thomas   
On behalf of: Maes Y Ffynnon Residents Association,  
Bonvilston, Vale of Glamorgan.

Date submitted: 23/4/19.



Submitted to Civic Offices, Hotton Rd, Bamy,  
CF63 4RU.



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RECEIVED  
26 APR 2019  
Regeneration  
and Planning

Title Number : CYM410667

Rhif Teitl : CYM410667

This title is dealt with by HM Land Registry, Wales Office.

Gweinyddir y toitl hwn gan Gofrestrfa Tir EM Swyddfa Cymru.

The following extract contains information taken from the register of the above title number. A full copy of the register accompanies this document and you should read that in order to be sure that these brief details are complete.

Mae'r detholiad canlynol yn cynnwys gwybodaeth o gofrestr y teitl uchod. Darperir copi llawn o'r gofrestr gyda'r ddogfen hon a dylech ddarllen hwnnw er mwyn sicrhau bod y manylion cryno hyn yn gywir.

Neither this extract nor the full copy is an 'Official Copy' of the register. An official copy of the register is admissible in evidence in a court to the same extent as the original. A person is entitled to be indemnified by the registrar if he or she suffers loss by reason of a mistake in an official copy.

Nid yw'r detholiad hwn na'r copi llawn yn 'Gopi Swyddogol' o'r gofrestr. Derbynnir copi swyddogol o'r gofrestr fel tystiolaeth mewn llys i'r un graddau 'r ddogfen wreiddiol. Mae hawl gan berson gael indemnïad gan y cofrestrydd os yw'n dioddef colled o ganlyniad i gamgymeriad mewn copi swyddogol.

This extract shows information current on 13 FEB 2019 at 11:47:55 and so does not take account of any application made after that time even if pending in HM Land Registry when this extract was issued.

Mae'r detholiad hwn yn dangos gwybodaeth sy'n gyfredol ar 13 FEB 2019 am 11:47:55 ac felly nid yw'n ystyried unrhyw gais a gyflwynir ar 1 yr amser hwnnw hyd yn oed os yw'n aros i'w brosesu yng Nghofrestrfa Tir EM ar adeg darparu'r detholiad.

REGISTER EXTRACT

DETHOLIAD O'R GOFRESTR

|                          |  |
|--------------------------|--|
| Title Number             | : CYM410667  |
| Rhif Teitl               |  |
| Address of Property      | : Land at Maes Y Ffynnon, Bonvilston, Cardiff                                  |
| Cyfeiriad yr Eiddo       |  |
| Price Stated             | : Not Available  |
| Pris a Ddatganwyd        |  |
| Registered Owner(s)      | : THE VALE OF GLAMORGAN COUNCIL of Civic Offices, Holton Road, Barry CF63 4RU. |
| Perchnogion Cofrestredig |  |
| Lender(s)                | : None   |
| Rhoddwr Benthyg          |  |



## Title number / Rhif teitl CYM410667

This is a copy of the register of the title number set out immediately below, showing the entries in the register on 13 FEB 2019 at 11:47:55. This copy does not take account of any application made after that time even if still pending in HM Land Registry when this copy was issued.

This copy is not an 'Official Copy' of the register. An official copy of the register is admissible in evidence in a court to the same extent as the original. A person is entitled to be indemnified by the registrar if he or she suffers loss by reason of a mistake in an official copy. If you want to obtain an official copy, the HM Land Registry web site explains how to do this.

Copi yw hwn o gofrestr y rhif teitl isod. Mae'n dangos y cofnodion yn y gofrestr ar 13 FEB 2019 am 11:47:55. Nid yw'r copi hwn yn ystyried unrhyw gais a gyflwynir ar 1 yr amser hwnnw hyd yn oed os yw'n aros i'w brosesu yng Nghofrestrfa Tir EM ar adeg darparu'r copi hwn.

Nid yw'r copi hwn yn 'Gopi Swyddogol' o'r gofrestr. Derbynnir copi swyddogol o'r gofrestr fel tystiolaeth mewn llys i'r un graddau 'r ddogfen wreiddiol. Mae hawl gan berson i indemnïad gan y cofrestrydd os yw'n dioddef colled o ganlyniad i gamgymeriad mewn copi swyddogol. Os hoffech gael copi swyddogol, mae gwefan Cofrestrfa Tir EM yn esbonio sut i wneud hyn.

## A: Property Register / Cofrestr Eiddo

This register describes the land and estate comprised in the title.

Mae'r gofrestr hon yn disgrifio'r tir a'r ystad a gynhwysir yn y teitl.

THE VALE OF GLAMORGAN/BRO MORGANNWG

- 1 (11.08.2008) The Freehold land shown edged with red on the plan of the above title filed at the Registry and being Land at Maes Y Ffynnon, Bonvilston, Cardiff.

## B: Proprietorship Register / Cofrestr Perchnogaeth

This register specifies the class of title and identifies the owner. It contains any entries that affect the right of disposal.

Mae'r gofrestr hon yn nodi'r math o deitl ac yn enwi'r perchennog. Mae'n cynnwys unrhyw gofnodion sy'n effeithio ar yr hawl i waredu.

## Title absolute/Teitl llwyr

- 1 (11.08.2008) PROPRIETOR: THE VALE OF GLAMORGAN COUNCIL of Civic Offices, Holton Road, Barry CF63 4RU.
- 2 (11.08.2008) A Conveyance of the land in this title and other land dated 9 January 1956 made between (1) William Powell & Sons Limited (Vendor) and (2) The Council For The Rural District of Cardiff (the Council) contains purchaser's personal covenant(s) details of which are set out in the schedule of personal covenants hereto.

## Schedule of personal covenants Atodlen cyfamodau personol

- 1 The following are details of the personal covenants contained in the Conveyance dated 9 January 1956 referred to in the Proprietorship Register:-

"The Council hereby covenant with the Vendors that they the Council or their successors in title will at their own expense forthwith make and for ever hereafter maintain along the eastern and northern sides of the said piece of land hereby conveyed a wall or sufficient boundary fence and will form a new access to the said piece of land which is marked A on

Title number / Rhif teitl CYM410667

## Schedule of personal covenants continued Parhad o'r Atodlen cyfamodau personol

the attached plan to the Vendors' satisfaction using the existing posts and field gate from the existing access to enclosure No. 69 aforesaid."

NOTE: Enclosure 38 referred to is the field lying to the north of the land in this title. The point marked A referred to has been reproduced on the title plan.

### C: Charges Register / Cofrestr Arwystlon

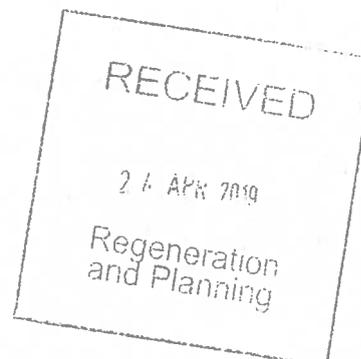
This register contains any charges and other matters that affect the land.

Mae'r gofrestr hon yn cynnwys unrhyw arwystlon a materion eraill sy'n effeithio ar y tir.

- 1 (11.08.2008) The land is subject to rights of support for structures and buildings erected on adjoining land.
- 2 (11.08.2008) The land is subject to rights of drainage and rights in respect of the supply of water, gas, electricity and other services.
- 3 (11.08.2008) The roads and footpaths included in the title are subject to rights of way.
- 4 (11.08.2008) The garage forecourts are subject to rights of way and user.
- 5 (11.08.2008) The land is subject to the rights granted by a Deed dated 6 May 1969 made between (1) Cardiff Rural District Council and (2) Frederick Arthur Lewis.

-NOTE: Copy filed.

End of register / Diwedd y gofrestr



Title number / Rhif teitl CYM410667

These are the notes referred to on the following copy of the title plan.

Dyma'r nodiadau y cyfeirir atynt ar y copi canlynol o'r cynllun teitl.

This is a copy of the title plan on 13 FEB 2019 at 11:47:55. This copy does not take account of any application made after that time even if still pending in HM Land Registry when this copy was issued.

Copi yw hwn o'r cynllun teitl ar 13 FEB 2019 am 11:47:55. Nid yw'r copi hwn yn ystyried unrhyw gais a gyflwynir ar l yr amser hwnnw hyd yn oed os yw'n aros i'w brosesu yng Nghofrestrfa Tir EM ar adeg darparu'r copi hwn.

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Nid yw'r copi hwn yn 'Gopi Swyddogol' o'r cynllun teitl. Derbynnir copi swyddogol o'r cynllun teitl fel tystiolaeth mewn llys i'r un graddau 'r gwreiddiol. Mae hawl gan berson i indemnïad gan y cofrestrydd os yw'n dioddef colled o ganlynïad i gamgymeriad mewn copi swyddogol. Os hoffech gael copi swyddogol, mae gwefan Cofrestrfa Tir EM yn esbonio sut i wneud hyn.

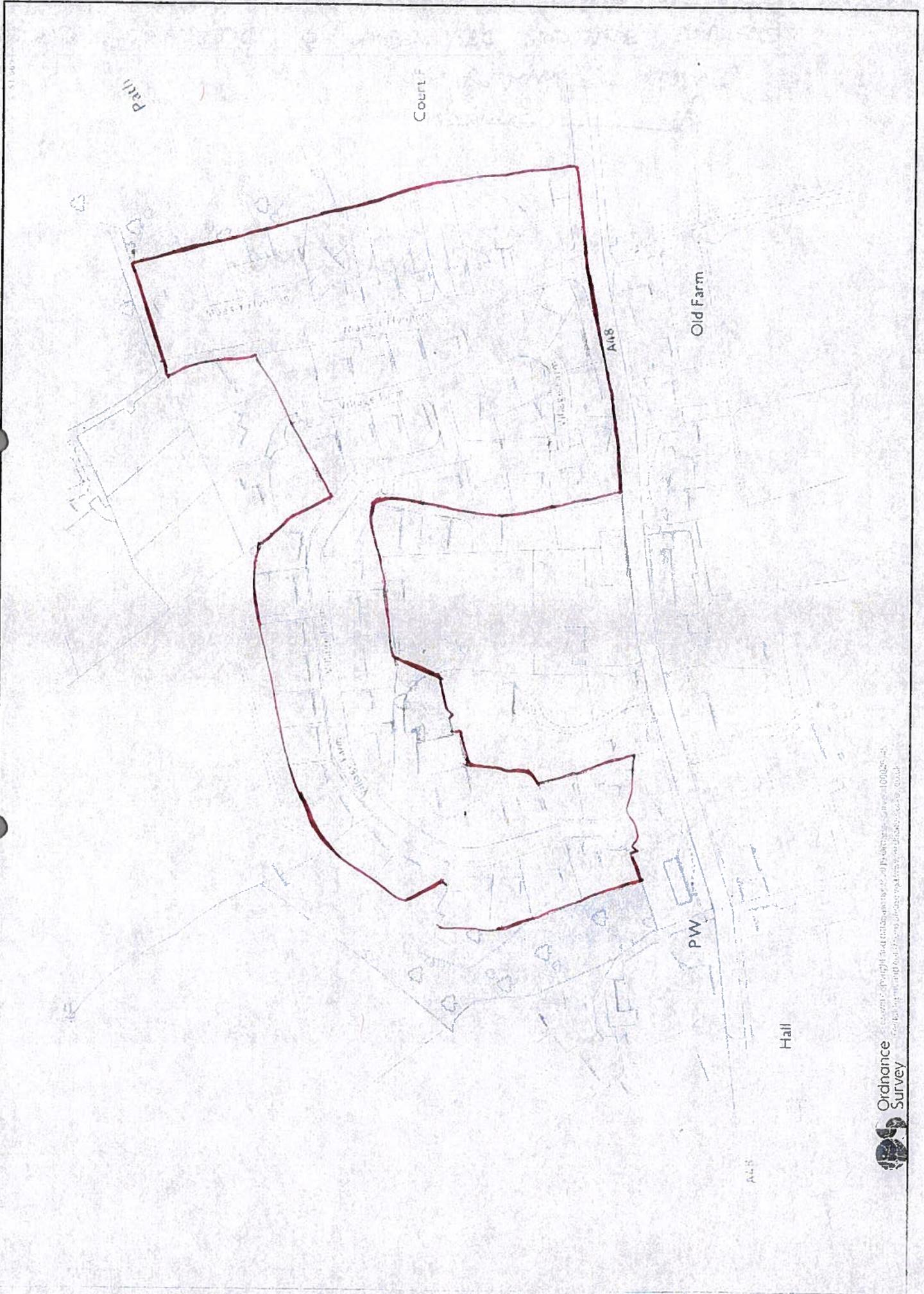
HM Land Registry endeavours to maintain high quality and scale accuracy of title plan images. The quality and accuracy of any print will depend on your printer, your computer and its print settings. This title plan shows the general position, not the exact line, of the boundaries. It may be subject to distortions in scale. Measurements scaled from this plan may not match measurements between the same points on the ground.

Mae Cofrestrfa Tir EM yn ymdrechu i sicrhau bod delweddau cynlluniau teitl o safon uchel a bod y raddfa yn gywir. Bydd ansawdd a chywirdeb unrhyw argraffiad yn dibynnu ar elch argraffydd, elch cyfrifiadur a'i osodiadau argraffu. Mae'r cynllun teitl hwn yn dangos safle cyffredinol, nid union linell y terfynau. Gali fod gwyriadau yn y raddfa. Mae'n bosibl na fydd mesuriadau wedi eu graddlo o'r cynllun hwn yn cyfateb mesuriadau rhwng yr un pwyntiau ar y llawr.

This title is dealt with by HM Land Registry, Wales Office.

Gweinyddir y teitl hwn gan Gofrestrfa Tir EM Swyddfa Cymru.

VILLAGE GREEN, MAES Y FFYNNON - PREDOMINANT USE AND VILLAGE FARM.



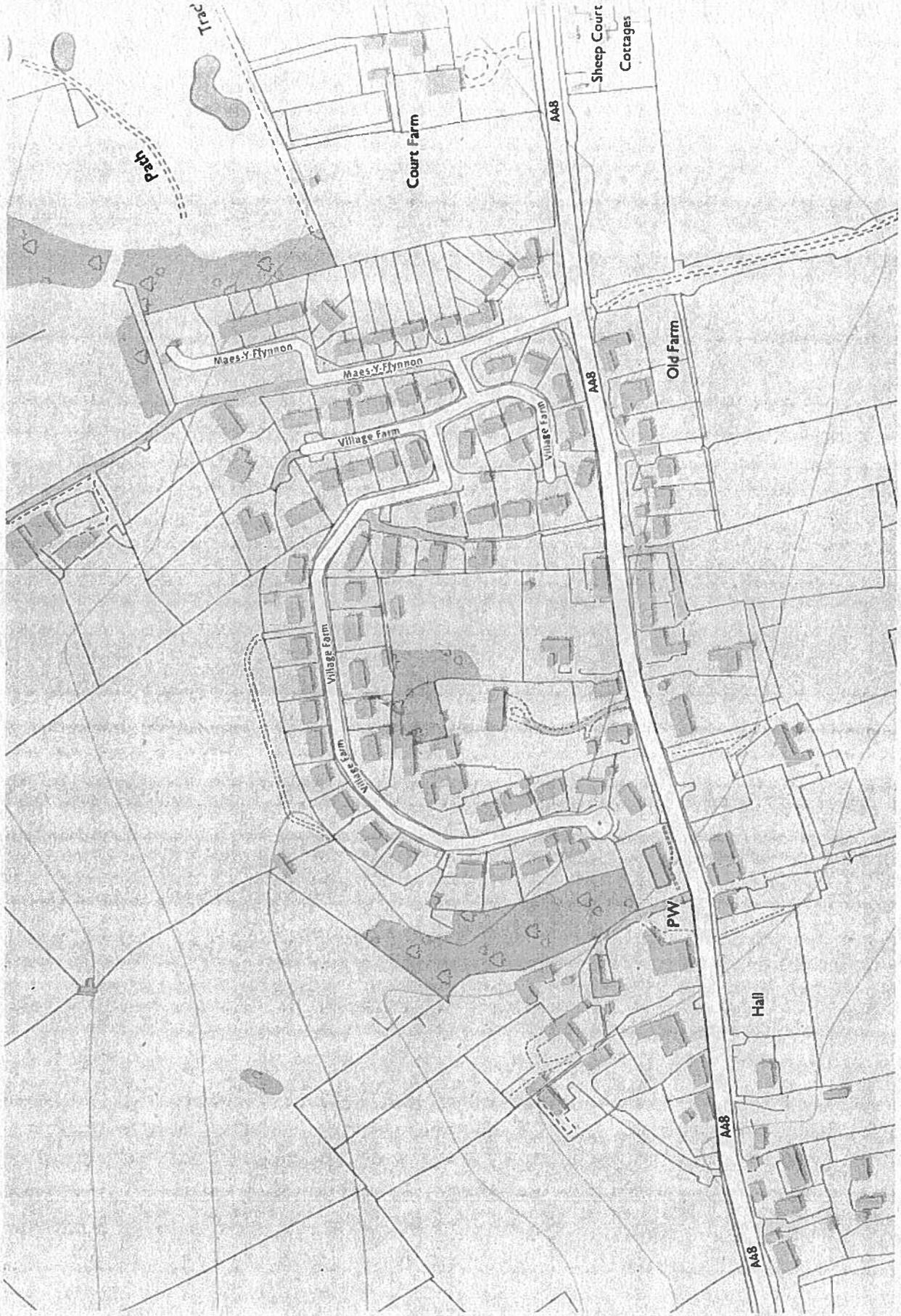
THIS IS THE MAP REFERRED TO IN PART 6  
OF THE STATUTORY DECLARATION OF DEBORAH SIAN CLARKE  
DATED 22 MAY 2019  
~~PA~~ Solicitor

---

Sian Clarke

ST 069 744

ST 061 744



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ST 061 738

ST 069 738

## **List of Witnesses for Public Enquiry**

**Sian Clarke – 21 Maes Y Ffynnon, Bonvilston, CF5 6TT**

**Ceri Hunt – 13 Maes Y Ffynnon, Bonvilston, CF5 6TT**

**Lynne Morgan – 20 Maes Y Ffynnon, Bonvilston, CF5 6TT**

**Chris Brown – 24 Maes Y Ffynnon, Bonvilston, CF5 6TT**

**Leigh Ivory – 23 Maes Y Ffynnon, Bonvilston, CF5 6TT**

## **STATEMENT IN SUPPORT OF AN APPLICATION TO REGISTER A VILLAGE GREEN AT MAES - Y - FFYNON , BONVILSTON .**

I, **Sian Clarke**, resident at 21 Maes Y Ffynnon, Bonvilston, CF5 6TT, make this statement in support of an application to register the Village Green at Maes - y - Ffynnon .

1. I was born and grew up in the neighboring village of St Nicholas, so as a child I always had a close connection with Bonvilston Village and the residents who lived there. As children we attended the same primary school in St Nicholas, I first went there in 1976 and then caught the bus together when we went to Cowbridge Comprehensive School, in 1983. I grew up alongside the children of my age who lived there. This connection and history were an important factor when we chose to purchase our home in Maes Y Ffynnon and move in during 2010.

2. I have known many of the residents who live in Maes Y Ffynnon since childhood, including Kath Lougher, Eve Morgan and Thelma Whiting, as they all worked in St Nicholas Primary School, when I was growing up. Each of these moved to live in Maes Y Ffynnon in the 1950s and have provided a wealth of stories and history about the village, in particular around the 'Village Green'. Since moving into Maes Y Ffynnon I have listened to them recall stories of how they watched their children grow up playing football and cricket on the Green from the comfort of their homes, whilst also knowing they were safe. I have heard stories about the games played, the carol singing, halloween gatherings, fetes and festivals, as well as building bonfires and snowmen in the winter.

3. It has been used as a place for residents to gather, socialise and chat, for decades and this is often centered around the bench at the front of the Green. A favorite photo of mine is a picture taken in 1995 of Betty Watts, who lived in number 1, sat next to my Nana Joan Walklate, Cec and Barbara Mustow, and Thelma Whiting, from number 10, where they are clearly enjoying the time they were spending together, relaxing on a lovely summer's day. When I showed this to Cec recently, who still resides in number 17 and moved there in the 1950s, recalled how it was usually his job to go back to the house and return with a tray of tea, for them all to drink. A true picture of community life based around the Green for the older generations living at Maes Y Ffynnon, as well as it being a place for the children to play.

4. Gareth Morgan, who grew up in number 20 and spends much of his time living in his Mum's house, has recalled to me the story of how he played a concert on the Green with his then band, which they formed in school. When I first moved to Maes Y Ffynnon his Mum was still living at home and she had a dog called Lucy, she was of mixed breed, but definitely had some Labrador in her. I would watch Eve walk Lucy on the Green and give her a run with her ball. As we both like to talk, I would go out there and spend time chatting with her making a fuss of Lucy. It is so important that different generations are able to integrate within the community and the Green allowed us to have this connection.

5. Over the years, since I have lived here, I have watched Leigh and Tracy Ivory's Grandchildren, who live at number 24, playing on the Green and following in the footsteps of their parents who also grew up in Maes Y Ffynnon. More recently over the last 3 and a half years, my Cousin's son Oliver, who lives at number 13, has played football and games with his friends on the Green. He also in the summer months played with my Nephew Dylan, when he came to stay with me for a holiday and they would invent their own games hiding behind the trees, whilst Ffion, my youngest Niece tried all ways she could to get involved with playing with the boys.

6. My neighbors in number 24 have used the Green for many years to exercise and train their rescue dog Lyra. I am always amused when I see Alex with her furry toy Terrier on the Green teaching Lyra the skills to socialise with other dogs. The Green has provided the perfect environment to give Lyra the community experience she needs to aid her training and consequently her social skills have

improved significantly. The whole time I have lived here I have observed numerous other residents walking dogs on the Village Green from the flats (15 – 16 a and b),0. and the front of Maes Y Ffynnon including Thelma Whiting.

7. Although I do not have a dog myself, I regularly look after my Mum's dog Ebony, who is a black Labrador. I do this when she goes on holidays, or sometimes I just have her for the day. When Ebony comes to stay my Husband Steve, takes her out to throw the ball on the Green and to stretch her legs in addition to her daily walks. It serves to be a perfect spot for giving her the fun and exercise she needs and has done for generations of dogs and their owners.

8. In March 2019 the residents of Maes Y Ffynnon held a Saint Davids Day event on the green which was attended, attended by local people from the Bonvilston community, as well as neighboring villages St Nicholas and The Downs. We made cakes for the stalls, had a competition to make the best Welsh Cake, sold teas and coffees, had a raffle and tombola, while the children played 'hide and leek' and football on The Green. There were over 40 people in attendance on that afternoon and fun was had by everyone.

9. Since March 2020 and the Covid-19 pandemic, I have observed from my bedroom window, a significant increase in the daily use of the Village Green by residents throughout Bonvilston. Local villagers have been walking their dogs throughout the day and it has been a pleasure to see so many children kicking a football, playing hide and seek and in particular using the swing, whilst their family are either pushing them, or watching from the tree trunk bench. As residents of Bonvilston we felt very privileged to have access to this space, in unprecedented times when community living has been so restricted. The area has been so important during lock down and the enduring pandemic, in providing essential fresh air and a valuable place for children to play safely. In 2020 the importance and role of the Village Green within Bonvilston, has never been more evident. To ensure that children could continue to play safely and other residents can walk their dogs, my neighbors in 24,23 and 17 have mowed the grass regularly over the last eight months.

10. There are two Greens in Bonvilston and these were described as such in the 1996 – 2011, UDP. The Green at the front of Maes Y Ffynnon, although a beautiful feature of the village, is not safe for children to play on, due to its proximity to the road. The Green, to the back of the north of Maes Y Ffynnon, has always been an area that residents can freely access to use for playing, socialising and dog walking and there have never been any restrictions in place around its usage. Since the 1950s, the area which is directly in front of my house has always been called 'The Green', by all who have lived there in the past and also in the present. We continue to refer to it as 'The green' and now so many more residents do as well, now they have been able to use it during lockdown and know that their children can play safely at the heart of the village.

**I believe the facts stated in this witness statement are true**



**Deborah Sian Clarke**

**Dated : 12<sup>th</sup> January 2021**

Appendix 3.27



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9 / APR 2019

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Alex & Kyra

Dog Training

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2019

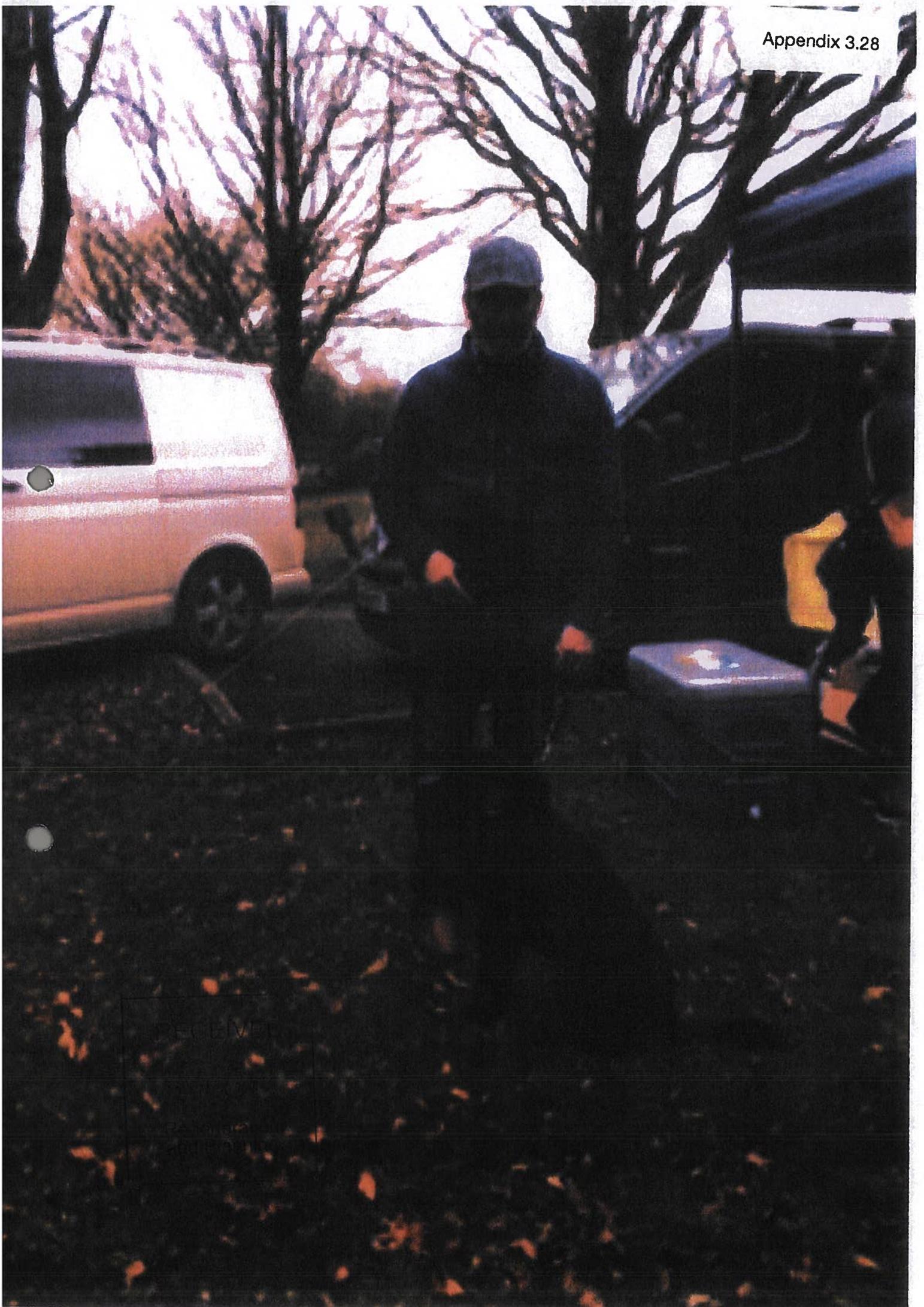


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Steve & Ebony

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2019

Appendix 3.34



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fete: Cake stand with some  
of many donated cakes

Appendix 3.35



fete: Tea & coffee stand



Suzi Thomas at the St Davids Day fête 2019



Alex Brown at the Sr Devs Dinner Late Service Table and

**Statement in support of an application to register a  
Village Green at Maes Y Ffynnon, Bonvilston**

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I, **Ceri Louise Hunt (formerly Jenkins)**, a financial adviser for Aviva Plc, Home based at 13 Maes Y Ffynnon, Bonvilston, CF5 6TT, make this statement in support of an application to register the Village Green at Maes Y Ffynnon.

1. I moved to Maes Y Ffynnon in July 2015, 5 months pregnant with one older child who at the time was 8 years old. My husband, Nicholas's cousin resides at 21 Maes Y Ffynnon, overlooking the village green which is the subject of this application. This village green is one of the reasons we chose Bonvilston, and particularly Maes Y Ffynnon to raise our children.
2. My older son, Oliver remained at his former school as his decision, which incidentally was the same school attended by the grandson, Riley, of two of the other residents, Leigh and Tracey Ivory of 23 Maes Y Ffynnon, which also overlooks the village green. Whenever Riley would visit, Oliver would call on him and they would play various games, such as football and hide and seek, safely within earshot of our home. This was a comfort to us as without the village green he would not have engaged with other children in the community.
3. Oliver has regular sleepovers with friends from school, from 2016 to the present day and they take to the village green with nerf guns and water bombs as it is an ideal site for children to run around using the trees for shelter from the firing bullets and incoming water balloons. I have paced the green collecting the bullets and debris countless times to protect what is precious to me and my community.
4. I remember one occasion in the summer of 2016, where Oliver was out playing with a friend near the garages, I stopped being able to hear them so looked out of the window to see them on the roof of one of the garages, needless to say I shouted from the window to get down and they came back shortly after with a story they had concocted about how they were getting their ball down.
5. My youngest son, Thomas, is now three years old and we frequently take him onto the green with a football, where he tends to practice his unique skill of being able to fall from a standing position into the muddiest patch he can find. We often look for one of the many squirrels in the trees on the green which drive our dog, Max wild.
6. I grew up in Llangan, near the village hall on Heol Llidiard and a short walk from the village green where regularly we played cricket, football, attempts at tennins and mob mob on the green with the other neighbours, all of whom I know today. My reasons for moving to Bonvilston and Maes Y Ffynnon in particular were to give my son the same upbringing as I had, and this has certainly been the case since moving here.
7. I know the former residents of 13 Maes Y Ffynnon, Charlotte and Rebecca England. They lived here for 10 years combined as their mother, Ruth was the owner. Rebecca was the

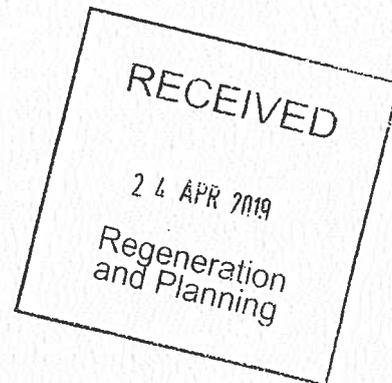
most recent resident and before I moved in and had two small children who frequently played on the green as a provision of community open space.

8. In the circa 4 years since I have moved here there has never been any signs placed on the green by the council asking to keep off the grass, in fact it has been generally accepted that the community use the green to exercise their dogs, specifically by the placing of notices adjacent to the village green advising dog owners to clean up after their pets.
9. I have to acknowledge the community spirited way that I have been welcomed into Maes Y Ffynnon, a community that, in the many cases, is occupied by the original owners of their properties in the street, since the 1950's. I would place this rare attribute on the way that the community was brought together in sharing the village green, the centre of the village, which has led them to stay in their homes for as long as they are physically able. This can be witnessed in several properties adjacent to the village green, and is, in my view, a testament to the ability of the residents to gather together, Thursday club is one example which ran during the 1990's and can be observed by the photograph.
10. The vale of Glamorgan council has referred to the green in documents relating to the former conservation area that used to cover the proposed site. This reference is testament to the value of the village green as one of the only two green spaces in the village. The former planning applications that would affect the village green were rejected on grounds that they would spoil the view of the amenity space, which in my view while researching the area I intended to live, told how valuable this space is, as it always was.

**I believe the facts stated in this witness statement are true**

**Ceri Louise Hunt**

**Dated: 19<sup>th</sup> February 2019**





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Cen Hunt with Max the dog and a relative  
March 2019



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Thomas Hunt (13 mths) March 2019

## STATEMENT IN SUPPORT OF AN APPLICATION TO REGISTER

### A VILLAGE GREEN AT MAES - Y - FFYNON , BONVILSTON .

I , **Lynne Mary Price ( Formerly Morgan )** , Barrister at Law , of 9 , The Parade , Merthyr Tydfil CF47 0ET , make this statement in support of an application to register the Village Green at Maes - y - Ffynon .

1 . When I was born in June 1962 , my parents were living in Peterston - Super - Ely . When I was still a baby , we moved to live in the top floor flat at 15 Maes - y - Ffynon . This looks out over the Green which is the subject of this application .

2 . My brother was born in May 1965 and , shortly afterwards , we moved to number 20 , Maes - Y - Ffynon . This house again looks out over the Green . I lived at 20 , Maes - Y - Ffynon for the next 21 years .

3 . The area in front of our house has always been called " The Green " . Everyone who lived in Maes - Y - Ffynon referred to it in that way and continues to do so .

4 . Over the years , my brother and I , and other children living in the street , and elsewhere in the village , would use the Green to play . It was , and is , the only safe open space where children in the village can play . My brother and I and other children , Andrew Morgan , David Loughor and Kelvin Mustow among them , regularly played football there . I was usually in goal because I was a girl ! We also played cricket , encouraged by my father , who taught my brother and I to bat and bowl . My brother went on to play for a local team . On occasions , when it was safe to do so , I practised throwing my javelin . I was in my school athletics team and also competed for the county in that event .

5 . Linda Morgan , who lived next door at number 21 , and I were childhood friends , and we often played on the Green . I can recall one occasion , in particular , when we were playing at the top end of the Green , near the fence which now divides that area from the Cotterell Golf course . We climbed through the hedge into the lane and went for a walk , returning the same way , only to see an adder curled up in the hedge near where we were climbing through . We were terrified , and fascinated , and I often returned to the spot to see if I could see it again . We would also pick blackberries and nuts from the hedge , which ran along the side of the Green , and which divided the Green from the lane . We made dens and played all sorts of games , including hide and seek , when we would squeeze behind the garages or hid in the bushes and wait to be found . These were much simpler times . We had no computers and there were few TV channels and for some years TV transmission shut down for long periods during the day . We spent hours playing outside in the fresh air .

6 . The whole of the Green in front of , and to the side of , the houses was used by us as children . I remember kicking balls against the wall of the garages and also being told off for hitting balls against the doors . We would explore all around that area , including trying to climb onto the roof of the garages .

7 . Originally , the Green was just an area of open grass . In about the 1970's , the local council decided to plant trees there , presumably to improve the outlook for the residents of the street . It was clear that it was never intended that this area would ever be anything other than a green space for use by the community . They planted a number of Sycamore trees , which still grow there today . Some of the original saplings were damaged soon after they were planted , and the council replaced them with others , which have grown to maturity . The trees , once established , served as goal posts and even cricket stumps . We also climbed them when they got tall enough .

8 . The area was not only used for games . I remember that we also regularly held a Bonfire there on or around November 5th . My brother and I and other children and adults from the area would collect wood and pile it up to form a bonfire . This was sited in the area beyond the turning hammerhead at the top of the street and to the left of the garages . We would all congregate there when the bonfire was lit , and fireworks would be let off . In winter , when it snowed , we made snowmen on the Green and played snowballs . I remember one year , when the snow was particularly heavy , someone had a sledge and used it to slide down the bank next to the bench and onto the snow covered road .

9 . In the 1970's , my brother became interested in music and taught himself to play bass guitar .

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10 and 2 inches from Maes - Y - Ffynon Comprehensive School, the school we all attended, formed a band. In the late 1970's, Gareth and his band held a concert on the Green. They set up a makeshift stage with amplifiers and a drum kit and played for the residents of the street and other villagers. The residents of the top end of Maes - Y - Ffynon were very tolerant of the noise, not just of the concert, but the practising which preceded it.

10. The bench at the side of the Green was a place for the older residents to sit and chat. My father often sat there with Mr James, who lived further down the street. Over the years, I have seen current residents, including Mrs Kath Loughor and Mrs Thelma Whiting, who have both lived here for many years, and Mrs Muriel Morgan, who sadly died some years ago, sitting on that bench chatting. The council have replaced the bench on at least one occasion as it has become worn out by years of use and exposure to the elements.

11. I left 20, Maes - Y - Ffynon when I married in 1986 and moved to Merthyr Tydfil. My mother continued to live in the house until 2015, when she was admitted to hospital suffering from Alzheimers. Mum spent many hours sitting in the living room of the house looking out of the window and watching children playing on the Green. It was something she loved to do and would mention to me when I visited.

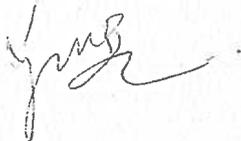
12. Between 1986 and 2015, and since then, I have returned regularly. I would visit mum most weekends, and at other times when I was able. In about 1989, mum acquired her first dog. We also got our dog, Non, at around the same time. We regularly walked Non and mum's dog, Tegwen, and mum's subsequent dog, Lucy, on the Green. As mum got older and her arthritis affected her mobility more and more, she would only be able to walk to the garages and back and so she would take Tegwen, and subsequently Lucy, to play on the grass. I would walk with mum and throw balls for the dogs, who would run around the whole of the Green area by the garages and in front of the house.

13. Mum was not the only resident of the street who used the Green to walk their dogs. Current residents do so now. I have seen them when I have come to the house. Mrs Whiting walked her dogs there until relatively recently and Chris and Alex, who live at number 24, have also walked their dog there. Recent occupants of the flats at numbers 15 and 16 have used the Green to walk their dogs, as do visitors to the houses in the street.

14. I have noted that, in the previous Unitary Development Plan, which provides an inventory of the conservation areas in the villages of the Vale of Glamorgan, Maes - Y - Ffynon is described as "a group of estate houses set around two village greens". In that UDP, the whole of Maes y - Ffynon, including the Green in front of the houses and around the garages, is included in the Conservation Area. The reference to two village greens refers to the green area at the entrance to the street, which is bordered by numbers 1 to 6 Maes - Y - Ffynon, and to the area at the top of the street, in front of, and to the side of, numbers 17 - 24. The Green at the bottom of the street has also been planted with trees by the council, but is too small, and too close to the busy A48 main road, to provide a safe place to play or to walk dogs, so residents from that end of the street also use the Green at the top to, for example, walk their dogs.

14. There has never been any restriction placed upon the use of the Green. There have for example, never been any signs forbidding ball games or bonfires and the area has never been fenced off in any way. It has always been an open space accessible to, and used by, all.

**I believe the facts stated in this witness statement are true**



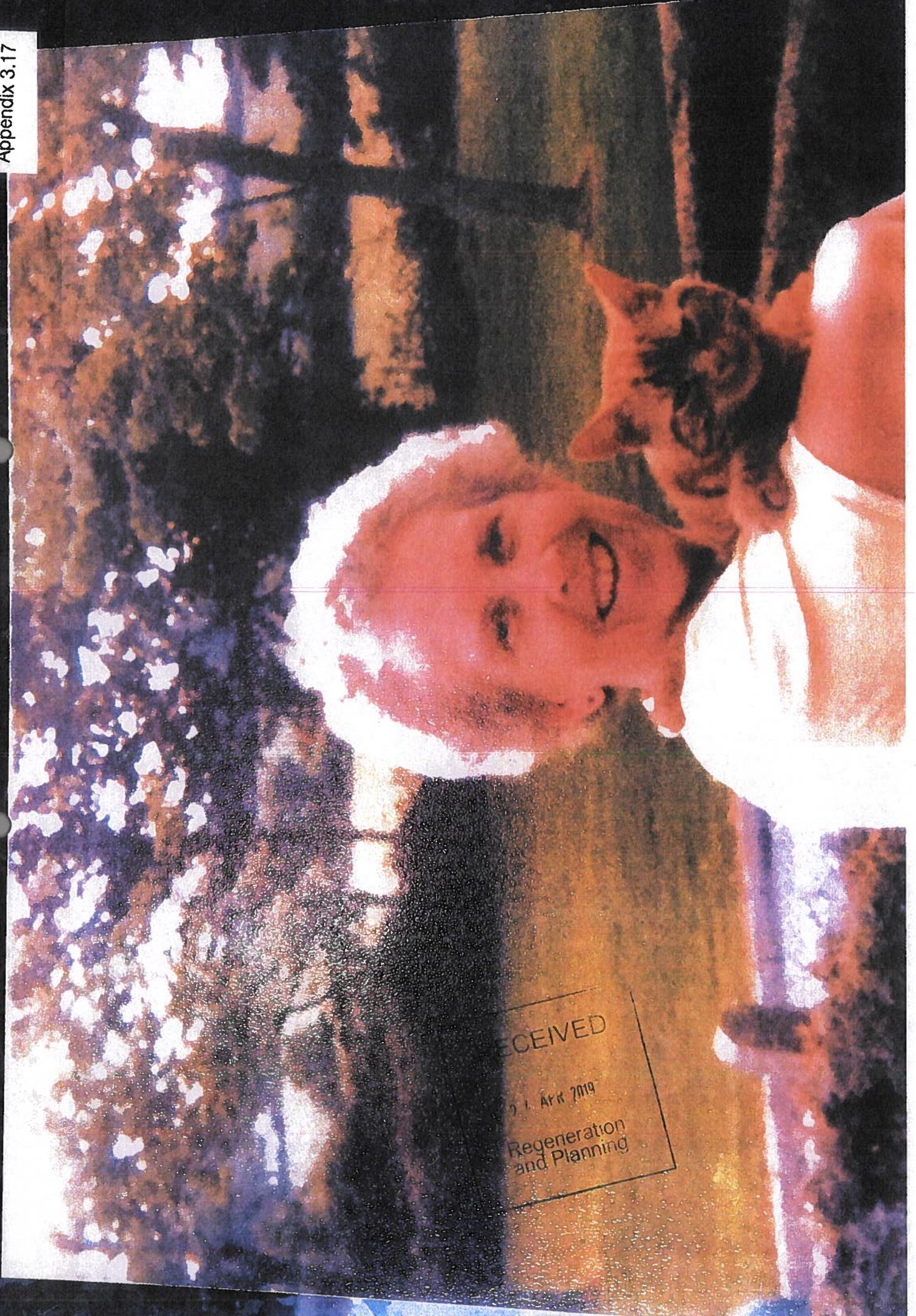
**Lynne Mary Price**

**Dated : 18th February 2019**



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Eve Morgan & Teg <sup>hata</sup> 1980s & 90s.



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Five Morgan 1990s

24 Maes-y-Ffynnon  
Bonvilston  
Vale of Glamorgan  
Cardiff  
CF5 6TT

Monday, 18 February 2019

To Whom It May Concern:

**Statement in Support of Application to Register a Village Green at Maes-y-Ffynnon , Bonvilston.**

I Dr Christopher Brown of 24 Maes-y-Ffynnon, Doctor, make this statement in support of the application to register the Green at Maes-y-Ffynnon. The Green played a significant role in our decision to move into Maes-y-Ffynnon 5 years ago, providing a quiet and safe living environment.

Crucially, the Green provides a safe and enriching environment for our 4-year-old goddaughter, who lives in Village Farm, also in Bonvilston, to play in. The Green is the only remaining safe green space within Bonvilston, the other being the small green verge area immediately adjacent to the busy A48 which is both impractical and unsafe.

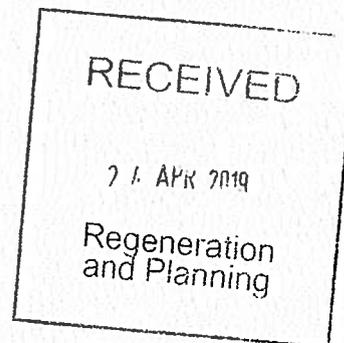
Registration of this area would secure this green space for future generations and preserve the strong sense of village community.

I believe that the facts stated in this witness statement are true.

Yours faithfully



Dr Christopher Brown  
Resident of 24 Maes-y-Ffynnon



23 Maes-y-Ffynon

Bonvilston

Vale of Glamorgan

CF5 6TT

Tuesday 19<sup>th</sup> February 2019

To Whom It May Concern:

Statement in support of Application to register a Village Green at Maes-y-Ffynon Bovilston.

I Mr Leigh Ivory, Self-employed Building contractor, Living at no 23 Maes-y-Ffynon make this statement in support of the application to register the Green at Maes-y-Ffynon.

I moved to Maes-y-Ffynon 30 years ago and started my family. We have always enjoyed our friendly neighbourhood, allowing my children and many others from the village including village farm, to enjoy the open space we call and have always called "the village green".

It has always been a safe environment for children of all ages even adults today take great pleasure in walking their dogs.

As a resident the wildlife we have on our doorstep is priceless, owls, are especially one of my favourites!

The Green is the only remaining safe place away from the busy and ever increasing traffic on the A48.

Registration of this area is paramount importance to the past and future generations.

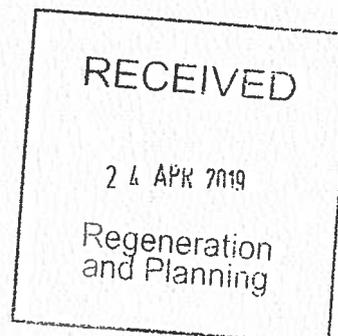
I believe that the facts stated in this witness statement are true.

Yours Faithfully



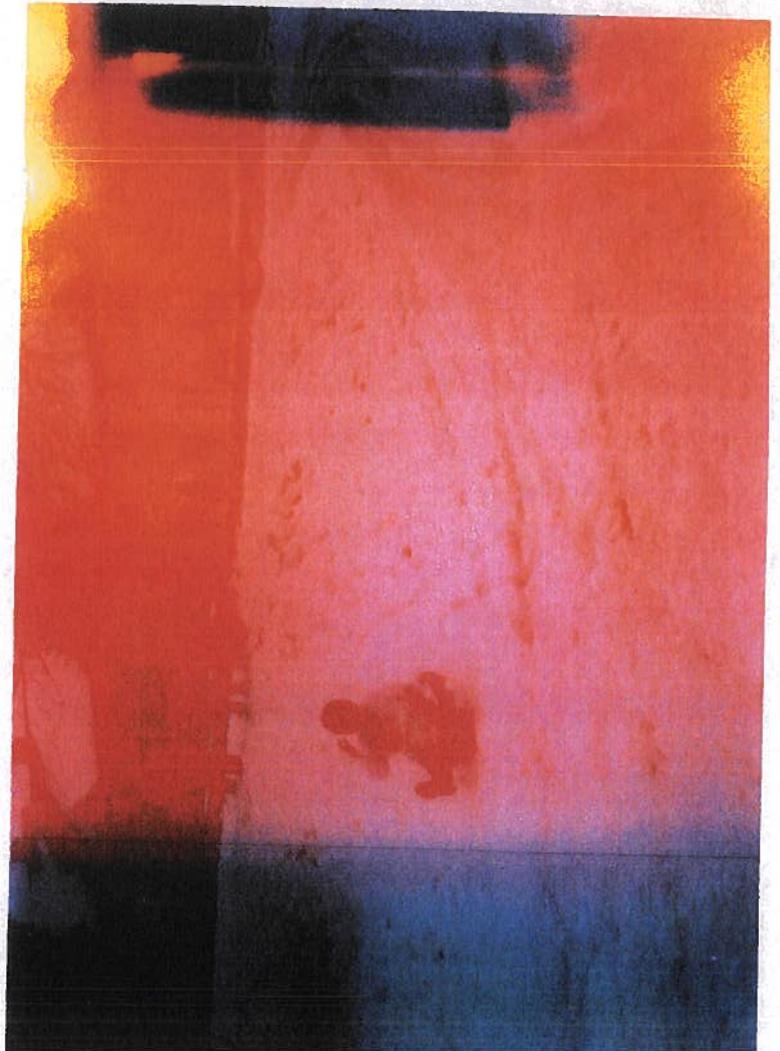
Leigh Ivory

Resident of 23 Maes-y-Ffynon.



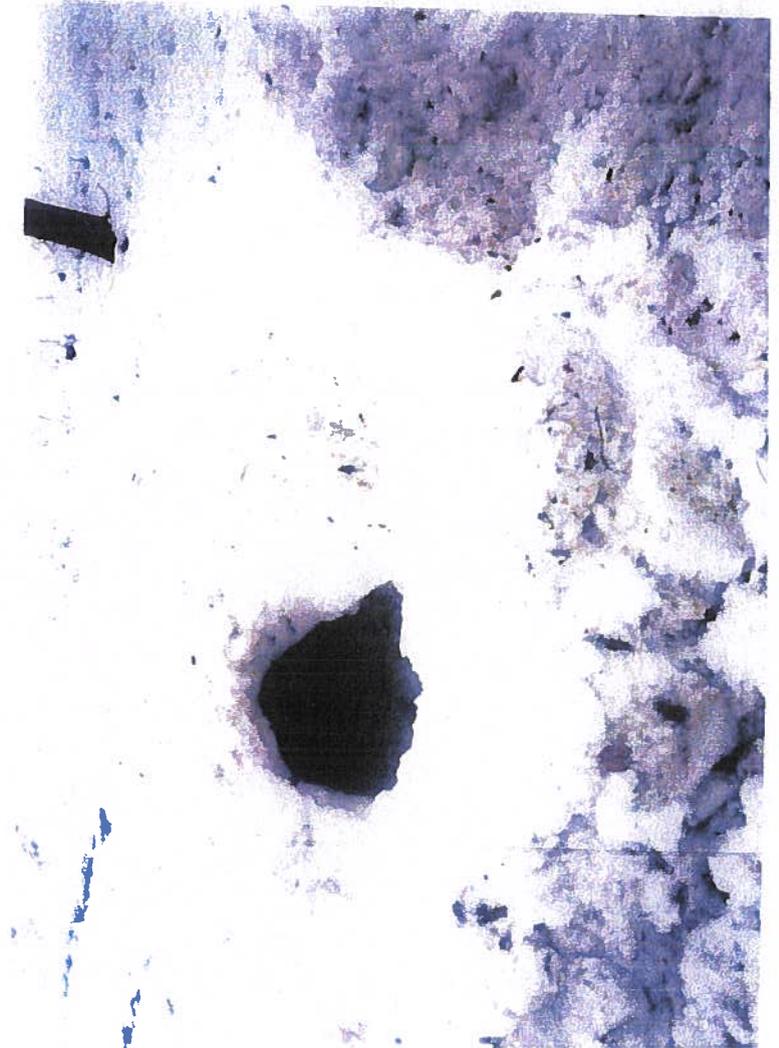
1990s - Big house Shedging

Clays & Jordan Ivory



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1990s - Big Freeze - 19100



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1990s - Big Freeze 19100

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1990's - Big Freeze Igloo.



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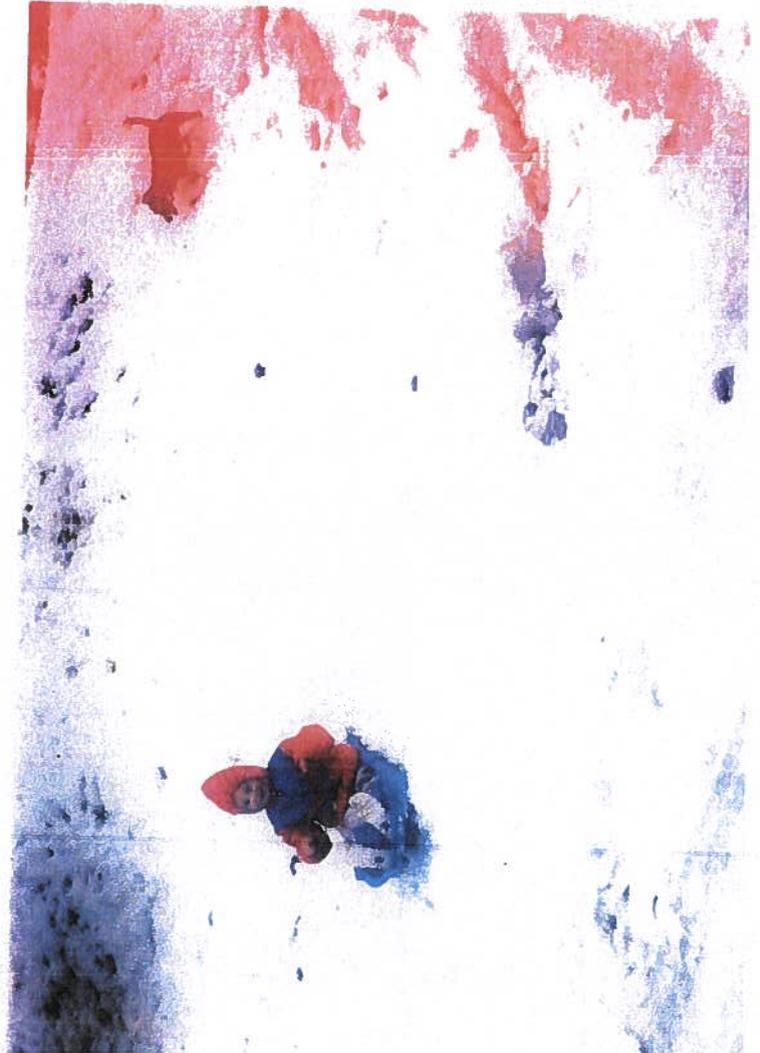
1990s - Big Freeze Sledging

Rhys & Jordan Ivory



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1990s - Big Moose Sledging - Klys & Jordan Lucy

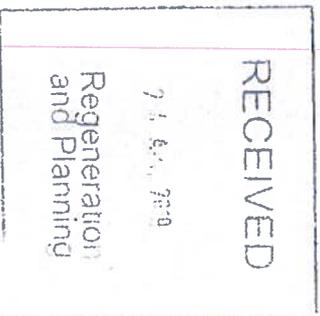


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Appendix 3.36

Appendix 3.36

Video from 1997 of children playing on  
village green at Northen End of  
Bowlston. Part of village green  
application.



NAMES AND ADDRESSES OF WITNESS STATEMENT CONTRIBUTORS IN SUPPORT OF THE VILLAGE GREEN APPLICATION AT MAES Y FFYNNON.

|   |   |   |
|---|---|---|
| HENRY CECIL MUSTOW                                  | APPENDIX 2.1  | 17 MAES Y FFYNNON,<br>BONVILSTON, CF5 6TT                           |
| THELMA MARJORIE WHITING                             | APPENDIX 2.2  | 10 MAES Y FFYNNON,<br>BONVILSTON, CF5 6TT                           |
| LYNNE MARY PRICE                                    | APPENDIX 2.3  | 9 THE PARADE, MERTHYR<br>TYDFIL, CF47 0ET                           |
| GARETH MORGAN                                       | APPENDIX 2.4  | C/O 20 MAES Y FFYNNON,<br>BONVILSTON, CF5 6TT                       |
| LEIGH IVORY   | APPENDIX 2.5  | 23 MAES Y FFYNNON,<br>BONVILSTON, CF5 6TT                           |
| CHRISTOPHER BROWN                                   | APPENDIX 2.6  | 24 MAES Y FFYNNON,<br>BONVILSTON, CF5 6TT                           |
| SIAN CLARKE   | APPENDIX 2.7  | 21 MAES Y FFYNNON,<br>BONVILSTON, CF5 6TT                           |
| TRACEY IVORY  | APPENDIX 2.8  | 23 MAES Y FFYNNON,<br>BONVILSTON, CF5 6TT                           |
| RHYS IVORY  | APPENDIX 2.9  | 23 MAES Y FFYNNON,<br>BONVILSTON, CF5 6TT                           |
| ALICE FISHER  | APPENDIX 2.10   | 43 VILLAGE FARM,<br>BONVILSTON, CF5 6TY                             |
| ROSEMARY FISHER                                     | APPENDIX 2.11   | 43 VILLAGE FARM,<br>BONVILSTON, CF5 6TY                             |
| CERI HUNT   | APPENDIX 2.12   | 13 MAES Y FFYNNON,<br>BONVILSTON, CF5 6TT                           |
| STEVE CLARKE  | OPEN SPACES EVIDENCE<br>QUESTIONNAIRE,  | 21 MAES Y FFYNNON,<br>BONVILSTON, CF5 6TT                           |
| NICHOLAS HUNT                                       | OPEN SPACES EVIDENCE<br>QUESTIONNAIRE,  | 13 MAES Y FFYNNON,<br>BONVILSTON, CF5 6TT                           |
| MARIANNE IRELAND                                    | MYFRA MEMBER  | 2 VILLAGE FARM, BONVILSTON,<br>CF5 6TY                              |
| PAUL IRELAND  | MYFRA MEMBER  | 2 VILLAGE FARM, BONVILSTON,<br>CF5 6TY                              |
| SUZI THOMAS<br>(SUSANNAH THOMAS)                    | MYFRA MEMBER/COMMUNITY<br>COUNCILLOR<br>APPENDIX 2.13   | 13 MAES Y FFYNNON,<br>BONVILSTON, CF5 6TT                           |
| ST NICHOLAS<br>WITH BONVILSTON<br>COMMUNITY COUNCIL | Letter signed by<br>Chair of Community<br>Council on behalf<br>of council.<br>(Attached overleaf) | Chair FRANK SPREGGS<br>Sarn Bach Bungalow<br>St Nicholas<br>CF5 6SG |

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**STATEMENT IN SUPPORT OF AN APPLICATION TO REGISTER A VILLAGE GREEN AT MAES Y  
FFYNNON, BONVILSTON**

I Hency Cecil Mustow, retired commercial traveller for Dulux, of 17 Maes Y Ffynnon, Bonvilston, CF5 6TT, make this statement in support of an application to register the village green at Maes Y Ffynnon.

1. I was born in Llantrisant, and my father was a farm Bailiff. I moved to Lisvane when I was 10 weeks old and lived there until I was 11 years of age. My father moved to work in Bonvilston house as a bailiff and we lived in Bonvilston Lodge.
2. At 18 I joined the forces on national service and served in the RAF in Germany, stationed at the Berlin Airlift. I left Germany at the latter end of 1949 and moved back to Bonvilston. In the meantime I'd married Barbara and moved back in with my father in Bonvilston.
3. Barbara and I moved to Maes Y Ffynnon in 1955, our son Kelvin (known locally as Sam) was just 5 years old at the time. He is still known as Sam today.
4. The village green which is subject to this application was always known as the village green. It was always played on by children of not only Maes Y Ffynnon but the entire village, despite the existence of the sports field which was developed in approximately 1978 and is now Village Farm housing estate. The sports field was primarily used by adults for football, so the village green was ultimately used by the children of the village for their games.
5. As an example, Sheila Whiting (8 at the time of 10 Maes Y Ffynnon) and our son Kelvin (age 5), would play on the green and use the mound that resulted from the excavation of the Maes Y Ffynnon houses when they were built, to access what was then the fields behind 17-24 Maes Y Ffynnon and is now the Cottrell Park golf course. This is shown in photograph 1, which I estimate was taken in around 1956.
6. Throughout the 1960's there were regular annual fancy dress carnivals held on the green which started at the village shop and make their way through Bonvilston to the football field, stopping at the village green for photos as shown in photograph 2, which is Sylvia Jones standing on a flotilla from one of the many carnivals that were held, the year of the photograph is unknown. The carnivals continued annually on August Bank Holiday Monday until Village Farm was built in 1978.
7. In 1977 Queen Elizabeth II passed through Bonvilston and a party was held on the village green as shown in photograph 9 & 10. Photograph 9 shows from left to right Jean Edwards (24 Maes Y Ffynnon) Audrey Deere (daughter of the former landlord at the Red Lion Pub and resident at number 13 Maes Y Ffynnon), Mary Osborne (22 Maes Y Ffynnon), Mrs Morgan and an child carrying a crown, I'm unsure of the name of this child. Photograph 10 shows the same girl and a young man, again his name I cannot recall, at the Jubilee party.
8. The bench on the village green that stands there today was donated by Mr Ferry of Village Farm following the construction of the dwellings that stand there today, as recompense for the development on the football field that we enjoyed playing on. This accepted the need for the village green, the subject of this application, as we had just lost the football field to development.

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9. Photograph 3 shows 6 local residents on the bench, a regular pastime enjoyed by the residents. The photograph shows Betty Watts (1 Maes Y Ffynnon), Joan Walklate (St Nicholas), Myself, Barbara and Thelma Whiting (10 Maes Y Ffynnon) with, I presume, one of her grandchildren. They used to meet on the bench whenever it was fine enough to get together throughout the 1980's. I would return from work and be ordered to the kitchen to fetch tea and biscuits for the gathering.
10. The winter of 1978 brought snow that lasted weeks, at the start, we residents decided to get together to dig out the street so that we could get to work on the Monday. Lynne and Gareth and the other resident children built snowmen and enjoyed snowball fights for as long as the snow lasted. In pictures 4 – 8 you can see that the community dug from number 24 to number 1, meeting in the middle, a community that was brought together due, in part to the existence of the village green.
11. The same children would play football, hide and seek, rat-a-tat ginger (knocking on the doors and running away), and cricket on the village green and use the garages to play tennis. There were numerous dens and hideouts that they would build and play in continuously. We held bonfires annually in November and the whole community would gather together. It was a real community. When the children hurt themselves they would run to any house on the part of the street that faces the green as we were all readily available to help and I believe this was the core of village life around the green.
12. The St Nicholas and Bonvilston Royal British Legion would arrange coach trips to places like Weston Super Mare, Barry Island and the like. The village green would be the pick-up point for the whole centre of the village. The mention of a trip would grasp everyones interest, the community would meet at the village green and be dropped off there at the end of the day.
13. Since the trees were planted on the green by the council in the late 1970's, presumably to enhance the village green, the council have regularly cut the grass and kept up the look of the green. The birds and wildlife attracted to the green are plentiful, some rare.
14. There has never been any restrictions for the use of the village green in question. It has always been used by locals to exercise their dogs. In 2017 the Vale of Glamorgan council placed signs around the village green accepting that dogs were exercised there and asking responsible owners to pick up after their pets. There has never been any barrier, sign to keep off the area of land or otherwise in my 63 years at Maes Y Ffynnon.

**I believe the facts stated in this witness statement are true**

**Hency Cecil Mustow**

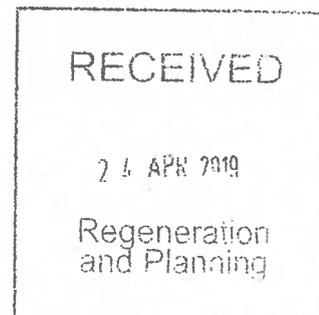


Photo 1



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Photo 2

Appendix 3.2



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# Photo 3

Appendix 3.3

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23 Maes-y-Ffynon

Bonvilston

Vale of Glamorgan

CF5 6TT

Tuesday 19<sup>th</sup> February 2019

To Whom It May Concern:

Statement in support of Application to register a Village Green at Maes-y-Ffynon Bonvilston.

I Rhys Ivory, Age 26 self-employed, Living at no 23 Maes-y-Ffynon make this statement in support of the application to register the Green at Maes-y-Ffynon.

My Memories of the viliage green:

I was born in no23 26 years ago, I have always regarded the green at such a young age as being my front garden, I have played there with my brother and sister all my childhood with many children from maes-y-ffynon and viliage farm.

Back 20 years ago we had no video or computers to distract us as we always would meet on the green after breakfast and play football cricket and my favourite was Mob.

I learnt to ride my first bike without any fear of traffic as it was always a safe place to play with all my friends.

Now I find much enjoyment playing football with my nephews who spend many a summers day at our house as they don't have a viliage green of their own.

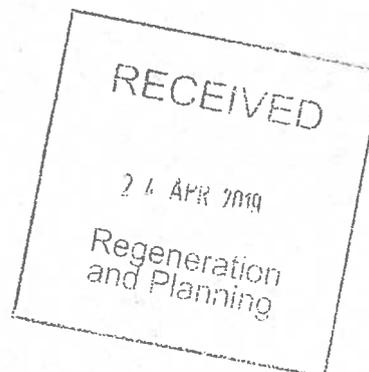
I believe that the facts stated in this witness statement are true.

Yours Faithfully



Rhys Ivory.

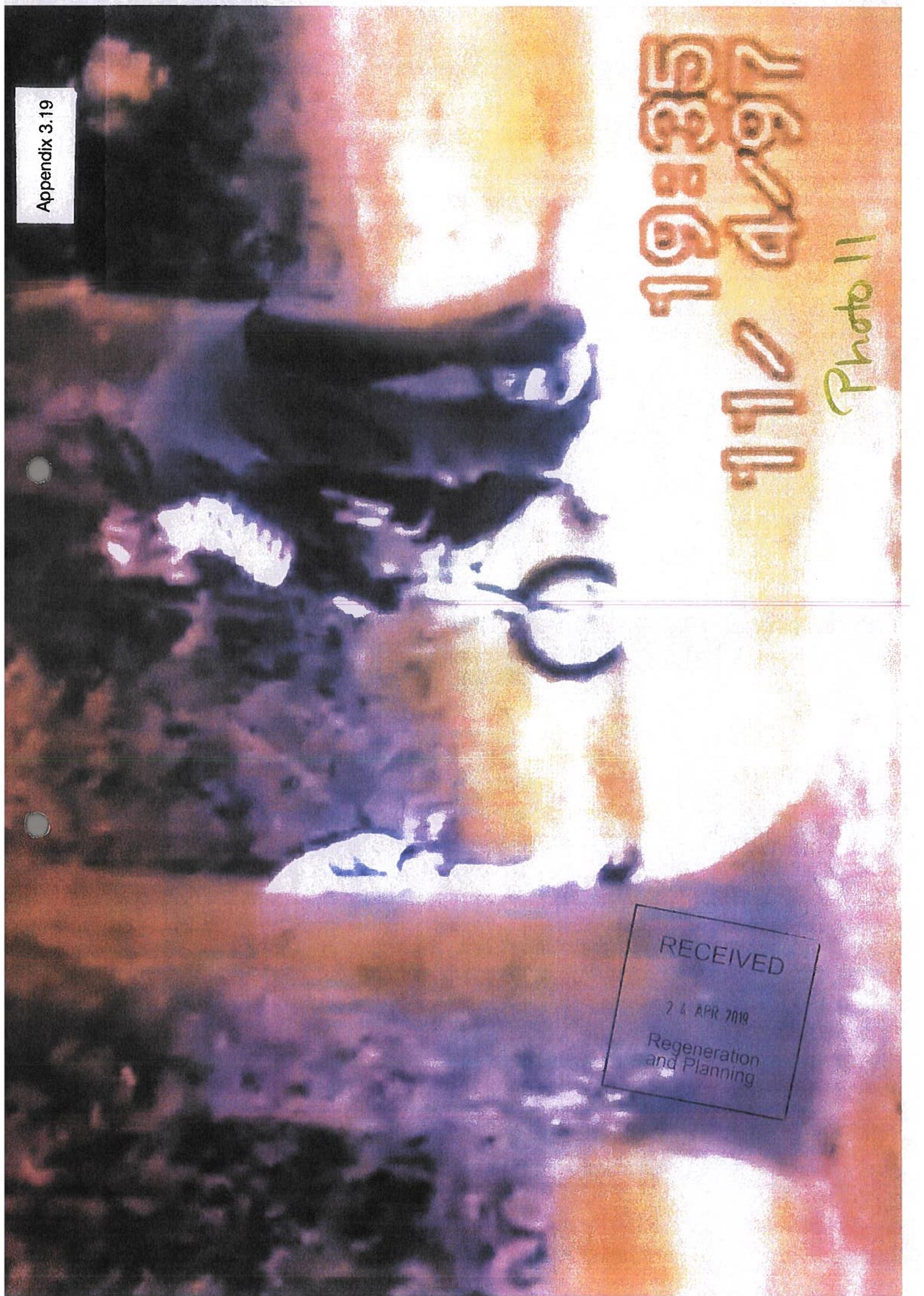
Resident of 23 Maes-y-Ffynon.



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Photo 11

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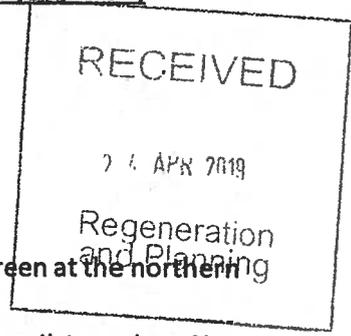
**Appendix 2.13**

**Witness Statement in support of Application to Register a Village Green at Maes y Ffynnon, Bonvilston.**

Name: Susannah Marie Thomas

Address: 4 Maes y Ffynnon, Bonvilston.

Occupation: Florist.

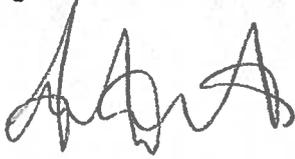


1. I am making this statement in support of the application to register a Village Green at the northern end of Maes y Ffynnon.
2. My husband, Rob Thomas, and I have been residents of 4 Maes y Ffynnon, Bonvilston, since Nov 2013.
3. Personally, during those 5 plus years, I have regularly seen our neighbours and other local visitors enjoying recreational activities on the Village Green at the northern end of Maes y Ffynnon. Specifically, I have witnessed people walking their dogs, children riding bikes, scooters. Plus I have seen parents and grandparents playing outside with their children and grandchildren be it football or just spending time exploring and learning about the local abundant wildlife. These activities have been witnessed on both the green area directly in front of houses 17-24 and also in the green space to the north and along the side / rear of house no. 24.
4. The main purpose of my witness statement is to provide a first hand account of the recent village event which took place on Saturday April 2<sup>nd</sup> 2019. This was a Village Fete in celebration of St David. This event was organised by the local resident's association (Maes y Ffynnon Resident's Association MYFRA) and was widely supported by both the residents of our village and surrounding villages including St Nicholas and Peterston Super Ely as well as some visitors from Cardiff.
5. The total number of people that attended this event exceeded 60 people. Attached are photos (Appendix Ref 3.22, 3.23, 3.24, 3.28, 3.33) showing some of the many people that attended and the various activities including:
  - Cake stall – with lots and lots of donations made for us by local residents. See photo attached. (Appendix Ref 3.34 and 3.20)
  - Hide and Leek – a trail for the children which saw the children seeking leeks to find clues attached to solve a puzzle. This trail involved finding large leeks hidden around the site, including the area to the north of the main grass section alongside and behind house no 24.
  - Best Welsh Cake Competition – The Winner was crowned Best Baker in the Village.
  - Daffodil planting – Pots of miniature daffodil plants were provided and local residents planted them around the green. This was a continuation of a tradition begun by some of our first residents who planted bulbs around the green in memory of loved ones who passed away. So their memories remain with us for future as the plants re-flower every year. Over 20 different people participated in the bulb planting, with many people planting more than one pot of bulbs. Bulbs were planted in a number of different areas around the Green. Personally, I planted 5 pots in memory of my father-in-law who passed away last December. See photos attached. Appendix reference 3.37.
  - Craft area for the children with a selection of St David's Day crafts and activities provided. See photo attached. Appendix ref 3.31
  - A Best Dressed Competition for kids of all ages. The winner was local resident Tommy, who won due to his original idea to come dressed as a Celtic Knight. See photos attached. Appendix ref 3.24 & 3.31.
  - Tea and cake stand with all cake home made by our fellow villagers and also run by our local residents too. See photos attached. Appendix reference 3.21 and 3.35

- Marshmallow toasting around a camp fire. See photo above of the Celtic Knight. Appendix ref 3.24.
  - Tombola stand. Appendix ref 3.32.
6. As one of the organisers of this event, whilst at the fete and also subsequently, I received many enquiries from other local residents about the future events proposed by the newly formed Residents Association and also we received offers to support our efforts to register the Village Green and protect it. As a result of the community's continued support, the Residents' Association are planning a number of different events for later this year including barbeques and music events as well as children's activities.
7. The success of this event and the interest shown by the community about future events, is further evidence that our community continues to treasure this valuable Green Space both in its current use and for future generations to come.

I believe that the facts stated in this witness statement are true.

Signed: Susannah Marie Thomas



Dated: 16/4/19





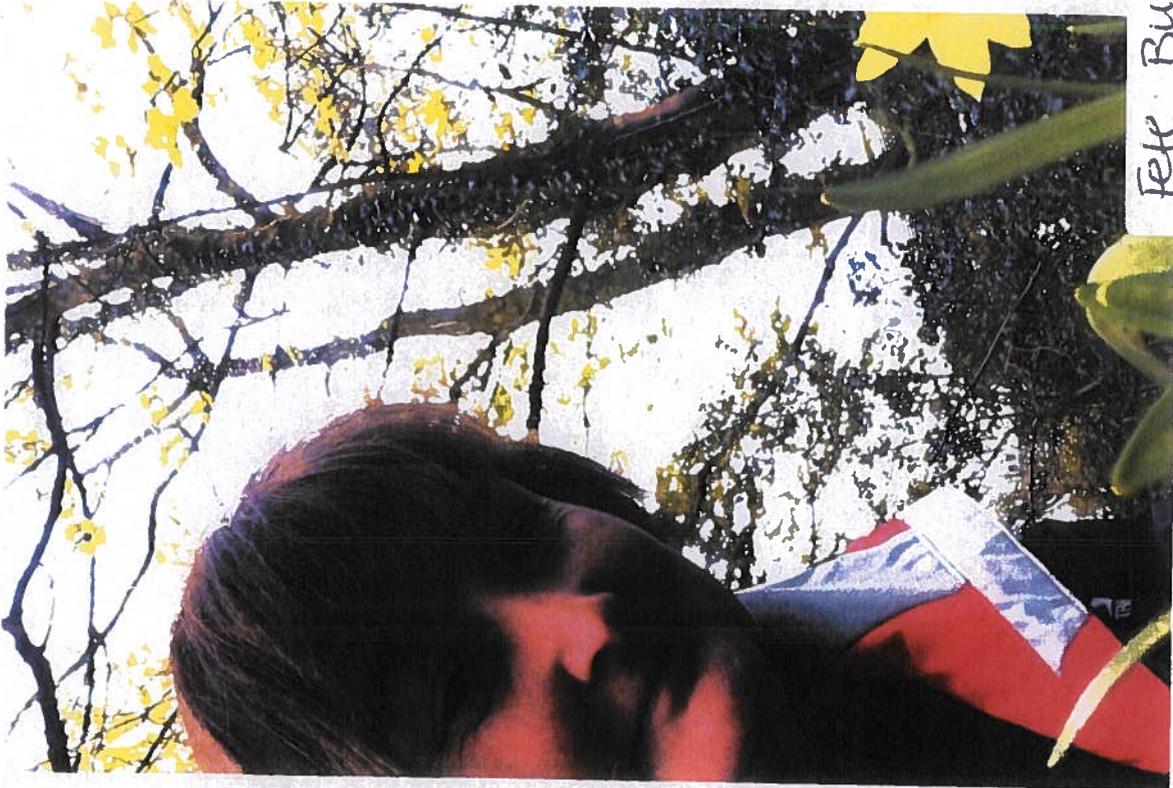


The St Davids day village fête March 2019

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Fete Bulb Planting  
 Selve of Suz. Thomas planting  
 + 5 plants I planted, near  
 plants already in situ on  
 a small area next to others



Remnants at St David's New March 2019



Thomas Hunt 9 2019



fete Children's Craft area  
with Best Dressed Winner  
Tommy as Celtic Knight



fete Tombola stand being  
set up

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24 Apr 2019

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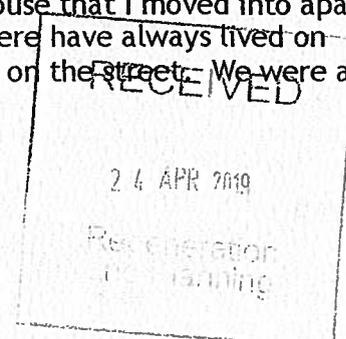
fete General Scenes  
April 2, 2019



26 APR 2019  
Regeneration  
and Planning

I, Thelma Marjorie Whiting, of 10 Maes Y Ffynnon, Bonvilston, CF5 6TT, make this statement in support of an application to register the Village Green at the north end of Maes Y Ffynnon.

1. I have been a resident of Maes Y Ffynnon since September 1949. We were the first to live at number 10 and I still reside there now. I was a full time mum at the time as my son, Andrew was two years old. He celebrated his second birthday here in the October. At the time the village green which is the subject of this application was a farmers field. The land was owned by the Powells but the Evans's of Village Farm used to farm it.
2. The Powells sold the land in 1956 as a compulsory purchase order, from my recollection. Ours were the first houses to be built on the street as we know it now.
3. When the green was bought the children played on the land and it then gradually it became known as the village green.
4. Nobody had a car at the time so there would have been no cars on the roads
5. The main events were held on the football field but then the football field was built on for the estate that is known now as village farm.
6. In the late 1950's the last houses were built, numbers 13 - 16. There were mounds of sand that the children used to play with on the green and near the site. As far as I remember there was a play house built there and the children would play rounders, cricket and team games like football, it was a regular activity. There were children in all of the houses in those days and they all used to play together on the green.
7. In 1977, when the Queen passed through Bonvilston as part of her Jubilee celebrations, there was a jubilee party held on the green. Muriel Morgan's grandson is seen in photograph 10 as the king, and I'm unsure who the girl is.
8. Cyril Smith and his daughters, Sarah and Emma lived at number 8. They were children born in the early 1980's and they regularly played on the village green with the other children in the village.
9. During the 1990's we used to congregate on the bench at the bottom of the green. Myself, Madge Evans's granddaughter (who lived in one of the flats at number 15), Barbara, Cec, Joan and Betty Watts are all in the photo. Muriel Morgan (top flat of number 15) is taking the photo.
10. We held regular bonfires on the green in the 1990's. I wore a coat once, which was well worn, similar to the shape of Princess Margaret's when she was married. Alf Osborne let a rocket off which went awry. The rocket went through the crowd and burnt my coat.
11. Since then the children grew up and moved away. The visitor's children would play on the green but from the late 1990's there were no children actually living on Maes Y Ffynnon. Cec, Kath, Myself, Dave and Val, are all still resident in Maes Y Ffynnon. I believe I'm the one that lives in the same house that I moved into apart from Kath. It's interesting that some of the residents here have always lived on Maes Y Ffynnon but some have moved house and stayed on the street. We were all very close and always looked after each other.



12. We used to make our own wine and sample our wares together on the green, sitting around and building a community.
13. Everyone had character. At one time we thought there were rats in the mound of earth and we felt that we should care for the ground and regularly set fires on the waste land to protect the green as it was ours.
14. We regularly made cakes and sandwiches and shared them on the village green if the weather permitted.
15. I regularly used to pick blackberries on the village green and all around. There was plenty of blackberries to be had. We were a community that was built around the village green.

I believe the facts stated in this witness statement are true

Thelma Whiting

Dated: 11/04/2019

## WITNESS STATEMENT IN SUPPORT OF AN APPLICATION TO REGISTER A VILLAGE GREEN AT MAES - Y - FFYNON , BONVILSTON

I, Alice Fisher, resident at 43 Village Farm, Bonvilston, CF5 6TY, make this statement in support of an application to register the Village Green at Maes - y - Ffynon.

1. I have been a resident of Village Farm for 25 years, since birth. I have grown up in Bonvilston and as such have enjoyed the surrounding areas including the Green in Maes - y - Ffynon.
2. From a young age, I remember visiting my friend, Zachary Ushers house, who lived at number 24, which overlooked the Green. I always remember my mother allowing me to walk to his house on my own due to it being a safe area. We would meet up and play on the Green and up near the area where the garages once stood.
3. Activities we would partake in could range from playing catch, frisbee, exploring nature, hide & seek, and making dens. I remember feeling safe in this area, as I was away from the main road.
4. As a result of the open nature of the Green, when I would meet up with my friends, Zachary Usher, his little sister - Georgia Usher and Georgina and Charles Jackson, who lived at number 13 Maes y Ffynnon , it meant that other children could see us out playing and join in with us if they liked. An example of this would be when Sarah & James Graves, who live at number 26 Village Farm, would join us when we met up. This was especially good because we went to different schools and still made time to socialise together on the Green.
5. It was an important meeting point for my friends and I when we would meet up after school by the bench at the bottom end of the Green.
6. Another memory of mine is one of playing up by where the garages used to stand. I remember making dens in the bushes up there and exploring our creativity and imaginations through nature. I believe this was a very important time for me, as even now, I fondly remember those times.
7. I also remember going for nature walks on the footpath behind the garages, next to Cottrell Park, which not only allowed us to socialise and have fun, but it allowed us to exercise as a result.
8. The main reason I chose to use the Green as my play area was that there was no viable play area option in Village Farm, other than to play in the road. This was not the most safe areas as there were frequently cars driving in and out of the estate.
9. Another reason for my support for the Green to be recognised is that, there was another area that we used to use which was the field with the public footpath behind the Red Lion, now known as 'The Walk'. This field was closer to my home and was a place where my brothers and I would play ball games regularly, with other residents of Village Farm, Maes - y - Ffynon and Bonvilston Village in general. These children included Michael Fisher, Jack Fisher, David Leech, Gareth Thomas, Joseph Rees and the Ivory boys.



10. The Green was also an area where I have walked my dogs many times too, due to it being an open green area which was a safe enough distance away from the road to be let off their leads.
11. Looking back on my experiences with the Green, I do not have much photographic evidence due to my age and the lack of technology. This was even more of a reason for us children to meet up and socialise as it was the only way we would be able to communicate. However, as a result of recent technological advances it means that people of all ages can take pictures of their experiences and share them with others. *I know I would rather a picture of a beautiful green field than another new build of flats.*
12. As my parents, Rosemary & Paul Fisher, were largely involved in the community activities and were known by other parents and residents in the village, they felt comfortable in the knowledge that I was safe to walk or cycle to the Green on a near daily basis with the strong sense of community both Village Farm and Maes - y- Ffynon had. Many of the residents were invested in our safety and wellbeing, so would keep an eye out for us when we were out on the Green, playing and having fun. These residents included Thelma Whiting, Cath Lougher, Betty Watts, Isobel Moffet, Murial Morgan and Glyn Roach.

**I believe the facts stated in this witness statement to be true**

**Alice Isabelle Fisher**

**Dated : 22nd February 2019**

**STATEMENT IN SUPPORT OF AN APPLICATION TO REGISTER**

**A VILLAGE GREEN AT MAES - Y - FFYNON , BONVILSTON .**

I, **Rosemary Fisher**, Retired Teacher, of 43, Village Farm, Bonvilston, CF5 6TY, make this statement in support of an application to register the Village Green at Maes-y-Ffynon .

Paul and I moved to Bonvilston in 1993 when I was pregnant with our third child. We wanted to bring up the children in a village environment with access to the countryside. Both Paul and I had grown up in small rural communities and we wanted something similar for our children.

Through various events and organisations in the village, we got to know some of the residents of Maes-y-Ffynon.

When the children were little and I was out pushing a pram, I would often meet people by the green and stop for a chat.

The 'regulars' were Muriel Morgan, Thelma Whiting and Mrs Watts. Muriel always had an opinion or two to share on events and people in the village and Thelma had, and still has, a friendly smile and was always ready for a chat. They would be on the green, walking their dogs or sitting on the bench, putting the world to rights and watching the goings-on.

When the children were old enough to go out to play with friends, I allowed them to walk or cycle around to the green in Maes-y-Ffynon. I felt this was a safe area for them to play, away from the A48. I also knew many of the people who lived around and near the green, so could rely that there would be 'eyes' on the children.

Kath Lougher lives in number 19 beside the green. She knew the children from working in Abracadabra Playgroup. They knew her as Aunty Kath and were always pleased to see her when they were playing on the green.

Isobel Moffat lived in number 18 beside the green and knew the children from Zoar Sunday school. Again, another friendly adult who the children would see when playing on the green.

I knew the Ushers who lived in number 24 as our children were all at St. Nicholas school together and we shared lifts.

My daughter Alice and their children, Zach and Georgia, played on the green together - making dens, riding bikes, making up games.....being children.

My two sons, Michael and Jack, regularly met up with other boys from the village and went up to the green to play football.

There'd be Michael & Jack, James Glaves(26, Village Farm), the Ivory boys(23, Maes-y-Ffynon), Gaz Thomas(Sheepcourt Cottages), Joe Rees(The Red Lion pub) and David Leech(The Old Forge). I often had to go and round them up when it was time for tea. No mobiles then!

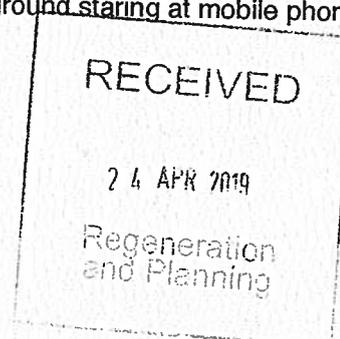
The green was the only place in the village where they could play a game of football. They sometimes explored in the overgrown Red Lion field but that has long since been developed for houses as 'The Walk'. Their alternatives were cycling along the A48 to the next village of St. Nicholas, or playing in the street outside our house.

My children regularly used the green in Maes-y-Ffynon to meet up with, and play with their friends until they were in their late teens; so from the mid/late 1990s to 2010.

It is of concern to me that the green is under threat of development. What will the children of the future have to look back on ....hanging round a manufactured playground staring at mobile phones?

I believe the facts stated in this witness statement to be true.

Rosemary Fisher  
25th February, 2019



**STATEMENT IN SUPPORT OF AN APPLICATION TO REGISTER**

**A VILLAGE GREEN AT MAES - Y - FFYNON , BONVILSTON .**

I , **Gareth Thomas Morgan**, professional bass guitarist, teacher and journalist, make this statement in support of an application to register the Village Green at Maes - y - Ffynnon.

1. I was born in May 1965 and within months this our family had moved from the flat number 15A to number 20, where the family remained, subsequently purchasing the house in the early 2000's.

2 . The grassy open space which has accrued mature trees over the last thirty years, to the west and the north of the line of terraced properties, has always been referred to and used as a Village Green.

3 . I utilised the Green to play football and cricket (often employing a cork cricket ball) with other local children throughout my youth, honing my cricket skills to the point that I was able to represent my university, the London School of Economics, and another village in the Vale. Whereas other villages in the area were provided with the support, space and amenities with which to set up sports clubs, Bonvilston wasn't. Sure, we had a football team in the 70's but the playing area was sacrificed to the Village Farm development in the late 70's and such facilities were lost and never replaced. So for any budding sportsmen and women, or those who simply wanted to kick a ball about, the Green was the sole option. This is still very much the case today.

4. We also played kids games like hide and seek on the Green and subsequently used it, along with many other fans of the canine species, to give our dogs necessary exercise. Those who used and use the Green for these purposes are 100% committed to keeping it clean. I don't remember ever seeing dog excrement on the Green.

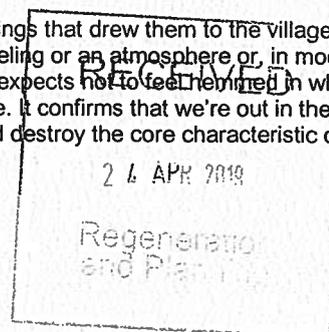
5. There are three sections to the Green and as children, we utilised all of the space that these provided. There was often a bonfire at the appropriate time of year on one of the north sections, we used the walls of the now deconstructed garages for both solo tennis and football practice and I used the road leading to the garage doors to hone my cricket bowling technique. Older residents utilised, and continue to regularly occupy, the bench at the entry to the cul de sac as a resting, meeting and socialising point. Little details such as this are vital to the social set up within Bonvilston and any other village.

6. We investigated every inch of each section of the Green, including the roofs of the garages, the ditches behind the hedges, the middle of the hedges, literally everywhere. Not only did the Green provide an important outlet for youthful exuberance but it also became a crucial element in our growing up, our life education. As well as being able to bowl accurate medium quick in a cricket sense, I learnt the best way to approach the art of tree climbing when the aforementioned trees had reached a reasonable enough size to make this worthwhile.

7. In the late 1970s I became interested in music and, after deciding to form a band with two school friends, taught myself how to play bass guitar. I was eventually lumped with singing duties. One of our most memorable gigs happened in the summer of 1981 or 82, when the village organised an extensive summer fete and my band and a support were provided with a small area covered by a canvass canopy under which to perform. We had to run a long extension lead from our house out to the section of the Green immediately opposite to be able to make our noise something which, today, would contravene all sorts of silly health and safety regulations.

8. I attended the LSE from 1983-86, moving to London in November 1986 in order to pursue a career in music, returning to visit my mum (we lost our dad in 1982) on a regular basis. After I became maritally separated in 2009 I visited on far more frequent occasions and always found the presence of the Village Green a calming and reassuring element. The feeling of space, of not being cooped up, of being able to breathe easily are things that the Green bestows on all residents of the village without expectation of reimbursement. Since mum became ill and was taken into care in 2015, I have become once more virtually a permanent member of the village community and my appreciation of the value of our Village Green has not diminished one iota.

9. Those who have more recently moved into Bonvilston will say one of the things that drew them to the village was the Green. I'm not simply talking about the activities that it facilitates. There's a feeling or an atmosphere or, in modern parlance, a vibe created by this open space. Everyone expects it to be there, expects not to feel hemmed in when they walk out of their front door. It is a crucial element in the character of the village. It confirms that we're out in the Vale and not in some suburb of a town or city. Amending or altering it in any way would destroy the core characteristic of the



village of Bonvilston. It would remove the only safe and versatile open space available for both current residents and those who will move into the village in generations to come. It won't just be ruined for now, it'll be ruined for ever.

**I believe the facts stated in this witness statement are true**

**Gareth Tomas Morgan**

**Dated: 21st February 2019**

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23 Maes-y-Ffynon  
Bonvilston  
Vale of Glamorgan  
CF5 6TT

Tuesday 19<sup>th</sup> February 2019

To Whom It May Concern:

Statement in support of Application to register a Village Green at Maes-y-Ffynon Bonvilston.

I Mrs Tracey Ivory. Care worker, Living at no 23 Maes-y-Ffynon make this statement in support of the application to register the Green at Maes-y-Ffynon.

We moved to Maes-y-Ffynon in 1990, our 3 children were brought up in the village.

Our village was the safest place for them to play and only place to play where parents didn't have to worry.

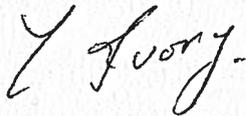
From camping, cricket, football and even slip`n slide for all the village kids to play on.

They learnt to ride there first bikes on the green away from danger, we take great pleasure now in watching our grandchildren doing the same.

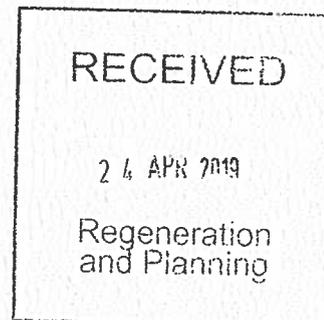
The green is the heart of Maes-y-Ffynon, the only open space away from harm and the ever increasing traffic on the A48.

I believe that the facts stated in this witness statement are true.

Yours Faithfully



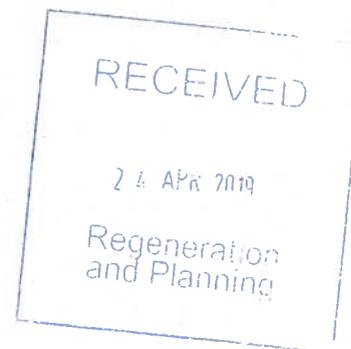
Tracey Ivory.





**EVIDENCE QUESTIONNAIRE  
IN SUPPORT OF CLAIM FOR  
REGISTRATION AS A NEW GREEN**

**COMMONS ACT 2006**



10a Bell Street, London, EC4A 3DF, UK  
Email: [info@oss.org.uk](mailto:info@oss.org.uk) Website: [www.oss.org.uk](http://www.oss.org.uk)  
Registered in England and Wales (limited liability) number 7346516 (registered charity: 1144840)

**(Please return this form to the applicant not to the Open Spaces Society)**

Date 1.1.2013

**EVIDENCE QUESTIONNAIRE IN SUPPORT OF REGISTRATION AS  
A NEW GREEN**

|                 |                               |                     |
|-----------------|-------------------------------|---------------------|
| <b>NAME</b>     | STEVEN CLARKE                 |                     |
| <b>ADDRESS</b>  | 21 MAES Y FFYNNON, BONVILSTON |                     |
| <b>POSTCODE</b> | CF5 6TT                       | <b>TELEPHONE NO</b> |

|     |  |   |
|-----|--|---|
| 1.  | Address when you used the land.<br>(The land in this form means 'the claimed land'.)   | As Above  |
| 2.  | Address when you knew the land was used by the local inhabitants.  | As Above  |
| 3a. | Did you sign the reverse side of 'Map A' confirming it relates to this evidence provided by you?<br>(Map A is the map showing the claimed land, and the claimed locality which uses the land, which should accompany the form and which will subsequently accompany the application: see Form 44 part 5 & 6 (and note 5 & 6).) | Yes/No  |
| 3b. | Please confirm that you agree with the boundaries of the locality (or neighbourhood within a locality) on 'Map A' edged in .....<br>(state the colour)   |   |
| 4.  | Please mark the location of your house on 'Map A' with an X  |   |
| 5.  | By what, if any, name is the land shown on 'Map A' known?  | The Green   |
| 6.  | Has it ever to your knowledge been known by any other name? If so, what name?  | NO  |
| 7.  | For how many years have you known the land?  | From 2010 to 2019                                 |
| 8.  | Between which years did you use it?  | From 2010 to 2019<br><br>Then from ..... to ..... |

9. Do you consider yourself to be a local inhabitant in respect of the land?  
 YES

10. During the time you have used the land, has the general pattern of use remained basically the same?  
 YES

11. What recognisable facilities are available to the local inhabitants of your locality? Please tick all boxes that apply and add any OTHER additional matters not covered.

- |  |  |
|--|--|
| <input checked="" type="checkbox"/> SCHOOL CATCHMENT AREA            | <input checked="" type="checkbox"/> AREA POLICEMAN       |
| <input type="checkbox"/> LOCAL SCHOOL                                | <input type="checkbox"/> DOCTOR'S SURGERY                |
| <input checked="" type="checkbox"/> RESIDENTS' ASSOCIATION           | <input checked="" type="checkbox"/> COMMUNITY ACTIVITIES |
| <input checked="" type="checkbox"/> COMMUNITY CENTRE                 | <input type="checkbox"/> NEIGHBOURHOOD WATCH             |
| <input checked="" type="checkbox"/> LOCAL CHURCH OR PLACE OF WORSHIP | <input type="checkbox"/> A CENTRAL FEATURE               |
| <input type="checkbox"/> SPORTS FACILITY                             | <input type="checkbox"/> SCOUT HUT                       |
| <input checked="" type="checkbox"/> LOCAL SHOPS                      | <input type="checkbox"/> OTHER (Please state)            |

12. To your knowledge are there any public paths crossing the land?  
 No

13. How do/did you gain access to the land? I can walk freely onto The Green, which is opposite my house

14. Why do you go on to this piece of land? walk the dog, throw balls for the dog. Attend village events, bird watching, walking to the car, pub, neighbours

15. How often do/did you use the land (apart from the public paths)?

16. What activities do/did you take part in? Dog walking, dog activities, bird watching, village events

17. Does your immediate family use the land?  
 YES

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18. If so, what for?  
Dog walking

19. Do you know of any community activities that take place or have taken place on the land?

19a. Please list them and state when and for how long they have taken place.

20. Do you participate in any of them?

21. Do any organisations use the land for sports or pastimes? If so please specify.

22. Do any seasonal activities take place on the land?

23. Please tick all the activities that you have seen taking place on the land.

- |  |  |
|--|--|
| <input checked="" type="checkbox"/> CHILDREN PLAYING       | <input checked="" type="checkbox"/> FOOTBALL       |
| <input type="checkbox"/> ROUNDERS                          | <input type="checkbox"/> CRICKET                   |
| <input type="checkbox"/> FISHING                           | <input type="checkbox"/> BIRD WATCHING             |
| <input type="checkbox"/> DRAWING AND PAINTING              | <input checked="" type="checkbox"/> PICNICKING     |
| <input checked="" type="checkbox"/> DOG WALKING            | <input type="checkbox"/> KITE FLYING               |
| <input checked="" type="checkbox"/> TEAM GAMES             | <input checked="" type="checkbox"/> PEOPLE WALKING |
| <input checked="" type="checkbox"/> PICKING BLACKBERRIES   | <input type="checkbox"/> BONFIRE PARTIES           |
| <input checked="" type="checkbox"/> COMMUNITY CELEBRATIONS | <input type="checkbox"/> BICYCLE RIDING            |
| <input checked="" type="checkbox"/> FETES                  | <input checked="" type="checkbox"/> CAROL SINGING  |
| <input type="checkbox"/> OTHER (Please state)              |  |

24. Do you know who is the owner of the land?  
The Vale of Glamorgan Council - Yes

25. Do you know who is the occupier of the land?  
No occupiers

26. Has the owner or occupier seen you on the land?  
NA

|   |  |
|---|--|
| 27. What did he or she say?   | NA   |
| 28. Was permission ever sought by you for activities on the land?   | Never required   |
| 28a. If so, from whom and when.   | NA   |
| 29. Did anyone ever give you permission to go onto the land?  | NO   |
| 29a. If yes, when and the reason.   | NA   |
| 30. Have you ever been prevented from using the land?   | NO   |
| 30a. If yes, when and the reason.   | NA   |
| 31. Has any attempt ever been made by notice or fencing or by any other means to prevent or discourage the use being made of the land by the local inhabitants? | NO   |
| 31a. If yes, give examples and dates.   | NA   |
| 32. Do you have any photographs or any other evidence of use of the land by local inhabitants?  | Yes/No<br>only used for recreational sports & part time  |
| 33. Are you willing to lend them to us?   | Yes/No<br>photographs of recreational sports & part times provided by MYFRA - This is the only usage of the Green. |
| 34. If you have additional information please attach a separate statement.  | Yes/No<br>Supporting Statement from MYFRA provided   |

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|  |        |
|--|--------|
| 35. If you have knowledge of others who may be in a position to complete an evidence form, would you please write their names and addresses upon the reverse of this form.   | Yes/No |
| 36. I have carried on the activities referred to in this questionnaire for ... 8 ... years without anybody trying to stop me and I believe the activity should be treated by the law as having a lawful origin.                            |        |
| 37. <i>I understand that the evidence form I have completed in relation to this application may become public knowledge and I authorise the applicant to disclose this form to anyone reasonably requiring access to this application.</i> |        |
| 38. <i>I also understand that this evidence may be presented at a non-statutory inquiry and I authorise the applicant to use this form for that purpose.</i>   |        |

Signed S. Ell Date 15/4/2019

(Please return this form to the applicant not to the Open Spaces Society)

**NOTES FOR THE INTERVIEWER**

**THE GROUNDS FOR REGISTRATION OF A TOWN OR VILLAGE GREEN**

**Commons Act 2006 section 15, Registration of greens**

- (1) Any person may apply to the commons registration authority to register land to which the Part ie part 1 of the Commons Act 2006. registration 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 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 application.
- (3) This subsection applies where –
  - (a) a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years:
  - (b) they ceased to do so before the time of the application but after the commencement of this section: and
  - (c) the application is made within the period of two years beginning with the cessation referred to in paragraph (b).
- (4) This subsection applies (subject to subsection (5), where –
  - (a) a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years:
  - (b) they ceased to do so before the commencement of this section: and
  - (c) the application is made within the period of five years beginning with the cessation referred to in paragraph (b).



1 January 2013

Nicholas Hunt  
13 Maes y Ffynnon  
Banvilston  
CF5 6TT

---



**EVIDENCE QUESTIONNAIRE  
IN SUPPORT OF CLAIM FOR  
REGISTRATION AS A NEW GREEN**

**COMMONS ACT 2006**



11a Bar Street, Henley on Thames, RG9 1BA  
Email: [info@oss.org.uk](mailto:info@oss.org.uk) Website: [www.oss.org.uk](http://www.oss.org.uk)  
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Date 1.1.2013

**EVIDENCE QUESTIONNAIRE IN SUPPORT OF REGISTRATION AS  
A NEW GREEN**

|          |                              |                           |
|----------|------------------------------|---------------------------|
| NAME     | Nicholas Hunt                |                           |
| ADDRESS  | 13 MAES Y FFYNNON BONVILSDON |                           |
| POSTCODE | CFS 6TT                      | TELEPHONE NO 01446 781651 |

|     |   |   |
|-----|---|---|
| 1.  | Address when you used the land.<br>(The land in this form means 'the claimed land'.)  | Since moving to Bonvilston<br>in 2015                                       |
| 2.  | Address when you knew the land was used by the<br>local inhabitants.  | I've lived locally all my<br>life and was aware of<br>this green throughout |
| 3a. | Did you sign the reverse side of 'Map A' confirming it relates to this evidence<br>provided by you?<br>(Map A is the map showing the claimed land, and the claimed locality which uses the land,<br>which should accompany the form and which will subsequently accompany the application: see<br>Form 44 part 5 & 6 (and note 5 & 6).) | Yes/No<br><input checked="" type="radio"/> Yes                              |
| 3b. | Please confirm that you agree with the boundaries of the locality (or<br>neighbourhood within a locality) on 'Map A' edged in Red<br>(state the colour)   | Red<br>Yes  |
| 4.  | Please mark the location of your house on 'Map A' with an X   |   |
| 5.  | By what, if any, name is the land shown on 'Map A'<br>known?  | The Village Green   |
| 6.  | Has it ever to your knowledge been known by any<br>other name? If so, what name?  | No  |
| 7.  | For how many years have you known the land?   | From Birth to NOW   |
| 8.  | Between which years did you use it?   | From 2015 to now<br><br>Then from ..... to .....                            |

9. Do you consider yourself to be a local inhabitant in respect of the land?

Yes

10. During the time you have used the land, has the general pattern of use remained basically the same?

Yes

11. What recognisable facilities are available to the local inhabitants of your locality? *Please tick all boxes that apply and add any OTHER additional matters not covered.*

SCHOOL CATCHMENT AREA

LOCAL SCHOOL

RESIDENTS' ASSOCIATION

COMMUNITY CENTRE

LOCAL CHURCH OR PLACE OF WORSHIP

SPORTS FACILITY

LOCAL SHOPS

AREA POLICEMAN

DOCTOR'S SURGERY

COMMUNITY ACTIVITIES

NEIGHBOURHOOD WATCH

A CENTRAL FEATURE

SCOUT HUT

OTHER (Please state)

12. To your knowledge are there any public paths crossing the land?

NO

13. How do/did you gain access to the land?

The area is open

14. Why do you go on to this piece of land?

Recreation, play football with kids, events

15. How often do/did you use the land (apart from the public paths)?

Monthly as a minimum, more during the summer

16. What activities do/did you take part in?

Football, dog walking, fêtes, Hide + seek

17. Does your immediate family use the land?

Yes

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18. If so, what for?  
Same as above

19. Do you know of any community activities that take place or have taken place on the land?  
St David's day fete, bush planting

19a. Please list them and state when and for how long they have taken place.  
as above

20. Do you participate in any of them?  
Yes

21. Do any organisations use the land for sports or pastimes? If so please specify.  
No

22. Do any seasonal activities take place on the land?  
Yes

23. Please tick all the activities that you have seen taking place on the land.

- |  |  |
|--|--|
| <input checked="" type="checkbox"/> CHILDREN PLAYING       | <input checked="" type="checkbox"/> FOOTBALL       |
| <input type="checkbox"/> ROUNDERS                          | <input type="checkbox"/> CRICKET                   |
| <input type="checkbox"/> FISHING                           | <input type="checkbox"/> BIRD WATCHING             |
| <input checked="" type="checkbox"/> DRAWING AND PAINTING   | <input checked="" type="checkbox"/> PICNICKING     |
| <input checked="" type="checkbox"/> DOG WALKING            | <input type="checkbox"/> KITE FLYING               |
| <input checked="" type="checkbox"/> TEAM GAMES             | <input checked="" type="checkbox"/> PEOPLE WALKING |
| <input checked="" type="checkbox"/> PICKING BLACKBERRIES   | <input type="checkbox"/> BONFIRE PARTIES           |
| <input checked="" type="checkbox"/> COMMUNITY CELEBRATIONS | <input type="checkbox"/> BICYCLE RIDING            |
| <input checked="" type="checkbox"/> FETES                  | <input checked="" type="checkbox"/> CAROL SINGING  |
| <input type="checkbox"/> OTHER (Please state)              |  |

24. Do you know who is the owner of the land?  
Yes

25. Do you know who is the occupier of the land?  
No occupiers

26. Has the owner or occupier seen you on the land?  
No

|   |   |
|---|---|
| 27. What did he or she say?   | n/a                                     |
| 28. Was permission ever sought by you for activities on the land?   | Never required                          |
| 28a. If so, from whom and when.   | n/a                                     |
| 29. Did anyone ever give you permission to go onto the land?  | no                                      |
| 29a. If yes, when and the reason.   | n/a                                     |
| 30. Have you ever been prevented from using the land?   | no                                      |
| 30a. If yes, when and the reason.   | n/a                                     |
| 31. Has any attempt ever been made by notice or fencing or by any other means to prevent or discourage the use being made of the land by the local inhabitants? | no                                      |
| 31a. If yes, give examples and dates.   | n/a                                     |
| 32. Do you have any photographs or any other evidence of use of the land by local inhabitants?  | Yes <input checked="" type="radio"/> No |
| 33. Are you willing to lend them to us?   | Yes/No<br>n/a                           |
| 34. If you have additional information please attach a separate statement.  | Yes/No<br>n/a                           |

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|  |        |
|--|--------|
| 35. If you have knowledge of others who may be in a position to complete an evidence form, would you please write their names and addresses upon the reverse of this form.   | Yes/No |
| 36. I have carried on the activities referred to in this questionnaire for ...4... years without anybody trying to stop me and I believe the activity should be treated by the law as having a lawful origin.                              |        |
| 37. <i>I understand that the evidence form I have completed in relation to this application may become public knowledge and I authorise the applicant to disclose this form to anyone reasonably requiring access to this application.</i> |        |
| 38. <i>I also understand that this evidence may be presented at a non-statutory inquiry and I authorise the applicant to use this form for that purpose.</i>   |        |

Signed 

Date 12-04-19

(Please return this form to the applicant not to the Open Spaces Society)

## **NOTES FOR THE INTERVIEWER**

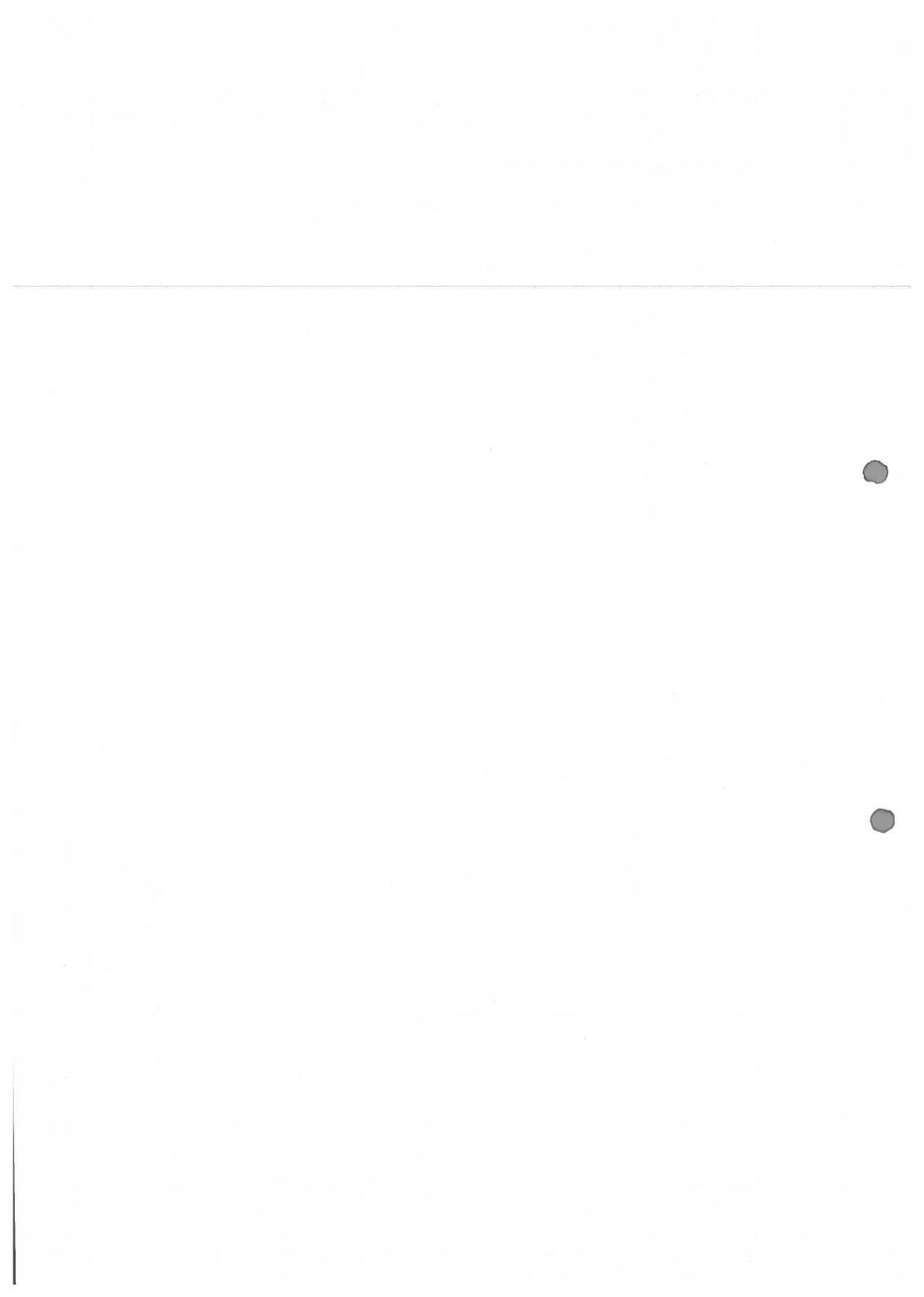
### **THE GROUNDS FOR REGISTRATION OF A TOWN OR VILLAGE GREEN**

#### **Commons Act 2006 section 15, Registration of greens**

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- (3) This subsection applies where –
  - (a) a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years;
  - (b) they ceased to do so before the time of the application but after the commencement of this section; and
  - (c) the application is made within the period of two years beginning with the cessation referred to in paragraph (b).
- (4) This subsection applies (subject to subsection (5), where –
  - (a) a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years;
  - (b) they ceased to do so before the commencement of this section; and
  - (c) the application is made within the period of five years beginning with the cessation referred to in paragraph (b).



1 January 2013



## **Supporting Statement for The Protection of The Village Green at Maes Y Ffynnon, Bonvilston**

This statement is evidence required for the submission of the application to protect the village Green in Maes Y Ffynnon, Bonvilston. To support this statement there are a number of 'witness statements', and photographs provided by residents of Maes Y Ffynnon and Village Farm in Bonvilston, many of which are supported by photographic evidence of activities, sports and pastimes and events that have taken part on the Village Green. **(Appendix 2 and Appendix 3).**

The earliest memories of the green have been provided by a number of residents who have resided in Maes Y Ffynnon since the beginning, when it was first developed. The first houses were built in 1948 in a post second world war Britain that was seeking to re-build communities destroyed through conflict. A number of our long-standing residents can site memories and recollections from the last 50 years, including, Cecil Mustow, Thelma Whiting and Kath Lougher. As time served residents they can reminisce about life and their experiences of using the village green at Maes Y Ffynnon, dating back to the 1950s. It is therefore not surprising that they passionately support the application to protect Bonvilston's Village Green space, located to the North end of Maes Y Ffynnon.

In 1948 the first houses were erected and following on from this, there were additional houses built in Maes Y Ffynnon from the late 1940s through until 1956, which make up properties number 1 - 24. Many of these are still occupied by the original residents, including properties 10, 14, 17, 19 and 20. It should be noted here that the design and quality of the architecture for these houses was recognised on many levels and they become award winning properties. The properties 1 – 24 include in their design two Village Greens, (one is located at the North end of Maes Y Ffynnon, the other at the front alongside properties 1 – 6). The Green at the North site extends from the end of number 24, around the hard stands, (that were previously the garages) and then runs directly in front of the houses 15 – 24 in Maes Y Ffynnon. **(Appendix 1.1, Land registry Title Plan, Green to the North of Maes Y Ffynnon outlined in red).**

The evidence that Bonvilston has 2 Village Greens is supported by the 1996 – 2011, Vale of Glamorgan Unitary Development Plan (UDP), which was adopted by the Vale of Glamorgan Local Authority and described Maes Y Ffynnon as, "a group of estate houses set around two "village greens". **(Appendix 1.2, P 17, 6.3.3).** This application applies to the Village Green located to the North end of Maes Y Ffynnon, as outlined in red on the attached map. The UDP report also clearly highlights the need for "The protection and enhancement of the two rural housing estates at Maes Y Ffynnon". **(Appendix 1.2, p17, 6.3.5).**

The design of the Maes Y Ffynnon houses allows the residents to enjoy the traditional principles of community life, integrated design, comprising of shared access to the properties, via communal paths and side passages. The Green space is integral to supporting community spirit and traditional family and village values. This has historically contributed to a better quality of family life and community togetherness. The houses and the Village Green were designed to complement each other and serve to support a lifestyle that promoted community activities, including recreational sports and pastimes.

It has always been evident from the 1950s, through the 1970s, 1980s, 1990s, 2000s, to the present that the Village Green has served to fulfil the principles of community living and function fully in line with its intended purpose. This Village Green has been used as an area for 'recreational lawful sports and pastimes, 'as of right' by the residents since the 1950s. It's inclusion in the overall design and layout of Maes Y Ffynnon, was for the sole purpose of providing a Village Green space for the local community to use. Over the decades the Local Authority have recognised this area as a Village Green

and protected it as such and aimed to preserve and protect the space, with preservation orders on many of existing trees.

From the beginnings of the Maes Y Ffynnon development, residents took full advantage of the Village Green space, which is evidenced in the Witness Statements from Cecil Mustow and Thelma Whiting, who have lived in their houses from when they were first built. Cec moved in to Maes Y Ffynnon in the 1950s and in his words 'the Green existed on day one'. Cecil Mustow can provide many stories about his son, Kelvin who was 5 when they moved to Maes Y Ffynnon, playing with Sheila Whiting on the Green from the year they first moved in. **(Appendix 2.1, Witness Statement / Appendix 3.1 Photograph)**

He along with other residents such as Thelma Whiting have witnessed decades of activities on the Green, some of which were annual events tying in with Bank Holidays, or Bonfire night and others that involved unique one-off celebrations, such as the Queen's 1977 Silver Jubilee. **(Appendix 2.2, Witness Statement)**. During the 1960s the Green was used to hold annual Carnivals on the August Bank Holiday not just for the residents of Maes Y Ffynnon, but for all of the Bonvilston villagers to attend. By this time the Green was 'in full swing' and functioning as the centre of the community, with events and Carnivals being held on the May Day and August Bank Holidays as well. **(Appendix 2.2 Witness Statement / Appendix 3.2 Photograph)**.

During the 1970s there was one of the most significant changes to the village of Bonvilston in its history. In 1976 building started on the houses at Village Farm, which were being constructed on the area known as the 'sports field'. Historically this site had been a space for playing local club football, cricket and hosting Pony Gymkhanas for the residents of Bonvilston and neighbouring village of St Nicholas. There was also a building which is now long gone, on the 'sports field', that was known as The Pavillion. The loss of this green space known as the 'sports field' and site of so much activity, meant that the focus for outdoor community activities centred around the Village Green to the North end of Maes Y Ffynnon, that flanks the garages on both sides. **(Appendix 2.1, Witness Statement)**. This became the primary green space as it was that was safe for to children to play and large enough for adults to socialise with each other and Fetes and other activities be held. The development, which involved such a significant loss of green space, was able to go ahead because there was the Village Green space in Maes Y Ffynnon. This Village Green was considered a sufficient and appropriate space to serve the residents of Village Farm as well, as Maes y Ffynnon. The fact that it offered the scope for social activity, was also an important factor with the loss of the Pavillion. A bench was donated by John Ferry following sale of his 'sports field' for the Village Green, when the houses were built in Village Farm, (this was in recognition of the Village Green space at the North of Maes Y Ffynnon having the capacity to serve the community of Bonvilston with a place for recreational sports and pastimes, as so much land space was lost due to the housing development). The evidence provided supporting this application includes and describes testimonials and pictures of the bench being used by the residents of Bonvilston. **(Appendix 2.1 and 2.2, Witness Statements / Appendix 3.3 Photographs)**.

Village Farm was built during the 1970s and 1980s and was completed in 1985. This saw an influx of families moving into Bonvilston and an increase in the number of children who played on the Village Green and also attended the community events. The new Village Farm Estate also attracted families with younger children, as it was in the catchment area of Cowbridge school and Bonvilston children could attend St Nicholas Primary School. Another significant contributing factor for the increase of the usage of the Village Green, from the late 1960s, into the 1970s and through to the 1980s, was that a number of the residents that first moved in had young families, so Maes Y Ffynnon had a growing population of small children and young people living there. There was Lynne and Gareth Morgan, Andrew and Linda Morgan, David and Christine Lougher to name a few of the children that played

daily on the Village Green. All of these children, who are now adults either still reside in the village of Bonvilston or return regularly to visit their parents and relatives. Their continued connection with Maes Y Ffynnon, has allowed them to share their memories of daily playing on the Village Green with ball games, cricket and climbing trees. The children would also build dens and practice sports for the school teams that they represented. **(Appendix 2.3, Witness Statement).**

As well as the daily play there was always something to look forward to that would take place on the Village Green. Every year for decades, residents built a bonfire for Guy Fawkes night, they also in October gathered in their Halloween costumes before parading around the village. The annual Bonfire was at the North end of the Village Green to the left of where the garages and hard stands are situated. **(Appendix 2.1, 2.2 ,2.3 Witness Statements).** The residents also held Fetes and celebrations throughout the 1970s and 1980s, including a party on the Green to celebrate the Queens Jubilee. The attendees for this event were between 80 and 100 and the residents all congregated on the Village Green for the Royal celebrations. The photographic evidence provided from 1977, clearly shows the residents celebrating in style and fancy dress on The Green. The area to the right of the garages backing onto number 24, has stalls and stands with festive bunting residents wearing their Red, White and Blue. **(Appendix 2.1, 2.2, 2.3, Witness Statements / Appendix 3.4, 3.5 Photograph).**

It was during the 1970s that the Council decided to plant the Sycamore Trees that are now mature and an integral part of supporting the wildlife, that is in abundance on the Green. A significant number of these have existing Preservation Orders applied to their conservation. Residents both in the past and present enjoy the birdlife which can be observed, including an abundance of Woodpeckers, finches and tits to name a few. The trees also serve to support the local Bat and Owl (both Tawny and Little) populations that can be seen and heard on a daily basis, further adding to the Greens charm. **(Appendix 2.1, 2.5, Witness Statements).** Spurred on and inspired by the planting of the trees, the residents decided to further enhance the area and began planting bulbs and shrubs on the Village Green. Many of these daffodils can still be seen today around the bottom of the trees and around the bench at the front of the Green.

In 1978, 1982 and then later in 1990s the big freezes descended, and residents had weeks of snow, with the schools closed, public transport at a standstill and also regular power cuts. The residents of Maes Y Ffynnon, during all of these decades pulled together to clear the roads and the children in Bonvilston took full advantage of their time off school, by building snowmen and having snow ball fights on the Green, sledging down the slope at the front of the Green to the road and walking along the top of the hedges which separates the Village Green from the lane. There are Witness Statements and photographs provided from the 1990s of Rhys and Jordan Ivory sledging and building igloos on the Green. **(Appendix 2.1 Witness Statement / Appendix 3.6, 3.7, 3.8, 3.9, 3.10, 3.11, 3.12, 3.13, 3.14, 3.15, 3.16 Photographs).**

From the early days of the Green and throughout the 1980s to 2019, it has been a favourite spot for dog owners to let their pets chase a ball and stretch their paws. Eve Morgan, Lynne Morgan, Chris and Alex Brown and Thelma Whiting who are all animal lovers have exercised their dogs on the Green for many years. In the 1980s Eve had her first dog, which was called Tegwen, a picture of her has been provided holding Teg on the Village Green. She walked Teg daily on the Village Green and on weekends her daughter joined them with her dog, Non and they threw balls at the front, around the garages on both sides, up to and behind number 24. Eve also walked her last dog Lucy on the Village Green and this continued until 2011 and residents and family can recall seeing her out there throwing the ball and chatting with her neighbours. Her dog walking on the Green spanned over four decades and can be remembered by residents of all ages. **(Appendix 2.2, 2.3,2.5,2.6,2.7, Witness Statements / Appendix 3.17, 3.18, Photographs).**

During the 1980s, other special activities that took place on the Village Green, notoriously a rock music concert with a temporary stage, amplifiers and a local band. Gareth Morgan, from number 20 had now progressed from playing children's games such as, 'rat a tat ginger' to leading and playing bass in his newly formed band. In 1981/1982 following weeks of practice Gareth on bass and his band, with fashionably long hair and 'cut off denim' played their first public gig on the Village Green at Maes Y Ffynnon for the residents of Bonvilston to enjoy. This was attended by those living in both Maes y Ffynnon and Village Farm and as his Sister recalls the neighbours were very patient and supportive of pre-concert practicing leading up to the 'gig'. Lynne, Gareth's Sister witness statement describes this perfectly. **(Appendix 2.3, 2.4, Witness Statements).**

During the 1990s a new generation of children started to play on the Village Green. Rosemary Fisher, who moved to Maes Y Ffynnon in 1993, with her husband Paul, did so to give her children a village life upbringing. She recalls their three children playing on the Green and how it also offered a social point for her to meet the other residents. This allowed her to become friendly with many people living in Maes Y Ffynnon and she felt comforted that they would keep an eye on the children playing on the Village Green. Rosemary has provided a witness statement that describes her children, playing ball games, riding their bikes and playing football. Her sons played with other children from number 23 and 24 Maes Y Ffynnon and number 26 Village Farm, as well as other children in Bonvilston. Both Rosemary and her Daughter Alice have provided evidence of how she played with Zach and Georgia Usher in number 24 Village Farm building dens and making up games. Her three children played sports and used the Green recreationally as teenagers as well, so this spanned across two decades and up until 2010. **(Appendix 2.10, 2.11).**

Leigh and Tracy Ivory's children Rhys and Jordan (Number 23 Maes Y Ffynnon, who are referred to by Rosemary), played football and games on the Village Green after school and on the weekend. They learned to ride their bikes on the Village Green and Leigh has fantastic video footage of this from 1997. **(Appendix 3.36, DVD containing Video Footage).** Tracy has described how her children not only played traditional games but also 'slip and slide' and even camped out on the Village Green creating their own adventures, as both children and teenagers. They continued to play on the Village Green for many years, Rhys has early memories of learning to ride his bike, as well as playing with his Brother and Sister and children from Village Farm. He recalls playing, football and cricket on the Village Green after breakfast and also his favourite game which was Mob. Throughout their teenage years they continued to use the Village Green to play football and to also camp out with their friends, making them very popular boys. They played on the Village Green for over two decades up until 2010. These days Rhys can be seen playing football with his Nephews on the Village Green, especially on Sundays and school holidays while his Mum, who is a now Granny is cooking roast dinner for the whole family. The family place great importance on this generation having the same experience that Rhys and his siblings had and this generation of children cannot wait to come to Maes Y Ffynnon to play, as they do not have a Village Green of their own. **(Appendix 2.5, 2.8, 2.9, Witness Statements / Appendix 3.19, Photographs)**

When Rhys is not there to play football with his Nephews they can be seen playing together and with Oliver Hunt who lives in number 13. Oliver is 11 and enjoys the freedom of being able to go out to play with his neighbours and his parents, Nick and Ceri Hunt have piece of mind knowing that he is safe and can be observed by the other residents, including relatives Sian and Steve Clarke, at number 21 and Leigh and Tracy Ivory at number 23. Oliver regularly brings his friends to play on the Village Green and like so many children today they love the freedom and space they have to run around with a football or climbing trees, as the community where they live, does not have a Village Green. In the summer Oliver also used to play with his three Cousins who come and stay with their Aunt and Uncle

at number 21 and we have watched them inventing new games and planning adventures around the Village Green and trees. Over the last couple of years Oliver's little Brother Tommy has also started to join in with playing on the Village Green, practicing his football skills with Mum, Dad and his Brother, whilst throwing the ball for Max their Springer Spaniel. (Appendix 2.9, 2.12,2.7. Appendix 3.25, 3.26, 3.27, 3.28, Photographs).

Dog walking has been a common and ongoing theme for the usage of the Village Green and this still continues today with Alex and Chris Brown from number 24, training Lyra their rescue dog on the Village Green, with photos provided to illustrate this. Other photographs of residents with their dogs on the Green, have also been provided, including Ceri Hunt with her Spaniel Max and Steve Clarke with Ebony a black Labrador. Residents from the flats and houses 1 – 14 and Village Farm, are also regularly seen walking their dogs on the Green. Buddy and Noodles who are very regular visitors to stay at number 23 Maes Y Ffynnon, can be seen running around on the Village Green, sniffing out the local cats, before visiting Cec in number 17 for a rest and discipline. (Appendix 2.5, 2.6, 2.7, 2.13 / Witness Statements, Appendix 4, Questionnaire / Appendix 3.27, 3.28,3.29 3.30, Photographs)

The Maes Y Ffynnon, Village Green, has not only served for children to play but offered recreational and social opportunities for the adult community. There are photographs of residents mixing with their neighbours and fellow villagers on the Village Green. (Appendix 3.20, 3.21, 3.22, 3.23, 3.24, Photographs). For over sixty years it has been the place for villagers to engage in, lawful sports and pastimes. It continues to host special events on notable occasions, such as St David's Day celebrations, with Welsh Cake competitions, fancy dress and children's games. On 2<sup>nd</sup> March 2019, the local residents of Maes Y Ffynnon and Village Farm gathered together to celebrate St David's Day and had refreshments and cakes on the Village Green. There were games for the children, such as 'hide and leek' along with drawing activities and football being played. There were also some fellow villagers from St Nicholas and The Downs in attendance, such as Anne Walklate and Therese Hunt who came to enjoy the celebrations. It was also great to see some of the original Maes Y Ffynnon residents there enjoying tea and cake, including Cec and Thelma, (mentioned above). This is evidenced in the photographs provided to support this statement. (Appendix 2.7, Witness Statement. Appendix 3.20, 3.21, 3.22, 3.23, 3.24, 3.25,3.28, 3.31, 3.32, 3.33,3.34,3.35,3.37, Photographs).

It is clear from the narrative above reflecting residents experience and the supporting evidence, of witness statements, photographs and official documentation, that there has been a continued use of the Village Green by generations of residents, many of which are part of the same family. It has served as a multi-functional and multi-generational green space that has united the community for decades. When the houses were built its inclusion in the design of the Maes Y Ffynnon development was for the sole purpose of being a Village Green to serve the community. It has clearly fulfilled and exceeded its intended purpose. It has been used and referred to since the 1950s, as 'The Village Green' providing a place to host a diverse range of activities, over many years. The Village Green at Maes Y Ffynnon also as already mentioned hosts a wealth of wildlife, including Newts, Bats, Owls and Snakes that further add to its charm and qualities. This provides constant opportunities for many of the residents, to nature watch.

The original residents describe the Village Green as being there from 'day one', as part of Maes Y Ffynnon. It clearly was not added at a later date because it was never meant to be added, as it was an integral original feature, tying together the overall development to serve a village community. (Appendix 2.1, Witness Statement). It has always been called the Village Green by residents and as previously noted, is referred to as such in a range of documents, most notable the UDP of 1996 -2011, where Maes Y Ffynnon is described as, "a group of estate houses set around two village greens.' (Appendix 1.2). The council has encouraged over the years its status as a Village Green and protected

it from any change of use, development or building and has recognised the need for it to be kept as an area for children's play, dog walking and a central space for socialising. This space has been used as a village Green 'as of right', since the 1950s and this continues today in 2019.

The above statement reflects the usage of the Green, since the 1950s and tells a story of how it has served to support the community and generations of families to enjoy the benefits of village life. In this application we wish for this story and history to be accounted for in line with our original statement, which was submitted to Cardiff Council in May 2019. As residents of Bonvilston we do however want to extend and elaborate on our story of the Village Green since March 2020. When COVID-19 hit the United Kingdom and we entered a national lockdown, the impact of this hit every community in Britain very hard. Bonvilston was just one village amongst many in Wales to find themselves under these restrictions and although initial thoughts were that this would be for a few weeks, that was short lived and ultimately it lasted longer than anyone could have anticipated. When we finally came out of the restrictions, any dream of normality disappeared as we very quickly entered local lockdowns and then a 'fire breaker', with further similar restrictions on the horizon as we approach the New Year.

Since March 2020 the Village Green has been at the heart of the community and served as a central place for families to frequent daily to use the swing, sit on the bench and watch the children play. I should note that all social distancing requirements have been adhered to, throughout this time. As activities are limited and walking has become a major pastime for many over the last year, saw families all over Bonvilston heading for the golf course via the Village Green, so that they could push their children on the tyre swing and watch them play and enjoy outdoor activities. I should note that permission was not sought nor granted for the erections of the swing or the benches made from old tree trunks and stumps.

Sian Clarke of 21 Maes Y Ffynnon, has been a home worker since March 2020 and has her office located in the spare bedroom, that overlooks the Village Green. Throughout the Spring, Summer and Autumn months she has observed a daily flow of families getting their daily fresh air and exercise on the Village Green, whilst the children play on the swing. She has seen watched her Niece play on the swing and Tommy and Oliver playing football and hide and seek at every opportunity. This space was of utmost importance to the local children when their school was closed and in an era, when children are so often focused on gaming, phones and tick tock, it was so refreshing to see them making up new games and playing outside, in the fresh air and enjoying simple traditional activities, like kicking a ball.

For most of this time the Village Green has not been maintained by the Council and the grass and surrounding verges, was cut by Tracy and Leigh Ivory, Chris Brown and Cecil Mustow. In fact, the land to the right of the hard stands where the garages used to be, has been left untouched by the Council since the end of 2019.

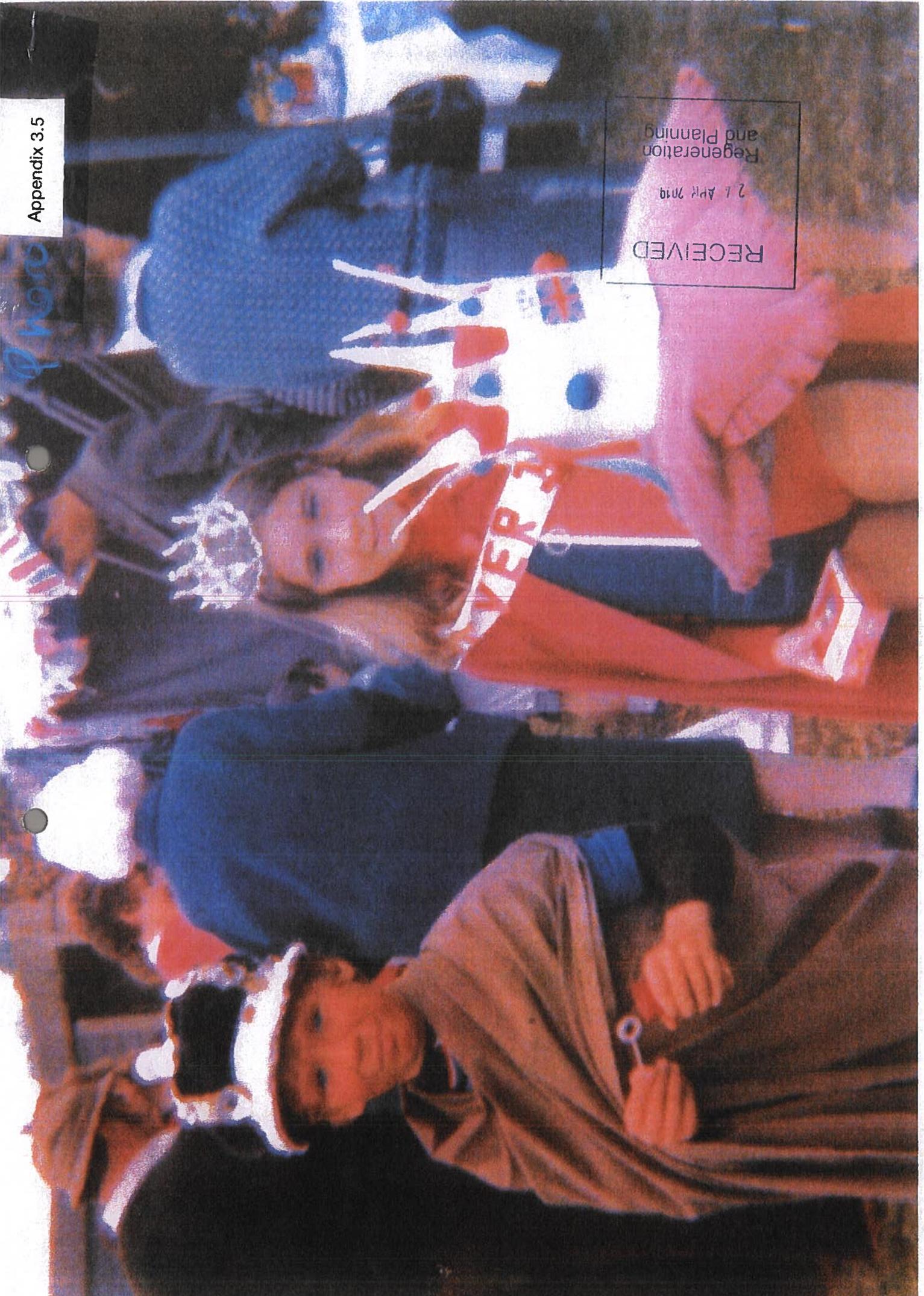
Since the mid-1950s there has never any restrictions imposed on the Village Green, in terms of its usage. It has not had any signage put up preventing ball games, play, community functions or dog walking. On the contrary, it has always been encouraged by the respective local authority, currently this is the Vale of Glamorgan Council, to be utilised for social activities and this was previously endorsed by Cardiff Rural District Council, when Maes Y Ffynnon was designed.

At no point has the Village Green ever been fenced off or any area been subject to the erection of a barrier preventing access to any part of the open space. This extends from the front where the bench is, to the north end where the garages once stood and the area of grass that backs onto number 24. All areas of this Village Green have been used by children, teenagers, adults, pet owners and the village

at large for over excess of twenty years and this practice continues today. This usage continues and has increased during the Covid-19 pandemic and no permission has been requested or granted to use the Village Green for 'recreational lawful sports and pastimes and we have done so, 'as of right' during this period and the timescales detailed within this statement.

The village Green in Maes Y Ffynnon Bonvilston was designed along the same principles of supporting the need for social housing of the 1950s, as also apparent in the developments of Pendoylan, St Nicholas, Duffryn Close and Button Ride, and Peterston of the same time. All of these villages are supported by the same design and community inclusion principles as Maes y Ffynnon, Bonvilston and have recognised Village Green spaces.

The witness statements and evidence of current Village Green usage included to support this application represent the majority of the 'occupied' properties in the Maes Y Ffynnon estates. This application is also supported by residents of Village Farm and the St Nicholas and Bonvilston Community Council.



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Appendix 3.5

Photo

1977 Silver Jubilee - celebrations

Photo



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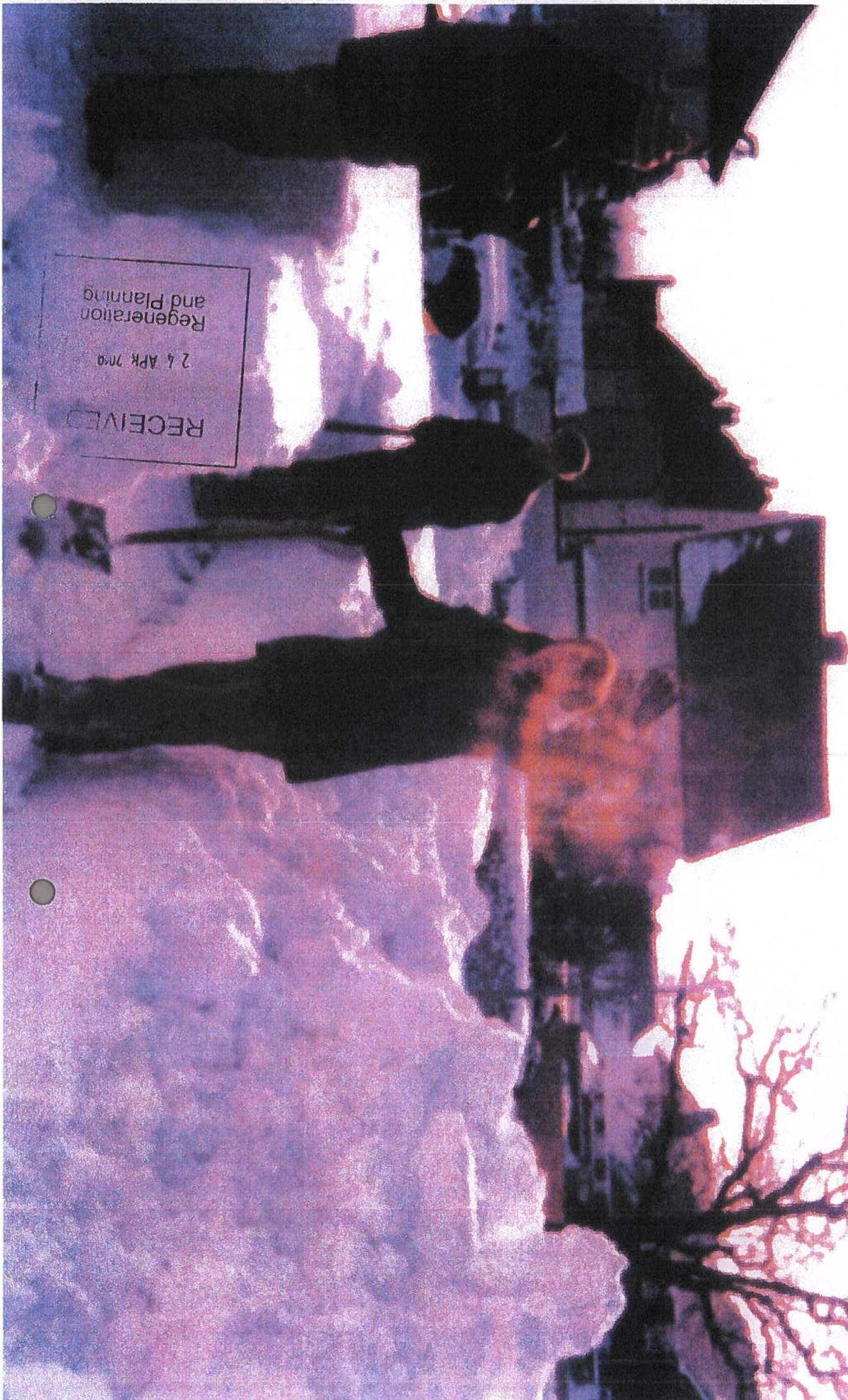
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1977 - Silver Jubilee Celebrations

# Photo 4

Appendix 3.6



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Big Freeze 1980s



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Photo 5

Appendix 3.7

Big Freeze 1980s

PHOTO V

Appendix 3.8

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Big Weeze 1980s

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Big Freeze 1980s

Appendix 3.10

Photo



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Big freeze 1980s

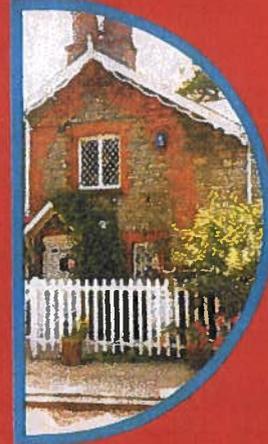
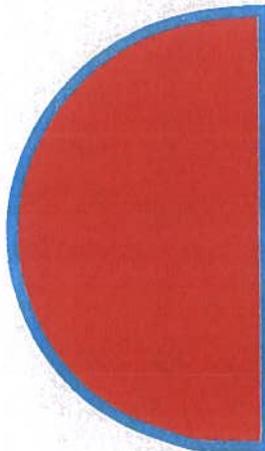
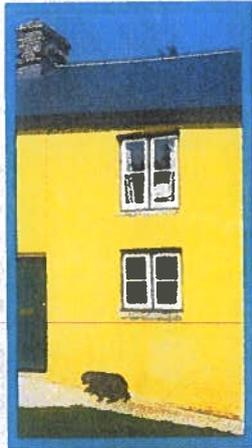
## *Supplementary Planning Guidance*

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*The Vale of Glamorgan  
Adopted Unitary Development Plan  
1996 - 2011*





*The Vale of Glamorgan UDP  
Supplementary Planning Guidance*

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# ***CONSERVATION AREAS IN THE RURAL VALE***



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The Vale of Glamorgan Council. © 2006

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# **CONSERVATION AREAS IN THE RURAL VALE**

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# **CONSERVATION AREAS IN THE RURAL VALE**

## **1. INTRODUCTION**

### **1.1 Background**

1.1.1 Unitary Development Plans Wales (2001) indicates that Supplementary Planning Guidance may be prepared to provide additional information for the Unitary Development Plan (UDP). It must be issued separately and be made publicly available.

### **1.2 Status of the Guidance**

1.2.1 This Guidance was approved for Development Control purposes by the Council on 6th January 1999, (Council minute no. 995 6/1/99 refers). This document has subsequently been updated in light of Planning Policy Wales (2002). This Guidance will be used as a material consideration in determining planning applications and appeals.

### **1.3 The Scope of the Guidance**

1.3.1 The Unitary Development Plan sets out policies for the protection of the built and historic environment, and a number of policies within the document relate to conservation areas. This guidance note explains how the policies can guide the way we protect and co-ordinate development within Conservation Areas in the rural vale. The guidance relates to villages designated as conservation areas, and these are set out in part VI of this report. Many of the policies could equally relate to villages not covered by the designation, and for this reason, the guidance seeks to promote an understanding of the special character of all villages in the Vale of Glamorgan which can guide enhancement proposals in a variety of situations and locations.

1.3.2 The Guidance has been prepared to assist in the preparation and assessment of development proposals. This is a planning term which does not simply relate to new buildings or houses. It covers

alterations and extensions to buildings, highway or engineering proposals or changes to the use of a property or piece of land. All these developments can affect the character of a Conservation Area. The guidance sets out policy to guide development which requires planning permission, as well as guidance on how the wider character of each Conservation Area may be maintained.

1.3.3 Conservation Areas recognise the special character of an area, and provide for the protection and enhancement of groups of buildings, as well as their setting. This special character can be formed by a number of features. Trees and spaces, paved and hard surfaced areas, groups of buildings and their historic development, can all influence the character of the Conservation Area. This guidance seeks to identify common building themes and the landscape qualities that can be found within villages in the rural vale, and to reflect and complement a local vernacular in the presentation of policies. The Guidance follows advice in Welsh Office Circular 61/96 relating to 'Planning and the Historic Environment: Historic Buildings and Conservation Areas', (as amended by Circular 1/98) and Technical Advice Note (Wales) on Design. Both encourage Local Planning Authorities to prepare guidance based on a clear understanding of the character of an area.

1.3.4 Following this introduction, the guidance, is set out in three parts: the first, sets out policies for the protection of the village Conservation Areas, the second, sets out a set of 'tests' and 'design principles', which can be used to appraise development proposals. The third, sets out guidance on how to protect and maintain the features which contribute to the character of the Conservation Area. The policies are followed by an inventory of the village Conservation Areas to which the policies will apply. Each Conservation Area is described in brief and opportunities for enhancement are identified.

## 2. THE UDP POLICY CONTEXT

2.1 The guidance should be read in conjunction with policies set out in the "Built Environment" Section of the UDP, and in particular, Policy ENV20 which relates to development within conservation areas, and Policy ENV27, which relates to the design of new developments.

2.2 The guidance and the inventory of Conservation Areas which follows are the first steps towards the preparation of appraisals required by Section 71 of the Planning (Listed Buildings and Conservation Areas) Act 1990. This places a duty on the Local Planning Authority to 'formulate and publish proposals for the preservation and enhancement of any parts of their area which are Conservation Areas'. Appraisals have been prepared for a number of Conservation Areas in the Vale of Glamorgan, and others will be prepared and adopted as part of a continuing programme of review.

## 3. THE SUPPLEMENTARY PLANNING GUIDANCE

### 3.1 The Background

3.1.1 The Vale of Glamorgan covers undulating countryside between the river Ely in the east and the Ogmore river in the west. Inland, the underlying limestone is fractured by shallow escarpments, and at the coast it forms dramatic cliffs. Further west the cliffs descend to the sand dunes beyond Ogmore. It is on this landscape that successive layers of settlement and culture have left their mark, giving the Vale its special character.

3.1.2 The geology of the area has not only determined its farming and settlement pattern, it has also determined the way houses have been constructed. The Vale is one of the few areas in Wales which once had ample supplies of good workable building stone and freestone. As a result, the area still displays modest houses with decorative stone work, and every village is framed and defined by boundary walls made of local stone. Timber is rarely used as a structural building material and is confined to ceilings and roofs. Thatching was once common in the Vale but slate has largely replaced this indigenous roof covering. With this change, there have also been structural changes to building form,

ridge and roof profiles. The variety of roof pitch and varied sky lines that result, all contribute to the character of villages in the Vale of Glamorgan.

3.1.3 Although rural house building is typically dispersed within farm holdings, the Vale is marked by nucleated villages, often possessing a Great House and church around which smaller cottages are set. This form derives from the manorial structure of the early communities of the Vale, again demonstrating the importance of the cultural history of the Vale in shaping the character of the villages.

3.1.4 Five periods of house building can be identified within the Vale villages. These are:

- *The pre-industrial buildings set around the Church and farm holdings which often form the nucleus of many Vale villages.*
- *Houses built during the Industrial Revolution. During this period, improved transport and the introduction of new materials lead to changes in traditional building patterns.*
- *Estate houses built for the agricultural community prior to 1915.*
- *Houses built by the former Rural District Councils and interwar housing estates. These were often developed in clusters on the edge of villages and still reflect many of the decorative qualities of the Arts and Crafts movement.*
- *Owner occupied contemporary housing set within single plots and possessing many different styles and materials.*

Each type of housing will benefit from the application and use of the guidance and policies set out next.

### 3.2 The Policies

3.2.1 The natural and man made elements described above combine to create the distinctive character of the Conservation Area in:

- *The landscape setting of each village.*
- *The shape of each settlement.*
- *The nature and form of the buildings themselves.*

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**3.2.2** The policies set out below seek to identify the features which contribute in a positive way towards the character of each Conservation Area. Because the policies have been prepared for all the Conservation Areas in the rural Vale, they cannot be prescriptive, but seek to promote an appraisal of site and context in the preparation and execution of development proposals.

### **3.3 The Historic Development of the Village**

**3.3.1** Most villages in the Vale have grown and evolved over time, and what can be seen today is often very different from the shape, form and purpose of the original settlement. There are many village forms in the Vale: some are clustered around Church and large farm holdings, or are placed at the junction of a number of routes. Others are linear and spread out along a road or coaching route. The way houses are placed, and the hierarchy of building patterns which emerge, often reflect the past social and economic structure of the community and determine the character of the village. The following policies seeks to recognise the cultural associations that the history of a village can provide.

**IN PROPOSALS FOR NEW DEVELOPMENT, FEATURES WHICH DISPLAY AND RECALL THE EARLY HISTORY OF THE VILLAGE WILL BE PROTECTED.**

**NEW DEVELOPMENT WILL RESPECT ITS HISTORIC CONTEXT IN SCALE, FORM MATERIALS AND DESIGN.**

### **3.4 The Landscape Setting of the Conservation Area**

**3.4.1** The earliest and most fundamental influence on the development of the village is the landscape. The shape of the land, the shelter provided, and the geology and drainage of the area all play a part in the form of villages in the Vale of Glamorgan. Although these factors are no longer a major influence in their form, they all contribute to the character of the village and evoke a strong association with the natural landscape. The qualities the landscape of the village provides can be found in:

- *The pattern of woods and fields which surround the village.*

- *The way trees, hedges and grass verges frame and shelter building groups.*
- *The way buildings are set over hillsides and along ridgelines, and within valleys.*

**3.4.2** The sensitive use of a site's natural contours can play a major part in helping to tie development into the landscape of the village. Similarly, the appropriate use of tree planting, hedges, screen planting and earth mounding can play a significant part in creating shelter, and in framing and softening the introduction of new building forms into the village.

**3.4.3** Trees within Conservation Areas are protected by Conservation Area legislation. Similarly, others are the subject of Tree Preservation Orders which recognise the value of individual, or groups of trees in the local environment.

**PROPOSALS WILL PROVIDE FOR THE CARE, MAINTENANCE AND ENHANCEMENT OF TREES AND WOODLAND AREAS WITHIN CONSERVATION AREAS.**

**DEVELOPMENT WILL GIVE HIGH PRIORITY TO LANDSCAPE DESIGN, TO PROTECT AND ENHANCE THE EXTERNAL VIEW OF THE VILLAGE.**

**WHERE A VILLAGE CONSERVATION AREA INCLUDES LANDSCAPES AND GARDENS OF HISTORIC OR ARCHAEOLOGICAL SIGNIFICANCE, THEY WILL BE PROTECTED AND WHERE APPROPRIATE SHOULD BE ENHANCED.**

### **3.5 Roads, Streets and Pathways in and around the Village**

**3.5.1** Villages in the Vale of Glamorgan reflect the former use of horse drawn vehicles within the area, and the importance of footpath links within the community and into countryside beyond. Now, few of the villages find it easy to accommodate motor vehicles, and traffic and parked vehicles often have an adverse effect on the visual and physical quality of the village Conservation Areas. One of the challenges of new development is to respond to the traditional road pattern and the restricted road widths that remain. New development and plans for parking and improved access need to satisfy highway standards for safety, but at the same time respond and respect the scale and intimacy which has evolved from the early road and building patterns. A flexible

approach to highway design that achieves safety through design is promoted:

**WHERE HIGHWAY IMPROVEMENTS ARE REQUIRED, THEY SHOULD RESPECT THE CHARACTER OF THE CONSERVATION AREA.**

**PARKING AND ACCESS REQUIRED BY NEW DEVELOPMENT SHOULD BE ACCOMMODATED WITHIN DEVELOPMENTS, AND RESPECT EXISTING ROAD LAYOUTS AND THE CHARACTER OF OPEN SPACE AND GARDEN ENCLOSURES.**

**IMPORTANT FOOTPATH LINKS SHOULD BE PROTECTED AND ENHANCED THROUGH MANAGEMENT AND IMPROVED SIGNAGE.**

**IN REPLACEMENT AND REPAIR, ORIGINAL LOCAL DETAIL IN THE HIGHWAY SHOULD BE RETAINED AND REPAIRED. WHERE DUE TO COST AND PRACTICALITY, DETAIL CANNOT BE REINSTATED REPLACEMENT SHOULD BE UNDERTAKEN USING SYMPATHETIC MATERIALS AND FITTINGS.**

### **3.6 Landmarks, Views and Vistas**

**3.6.1** The pattern of the landscape and the way a village has grown often determines the way the entrance to a village is perceived, as well as the way in which views in and out of the village and between building groups are achieved and enjoyed. The approaching view of a village can often show a settlement contained by trees, with post war housing development stretching beyond the nucleus of the village into open countryside. Elsewhere village forms can dominate the skyline and the village will appear as a straggle of houses and farm buildings along a road. The variety and quality of views in and out of a village is often determined by the distinctive features and landmarks provided by dominant buildings within. They can be formed by features such as a church tower, the dominant Great House of a village and its boundary gates and walls, or by the remains of a castle, ruin, or old farm buildings. These features are important and should be acknowledged and enhanced to ensure that new development does not mask or damage their quality as local landmarks.

**SIGNIFICANT VIEWS INTO AND OUT OF THE VILLAGE CONSERVATION AREA SHOULD BE PROTECTED**

**AND ENHANCED WHERE OPPORTUNITIES ARISE. DISTINCTIVE ROOF PATTERNS, RIDGELINES, AND LANDMARK BUILDINGS OR FEATURES WILL BE PROTECTED AND ENHANCED WHERE OPPORTUNITIES ARISE.**

### **3.7 Materials**

**3.7.1** The Vale of Glamorgan possesses many villages which still display the popularity of local natural building materials in their early development. The local limestone still predominates, and reflects local sources and skills as well. Near the coast, Blue Lias limestone is common, but to the north, carboniferous limestone is a traditional building stone, and pink sandstones are also used. Where the stone is of poor quality, it is often protected by limewashed renders. Slate roofs, or imitation slates now dominate the villages, though some thatching still remains. Brick is a recent building material in the Vale of Glamorgan, and appears in its earliest form in brick surrounds framing doors, window openings and as chimney stacks. Contemporary buildings across the Vale use a number of modern materials and show a wide diversity in style, colour and texture. However smooth white renders tend to be the most popular finish. This can be seen in the estate houses of the '50 and '60's building period, and in the commuter housing developments which have taken place within villages during the last thirty years.

**3.7.2** The way materials are used and the detailing of elevations also have a profound effect on the character of buildings in the villages of the Vale of Glamorgan. The resulting scale, form and character of building is often more significant than the use of traditional building materials. The following policy seeks to establish a clear understanding of scale, form and execution of detail in the design of new housing and development.

**MATERIALS MUST BE APPROPRIATE TO THE LOCALITY AND SYMPATHETIC TO THE EXISTING BUILDINGS IN THE CONSERVATION AREA.**

### **3.8 Boundaries and Enclosures**

**3.8.1** Local materials are seen to their best advantage within field and plot boundaries, where hedges and walls reflect the early farming patterns and practices. Boundary walls are especially important in the Vale of Glamorgan and their character can be

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determined by the size of the building stone, its coursing and method of pointing. The local Blue Lias limestone, laid to course or in random rubble, with a flush lime based mortar is a common feature of buildings and boundary walls in the Vale of Glamorgan. Often they are interrupted or surmounted by railings, particularly where 19th Century development on the edge of the village has brought new materials and building forms to the fringe of the earlier pre-industrial street pattern.

**3.8.2** There is often an attractive partnership of hedge with stone walling within the villages. This sort of boundary is common in the Vale and requires careful maintenance and protection using traditional repair and management techniques and the continuation of common hedgerow species.

**STONE BOUNDARY WALLS, HEDGES AND RAILINGS WHICH ENHANCE THE CHARACTER OF THE CONSERVATION AREA SHOULD BE RETAINED, MAINTAINED AND REPAIRED. WHERE NECESSARY, NEW DEVELOPMENT SHOULD SEEK TO FOLLOW THESE TRADITIONAL BOUNDARY FEATURES.**

### **3.9 Buildings and Spaces in the Village**

**3.9.1** The arrangement of buildings and open spaces within villages is often the key to their distinctive character. Their form should always be assessed early on in planning for new development and change in a village. New development should provide for both physical and communicating links with the existing village pattern. To achieve this, development should build on the existing network of open space within a village, and recognise the important links that they provide between shops, and homes and community facilities.

**3.9.2** Open areas also play an aesthetic part in forming the character of the village. They can improve access into the surrounding countryside, frame vistas and provide important woodland backdrops to informal or straggling building groups.

**THE DEVELOPMENT OF OPEN OR WOODLAND AREAS THAT CONTRIBUTE TO THE CHARACTER OF THE CONSERVATION AREA WILL BE OPPOSED.**

**NEW DEVELOPMENT WILL HAVE REGARD TO ITS LANDSCAPE SETTING AND RESPECT BOUNDARIES**

**AND ANY ESTABLISHED PATTERN OF PLOT COVERAGE IN THE VILLAGE.**

### **3.10 Village Boundaries**

**3.10.1** To many, the impression formed on arrival into the village forms a lasting one. The approaching views and entry into the village are influenced by boundaries, hedges and plot sizes. Often these are formed by back gardens, farm yard buildings or garages, where temporary, or insubstantial boundary treatments are used and tolerated. Hedges are often depleted, and well defined boundaries are lost as a result. There is often a tendency to replace indigenous hedge and shrub species with fast growing coniferous screens. Their heavy appearance cannot be compared with the delicate, and muted colours and shape achieved by the local species such as thorn, privet, field maple and spindle. The following policy seeks to protect existing boundaries and guide proposals to consolidate or replace them.

**TO ENHANCE THE VIEW OF THE VILLAGE FROM WITHOUT, NEW DEVELOPMENT WILL GIVE A HIGH PRIORITY TO THE TREATMENT OF BOUNDARIES AND SETTLEMENT EDGES.**

### **3.11 The Management of Development, Change and Repair**

**3.11.1** The way in which development is directed and planned often influences the way it looks, as well as the appearance of the wider area. The restrictive approach to new development within villages of the rural Vale can lead to pressure to maximize the development opportunities of many sites, leading to development which is out of scale, and the loss of the character this guidance note has sought to identify. The following policies encourage an early appraisal of village form and set out a framework for the assessment of development proposals alongside a contextual assessment of the area within which they will take place.

**THE LAYOUT AND DESIGN OF NEW DEVELOPMENT SHOULD ACKNOWLEDGE THE CONTEXT PROVIDED BY THE VILLAGE. TO DEMONSTRATE HOW THIS HAS BEEN ACHIEVED, DEVELOPERS SHOULD ALSO PROVIDE THREE DIMENSIONAL PLANS OR DRAWINGS TO SHOW HOW NEW DEVELOPMENT WILL RESPECT ITS SETTINGS.**

WHERE A PROPOSAL FOR THE DEMOLITION OF A BUILDING WITHIN A CONSERVATION AREA IS TO BE FOLLOWED BY THE REDEVELOPMENT OF A SITE, CONSERVATION AREA CONSENT WILL ONLY BE GRANTED WHERE FULL PLANNING PERMISSION HAS BEEN PREVIOUSLY OR CONCURRENTLY GIVEN FOR THE REPLACEMENT BUILDING.

PROPOSALS FOR THE DEMOLITION OF A BUILDING SHOULD BE ACCOMPANIED BY THE APPROPRIATE RE-USE OF LOCAL INDIGENOUS MATERIALS WHICH REFLECT THE CHARACTER OF THE AREA.

## 4. A METHOD FOR ACHIEVING THE POLICIES SET OUT ABOVE.

### 4.1 Introduction

4.1.1 This section provides detailed guidance on how UDP policies can be achieved. The check list of design criteria set out below aims to enhance the character of the Conservation Area. The check list promotes a contextual approach to development which is flexible and does not discourage innovative contemporary design. The check list also sets out criteria which can be used to achieve the objectives behind Policy Env 18 of the Unitary Development Plan. It will serve as a basis for the assessment of planning applications within the Conservation Areas set out in Part VI

### 4.2 Design Principles

The following principles should be taken into account:

**Context of the site:** Take account of the wider setting of the site.

**Recycle old buildings:** When considering a site, the sensitive conversion of existing buildings should be a priority.

**Preserve and enhance the character of the Conservation Area:** Reflect the character of surrounding buildings and open spaces, but avoid mimicking architectural styles and creating pastiche buildings that undermine the character of the Conservation Area.

**Materials and details:** Use high quality, durable materials. These should complement surrounding buildings and landscape and pay attention to detailing as an integral part of the design.

**Sustainability:** Create buildings and open spaces which are adaptable, minimising the need for change in the village.

**Scale:** Design and orientate new development so that it reflects the scale and layout of the village.

### 4.3 A Sensitive Development Test.

To see whether these principles have been met, consider the following:

i) *Are there original, traditional buildings that should be used or restored within the site?*

To minimize disruption to the character of the Conservation Area, priority should be placed on re-using existing buildings.

ii) *Does the development fit into the fabric of the locality; the plots, building groups, roads and open spaces?*

These components form the basis of the Conservation Area, and reveal the historical development of the site and its setting.

iii) *Does the development reflect the scale of building in the Conservation Area?*

The development and its various parts should sit easily within the Conservation Area.

iv) *Do the materials used in the development reflect those which are prevalent in the Conservation Area?*

The range of traditional or natural building materials in the Vale of Glamorgan rural Conservation Areas is diverse. New development should use natural materials, or those which can complement their simple and organic qualities. The use of foreign stone should be avoided. This check list should be used to guide the submission of a planning application within the Conservation Areas set out within Part VI. The Local Planning Authority will require an applicant to provide information that can show how new development can relate to its site and setting. This could comprise before and after photos,

or context sketches showing the surrounding area and buildings and should demonstrate how the guidance has been acknowledged and followed.

## REFERENCES.

The guidance has been prepared with the benefit of advice and information from the following documents:

**Planning and the Historic Environment:  
Historic Buildings and Conservation Areas.** Welsh  
Office Circular 61/96 HMSO

**Planning Policy Wales  
Technical Advice Notes (Wales) 12: Design**  
NAW 2002

**Inventory of Ancient Monuments in Glamorgan**  
RCAHM (Wales) HMSO

**Cardiff and The Valleys**  
Hilling J.B. 1973.  
Lund Humphries Publishers Ltd.

**Houses of the Welsh Countryside**  
Smith P. RCAHM 1975 HMSO

**The Buildings of Wales: Glamorgan**  
Newman J. 1995 Penguin Books

**Ideal Homes for Rural Wales**  
A Research Study for the Countryside Council for  
Wales.

**Village Design : Making Local Character Count in  
New Development**  
The Countryside Commission 1996

**The County Treasures Survey.**  
Prepared by the former South Glamorgan County  
Council.

## 5. GUIDANCE ON REPAIR AND ALTERATION

### 5.1 Introduction

5.1.1 This section provides advice on how to protect the Conservation Area by the repair and enhancement of some of the original and historic features which form an area's special character.

### 5.2 Alterations and Extensions to Buildings in a Conservation Area

5.2.1 The character which justifies the designation of a conservation area can easily be damaged by the cumulative impact of minor alterations to buildings forming the historic core of many of the Vale's village conservation areas. This can include the replacement of windows, doors and roofing materials or the addition of domestic extensions.

5.2.2 The following notes set out some simple advice on how to approach the repair of old buildings in the village. A planning officer can advise on the need for planning permission. Where consent is required, it is advisable to discuss proposals with a planning officer before the submission of an application. Work which alters a Listed Building will usually require Listed



*The St. Hilary Conservation Area.  
Many buildings show materials and decorations which  
are typical of the local building tradition.*

Building Consent. Again it is advisable to seek advice before preparing plans or undertaking work.

**5.2.3** In all work, the key to a successful repair is to understand and respond to the local building tradition.

**Windows**

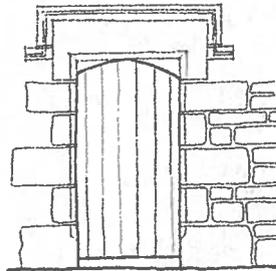
**5.2.4** It is often the simple arrangement of door and window openings in the building face which account for their quality. The replacement of an original set of windows in a house or cottage can often damage the look of a house, or the overall effect of a terrace or group of houses. Where repairs are undertaken, original window patterns should be followed and modern materials avoided.

**5.2.5** In replacement, multi divided and asymmetrical frames should be avoided, so should modern materials such as UPVC, or stained hardwoods, if they cannot reflect the simple qualities described above.

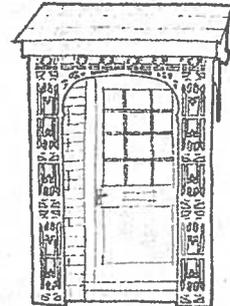
**5.2.6** It is often possible to have original windows overhauled, rather than replaced. If a window does need to be replaced, there are local joiners who can make a replica. Grant aid may be available through the Vale's Historic Building Grant Programme. A planning officer can advise you on how to approach repair and the feasibility of grant aid.

**Doors**

**5.2.7** Simple timber panelled doors with a limited area of glazing remain appropriate for most houses in villages within the Vale of Glamorgan. Doors which mimic materials from different periods should be avoided as should modern materials such as UPVC.

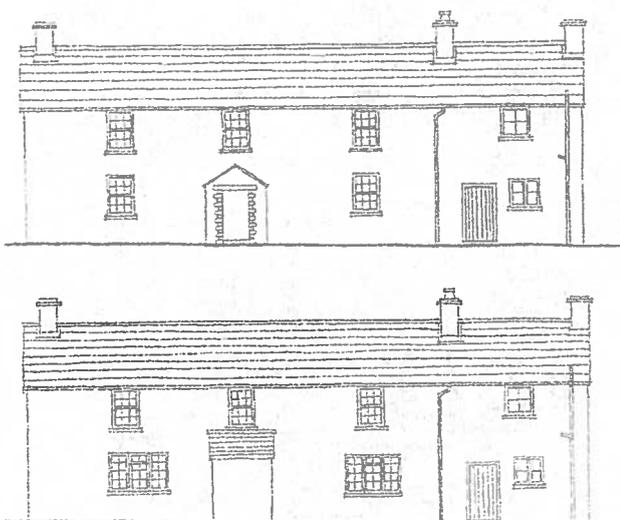


*An early door surround with stone drip mould*

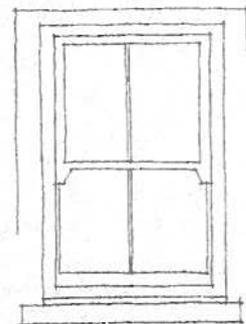
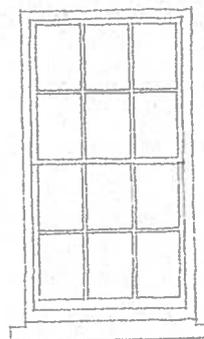


*Decorative porches are a common feature of 19th century village houses*

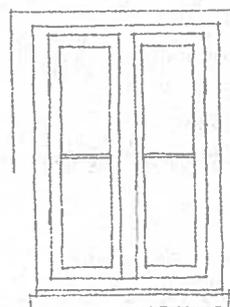
**5.2.8** The same principles apply to garage or garden gates or doors. Each should reflect the proportions and simple architectural details used on the main building. Horizontal boarding and panelling should be avoided.



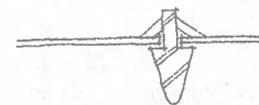
*The removal and replacement of original windows can upset the balance of a house*



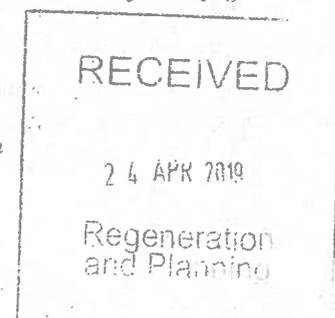
*Victorian windows continue the vertical emphasis of the Georgian window openings*



*This is a traditional design often used in cottages*

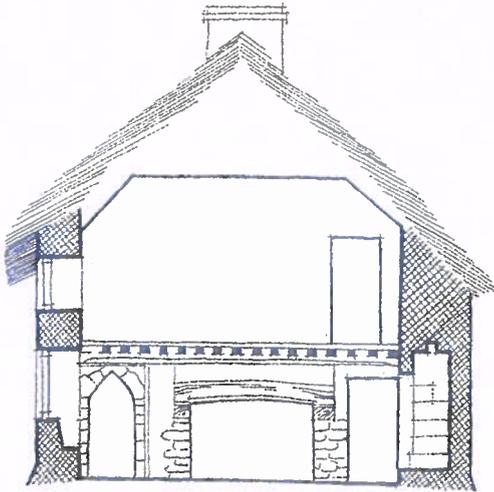


*Fine glazing bars can reflect daylight*

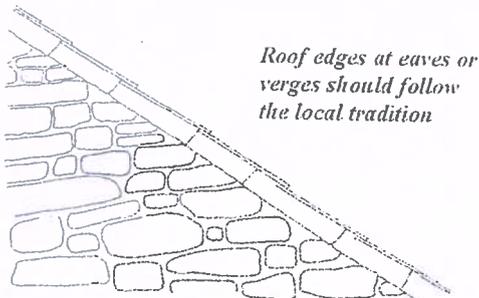


## Roofs

**5.2.9** Thatch was once a common roof covering in the Vale, but is now largely replaced with slate. Where thatch does remain, it should be protected and maintained by craftsmen with skills in handling the appropriate material. Within the Vale this could be either reed or long wheat straw. It is important that historic thatching, original details and supporting roof structure are retained in the repair and renewal of roofs.



*The Bush Inn, St. Hilary. This section shows a thatch roof together with important internal features*



*Roof edges at eaves or verges should follow the local tradition*

**5.2.10** Natural Welsh slate is now the most common roofing finish and in many cases was used to replace thatching to older buildings in the late 19th century. On listed buildings, it is required that natural slate laid to the same detail is used as a replacement finish in any repair. It is recommended that contractors with experience in laying natural slate are employed.

**5.2.11** On unlisted buildings in conservation areas, natural slate can often be a viable alternative to imitation slate. The latter can alter the appearance of an historic building in subtle but damaging ways.

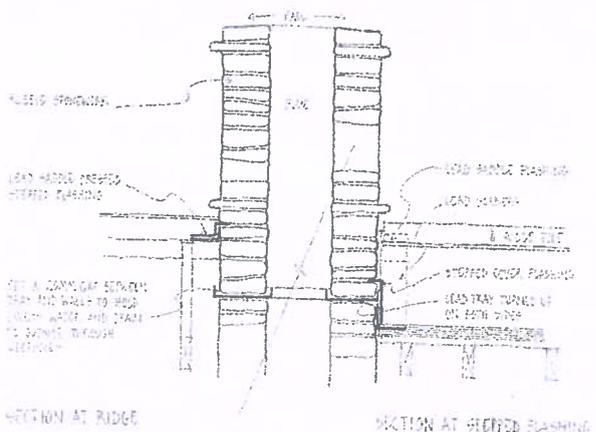
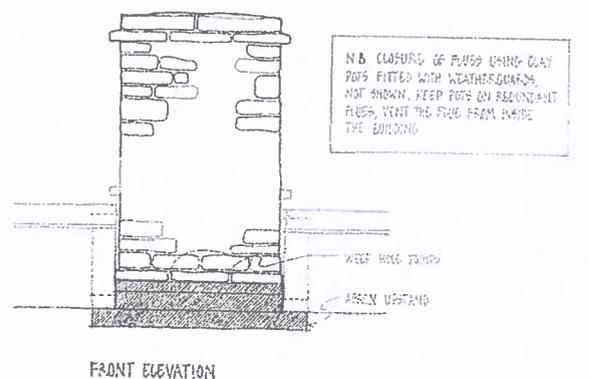
However, some artificial slates are manufactured with rougher edges and minor surface texturing. These may act as an acceptable visual alternative.

**5.2.12** Pennant stone slates are exhibited on the more important larger domestic buildings as well as on farm buildings. It is an increasingly rare local detail which should be retained and repaired whenever possible. Stone slate is always laid in diminishing courses from eaves to ridge.

**5.2.13** When roofs are replaced, traditional details should be recorded and replaced in the same way. Roof edges (at eaves or verges) should follow the local tradition. Often roof slates will overhang the gable end of the wall, with vertical slates set under to protect the end rafter. Timber bargeboards and fascias should follow the original size and profile as should the materials and design of replacement rain water goods.

## Chimneys

**5.2.14** Stone chimneys in old houses are an important part of the architecture and often provide clues to the age of a house. In the Vale of Glamorgan, there are many open hearths in houses constructed from the 16th Century onwards, whose



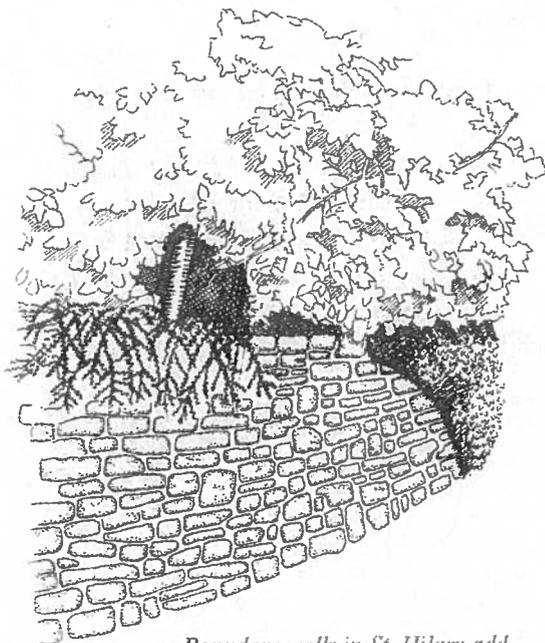
large chimneys are often fine examples of local stonework. In repair, such stonework often simply requires repointing. The method and mortar mix should always match the original finish. When a chimney does need to be rebuilt, it should be recorded by drawings and photographs and rebuilt in replica, reusing any sound old materials for the external face. Even when a flue is redundant, clay pots should be retained.

### Stonework/ Wall Finishes

**5.2.15** Local limestone is the traditional building material in the rural Vale. Its mellow cream and grey tones are found on boundary walls, farms and domestic buildings in most villages and give each a close affinity with their landscaped setting.

**5.2.16** The stone is often roughly squared, laid in random rubble courses and was normally finished with a protective limewash. The size, colour and shape of stone varies according to local source, and the age and importance of the building it forms.

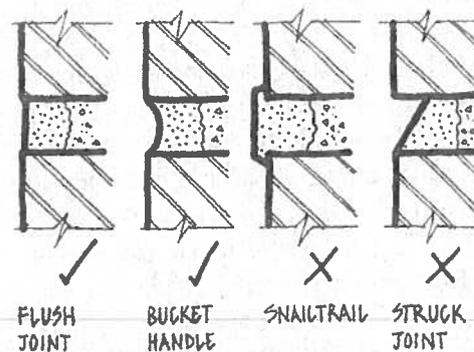
**5.2.17** The local stone is rarely used for dressings in and around windows/doors. In the best architecture of the 16th and 17th century, local Sutton and Quarella sandstones are used in dressings. From the 19th century, bathstone and local brickwork was used for this purpose.



*Boundary walls in St. Hilary add to the character of the village*

It is important that historic stonework is correctly repaired and replaced. It is essential that existing stone is repointed in a manner which is appropriate to the original building method. The use of lime putty based mortars is recommended, as the introduction of dense, cement based mixes will cause problems of moisture retention in traditional stone walling.

**5.2.18** The actual repointing technique is also important. On original stone work, repointing may be recessed, or lie flush with the stone, and this pattern should be followed for new work. "Snailtrail" repointing, or repointing that stands proud of the stone should be avoided.



*Repointing on old buildings*

**5.2.19** A white limewash applied regularly to stone walling is a traditional method of maintaining and protecting local stone.

**5.2.20** Attention should be paid to stone work patterns used on extensions. Random rubble limestone walling is frequently used on original buildings in the village. New stone work should be laid in similar patterns, with free stone or brick dressings set around doors and windows where appropriate. A painted smooth lime based render is an alternative.

### Walls and Enclosures

**5.2.21** Boundary walls should be regarded as an extension of the building they protect. They define ownership, provide privacy and protection from wind and rain. Most importantly, walls define space. New walls should seek to fulfil the same objectives. Natural stone walls define the character of each village and should be repaired and retained where possible. Grant aid may be available for repair which can show

traditional repair techniques following the local vernacular. Black painted iron railings on a stone base are common in the Vale and can be replaced using profiles and designs easily manufactured by local smithies.

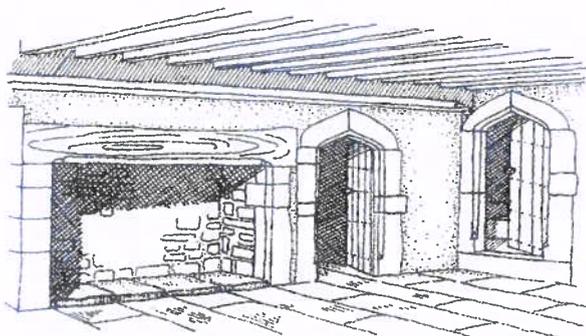


*Gate and pillar.  
Great House, Llanmaes*

**5.2.22** Artificial stone or concrete screen walling is alien to the area and should be avoided, as should chain link, timber or brick panelled fencing sections.

### **Internal Details**

**5.2.23** Older buildings often possess interesting details within. These should be left in place wherever possible. An original fireplace, a panelled door, an attractive ceiling or stair can all add to the character of a building. In the case of listed buildings, internal features (e.g. timberwork, historic plasterwork, doors, fireplaces etc.) are protected by law and consent is necessary for their alteration or removal.



*Original internal features of listed buildings are protected*

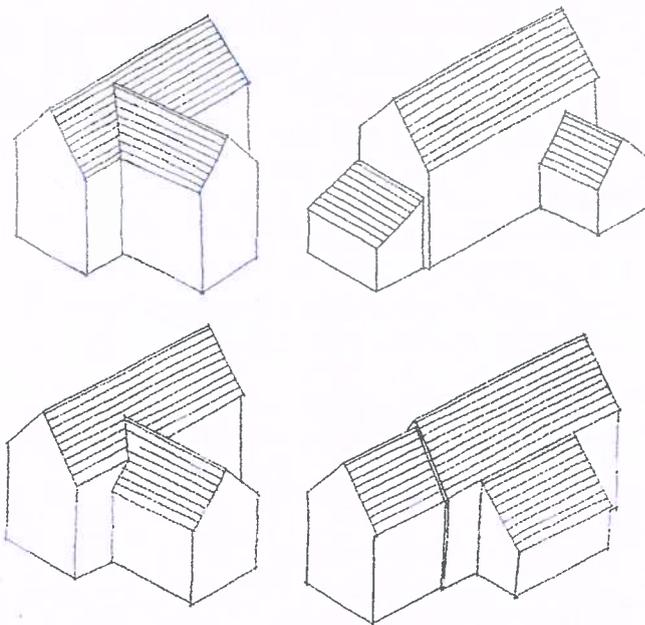
### **Extensions To Existing Buildings**

**5.2.24** The key to good design is to understand and respond to the characteristics of the local building tradition. The older the house, the more important it is to retain its character and long standing relationship with adjoining buildings.

**5.2.25** The main elements of roof, wall and windows should combine in such a way that the architectural balance of the original building is protected. In the rural Vale, many farm houses and village groups use a simple composition where doors and window

openings are closely related. This should be protected by acknowledging the symmetry already in place, for example by setting back the building line of an extension, or by dropping its ridge line to below that of the original house. The height and shape of this roof line is important and is often determined by the original roof characteristics.

**5.2.26** In acknowledging this simple building hierarchy, new development can add to and enhance the complex building form and skylines created by traditional village groupings.



*The scale and design of an extension should always be subordinate in scale to the main house, as these examples show*

### **Where To Get More Advice Or Information**

**5.2.27** If you are considering extending or altering your building it is advisable to contact the planning department at an early stage. A Development Control Officer will be available to give advice and information on the need for planning permission. More detailed advice is also available on the repair of buildings.

## 6. VILLAGE CONSERVATION AREAS: AN INVENTORY

### 6.1 Introduction

6.1.1 This inventory sets out a brief description of Conservation Areas for which the policies apply, and aspects of character or appearance which define each area's special interest. The buildings identified do not constitute a definitive list of those which contribute to the character of a Conservation Area, but seek to identify buildings which for historic or architectural reasons, make a positive contribution. The inventory covers the following Conservation Areas: Aberthin, Boverton, Bonvilston, Broughton, Colwinston, Drope, East Aberthaw, Flemingston, Gileston, Llanbethery, Llancadle, Llancarfan, Llandow, Llangan, Llanmaes, Llanmihangel, Llantrithyd, Llysworney, Michaelston Le Pit, Monkash, Pendoylan, Penmark, Peterston Super Ely, Porthkerry, St. Brides Major, St. George, St. Hilary, St. Nicholas.

### 6.2 Aberthin

#### Description

6.2.1 The Aberthin Conservation Area is set around the valley of the Nant Aberthin to the east of the A4222.

6.2.2 The conservation area has two distinct and different parts: the cluster of houses set around the pubs and village hall at the main road junction; and the quiet backwater of cottages and houses which line the brook as it runs below Stalling Down.

6.2.3 The village is of historic interest and is presumed to be the site of Villa Fratus, an important religious house referred to in the early local record: The Book of Llandaff.

6.2.4 More recently, the village developed as an early centre of non-conformity. One of the first Methodist Chapels in the county was built in 1749 for the Aberthin Society. The present village hall in Penylan Road is the chapel which replaced it in 1780.

6.2.5 The Great House occupies the site of an earlier building but now stands as an important 17th Century house set within walled gardens and

entered by a gatehouse on its southern boundary. The house and contemporary gatehouse retain their original features and provide a fine example of domestic building of the period. The symmetrical front elevation of the house has square headed mullion windows at two main floors and in three large gabled dormers.

6.2.6 The enclosing garden wall aligns with the gatehouse, a rectangular two storey building of rendered stone with dressed stone openings. This attractive group together with the buttressed brook and roadside verges give this part of the conservation area its special character, and continues to the west in the setting it provides Aberthin House, The Sweetings and Sunnybridge.

#### Landscape and Trees

6.2.7 The stream and the wayside verges on Llanquain Road determine the special character of the Conservation Area. This road nestles below Stalling Down; and is framed by trees and mature hedges on its southern side.

6.2.8 Beyond, the character of the village becomes more urban as contemporary housing along the A4222 dominates the earlier wayside inns and cottages.

#### Listed Buildings

- |   |     |
|---|-----|
| • The Great House   | II* |
| • Gatehouse and Bridge to Great House                           | II  |
| • The Sweetings   | II  |
| • The Telephone Call Box outside the Farmers' Arms Public House | II  |

#### Other Buildings of Note

- Aberthin Cottage
- Aberthin House
- Sunnyside
- The Village Hall

#### Key Issues

- The care and management of wayside verges and boundary walls which define and enhance the character of the conservation area.

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- The care and management of trees and hedges which define the eastern course of the Aberthin Brook and the gardens which enclose the historic building group.
- The protection of the attractive open watercourse and its stone retaining walls and bridges.
- The consideration of development proposals with the benefit of Supplementary Planning Guidance relating to villages in the rural Vale.

### 6.3 Bonvilston

#### *Description*

6.3.1 Bonvilston Village lies on the A48 and comprises a loose knit, but continuous line of houses, buildings and boundary walls set along the A48. The Conservation Area includes land and buildings between Sheepscoote Cottage in the east to Ty Groes Farm in the west, and extends northwards to include part of an extensive estate of detached houses built during the 1970s.

6.3.2 The origins of the village are ancient; the remains of two Roman settlements lie to the north and west, and its name is derived from the family of Simone de Bonville whose manorial possession dated from the 12th Century the family name. The village's name and Welsh title Tresimwn is derived from the family name.

6.3.3 The centre of the village lies at its western end in a group comprising church, Ty Mawr and Manor Cottage. From there, the road descends past stone retaining walls into open countryside and a straggle of houses ending at Ty Groes Farmhouse. At the eastern end lies another building group; this time having an informal and rural character. It includes Maes-y-Fynon, a group of estate houses set around two "village greens" and runs east to include Court Farm, Sheeps Court Farm and cottages and their respective yards; paddocks and outbuildings.

#### *Landscape and Trees*

6.3.4 The village is framed and enriched by the presence of substantial trees and woodland groups set within gardens and around the church yard. The Old Estate buildings which remain deep within the Bonvilston estate are also partnered by tall Scott

pinetrees, highlighting the early history of Bonvilston House and the importance of the village in the rural hinterland.

6.3.5 Because of its linear form, the conservation area retains a number of fields bounded by hedges and retaining walls. These have been reflected successfully within boundary walls fronting contemporary housing which has replaced a petrol filling station opposite The Red Lion.

#### *Listed Buildings*

- Bonvilston Cottage (II)
- Church of St. Mary (II)
- The Churchyard Cross at The Church of St. Mary (II)
- The Village Farm House (II)
- Great House (II)

#### *Other Buildings of Note*

- Church Cottage
- The Lodge
- Sheepscoote Farm and Cottages
- Sheepscoote Cottage
- The Red Lion Public House
- Red Lion Cottages
- Gate piers and remnants of stables, Village Farm Estate.

#### *Key Issues*

- The maintenance and consolidation of stone boundary walls which line the A48.
- The protection and enhancement of the two rural housing estates at Maes-y-Fynon.
- The mitigation of the effects of fast moving traffic along the A48.
- The maintenance and enhancement of tree groups which frame the Church at the centre of the village.
- The consideration of development proposals with the benefit of Supplementary Planning Guidance relating to villages in the rural Vale.

## 6.4 Boverton

### *Description*

**6.4.1** Despite lying on the western boundaries of Llantwit Major, Boverton still retains its character as a quiet rural backwater. The Conservation Area extends from the shopping precinct on Boverton Road to the outer limits of Boverton Place Farm yard and the B4265 in the east. This generous boundary permits the enclosure of the nucleus of the rural village and the outlying remnants of the historic Boverton Place. This complex comprises the ruined mansion farm buildings and historic boundary walls. The conversion of farm buildings within the grounds has led to a change in the character and function of the group, as well as the enfolding landscape, as gardens, garages and drives have replaced the paddocks and yards which once supported each farm.

**6.4.2** The importance of Boverton Road as an eastern access to the larger town of Llantwit Major has shifted and realigned the centre of the village to the contemporary shops which lie at the junction of Boverton Road at Old Tyle House. The boundary walls which surround Boverton House reinforce the identity of the village, directing fast moving traffic away from the lane along which cottages, farms and outbuildings are set.

**6.4.3** Boverton House and Orchard Farm are both substantial buildings set within wooded grounds. Boverton House is a fine three storey rendered and stuccoed house dating from the late 16th Century. It is set back from the road behind stone walls with a fine central gateway with cast iron railings.

### *Landscape and Trees*

**6.4.4** The village is set on level ground which forms the coastal plain of the Vale of Glamorgan. The landscape is domestic in scale and formed by trees and gardens around each farm complex. To the east, the lane is bounded by thorn hedgerows.

**6.4.5** The River Hodnant passes to the west of the village, meandering around a rough flood plain towards the road and bridge at Boverton Road. The eastern end of the village is marked by a stone gate tower and wall which bounds the copse surrounding Orchard Farm.

### *Listed Buildings*

- Door and walls of gardens to the west of Boverton House (II)
- No. 4 and "Navron", The Causeway (II)
- Nos. 1 and 2 Boverton Court Farm (II)
- Boverton House (II)
- Boverton Place (II)
- Boverton Place farmhouse (II)
- Tyle House (II)

### *Other Buildings of Note*

- The tower and walls adjoining Orchard House

### *Key Issues*

- The enhancement of the shopping precinct at Boverton Road where opportunities arise.
- Provision for the repair and protection of buildings of historic and archaeological interest.
- The investigation of opportunities for the improved interpretation of historic buildings.
- To maintenance and protection of stone boundary walls which define and enhance the village street.
- The consideration of development proposals with the benefit of Supplementary Planning Guidance relating to villages in the rural Vale.

## 6.5 Broughton

### *Description*

**6.5.1** The village of Broughton lies between Wick and Monknash, 3 miles west of Llantwit Major. The major part of the village has grown on the western side of the Lane which runs from the ancient well at Nash Brook in the south to a small green at the outer limits of Wick. The village has a distinctive building pattern derived from dwellings with gables set at right angles to the road. The houses, though dating from different periods, are spaced along the road at regular intervals and occupy generous plots.

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**6.5.2** More recent development to the north has disrupted the rhythm established by the gables and roadside hedge or wall. Here some houses front the road, and there is some reduction in plot size.

**6.5.3** At the northern end of the settlement; four farms are grouped around a small roadside "green".

**6.5.4** The buildings are predominantly of stone, in many cases rendered and colour washed with slate covered roofs. The stone garden walls with high sheltering hedge banks on the opposite side of the lane add to the character of the village.

#### *Landscape and Trees*

**6.5.5** The conservation area is set on the windswept coastal plain and is framed on either side by fields and hedges.

**6.5.6** The lane which defines the linear form of the village is set deep within high sheltering hedge banks; and stone boundary walls.

**6.5.7** In the north, West House and surrounding farms enjoy the protection of mature trees which enclose the northern nucleus of the village.

#### *Listed Buildings*

- Brooks Farm and outbuildings (II)

#### *Other Buildings of Note*

- Box Cottage
- West House
- Little West Farm
- The Old Shop
- The Former Carpenters Arms
- Plas Newydd
- Le Chateau
- West House Cottage

#### *Key Issues*

- The care and management of wayside verges and boundary walls which define and enhance the linear form of the conservation area.

- The recognition and affirmation of the distinctive alignment of buildings to the road.
- The consideration of development proposals with the benefit of Supplementary Planning Guidance relating to villages in the rural Vale.

## **6.6 Colwinston**

### *Description*

**6.6.1** Colwinston comprises a conservation area of approximately 100 dwellings. Some two thirds of these are of recent construction; 17 buildings may be identified as dating pre-1990.

**6.6.2** The village exhibits a strong pattern of east-west alignment. Rural lanes converge around Saint Michaels and All Angels Church (in the west) and Colwinston House (in the east). Between these two areas, modern infill housing has substantially added to an earlier settlement pattern based upon farms, such as Village Farm, Church Farm and the Sages. Other, earlier building types are exemplified by Church, Chapel and Parsonage.

**6.6.3** Older buildings within the village exhibit a more informal relationship and frontage with the road. Stone walling encloses front gardens, and provide enclosure. Modern housing layout and road alignment has damaged the earlier character of the conservation area, and the extent of change is so great that few opportunities now exist to complete the modern pattern of infill.

### *Landscape and Trees*

**6.6.4** The village is prominently located within the wider landscape and is visible at a distance from the south, south-west and south-east. From within the village, good views of the surrounding countryside are available between buildings, particularly southwards towards the channel coast.

**6.6.5** The interaction of local stone walling and treescape is most apparent in the east, around Colwinston House. In the west, the Church is located within a local valley. It forms an important site contained within stone walls. The effect of enclosure through walling, sunken lanes and treescape is of particular value in the village environment.

### Listed Buildings

- Church of Saint Michaels and All Angels B
- The Old Parsonage II
- The Sages II
- Village House II

### Other Buildings of Note

- Colwinston House
- Colwinston House (garage)
- The Ramblers
- P.O. Box outside the "Ramblers"
- Village House
- Yewtree House
- Yewtree Cottage
- Chapel Cottage
- Seion Chapel
- Forge Cottage
- Village Farm
- Lower House Farm
- Church Farm
- School House
- Former Village School
- Pen Lan
- Church Cottage
- Church Cross and Stone Altar, Saint Michaels Church
- Ty Maen Farm

### Key Issues

- The maintenance of the local environmental framework provided by local stone boundary walls to front gardens and on road frontages.
- To progress the local enhancement in the area of Saint Michaels Church.
- The consideration of development proposals with the benefit of Supplementary Planning Guidance relating to villages in the rural Vale.

## 6.7 Drope

### Description

6.7.1 Drope is a hamlet comprising a farm and small group of houses set adjacent to the lane which runs from Michaelston-Super-Ely to St. Georges. The largest building in the hamlet is the Rectory, an early Victorian building sited within a group of mature trees on the south side of the lane. Opposite lies Drope Farm, a substantial three storey farmhouse adjoining a courtyard of stone buildings. Planning permission has been granted for their conversion.

### Landscape and Trees

6.7.2 The village is enclosed by trees and hedges and stands isolated from major development to the east of the "Ely Spur". A dismantled railway embankment lies to the north of the settlement.

### Listed Buildings

None.

### Other Buildings of Note

- The Rectory
- Drope Farm
- Rose Cottage

### Key Issues

- The sensitive repair of farm and agricultural buildings within proposals for their conversion.
- The protection and repair of stone boundary walls adjoining the highway.
- The care and management of open verges and important tree groups which frame the village.
- The consideration of development proposals with the benefit of Supplementary Planning Guidance relating to villages in the rural Vale.

## 6.8 East Aberthaw

### Description

6.8.1 East Aberthaw is a hamlet overlooking the estuary of the River Thaw which has been important in the past as a port serving the South Wales Coast

and the Bristol Channel. The port operated until the mid nineteenth century when the river trade declined. The railway was constructed and finally the power station developed to the west of the river.

**6.8.2** The form of the village still displays this early trading importance with cottages, inns and houses grouped around the east/west route known as Port Road. More recently, the industrial activity of the area, lead to the 19th and 20th century additions to the village. Station Terrace, built in 1899 and Burton Terrace built in 1914, are both attributable to the mineral wealth of the area, the growth of the railway, cement works and Power Station

**6.8.3** The stone cottages and houses at the centre of the village form its special character. The Blue Anchor dates from the 14th Century and is a fine stone building with thatched roof placed at the centre of the village. Marsh House was once a public house too, but is now an attractive rendered house with slate roof. These buildings, together with 1 and 2 Marsh Cottages and the adjoining granary and outbuildings provide some indication of the earlier importance of the village.

**6.8.4** The open car park adjoining the station undermines this historic nucleus and opens the village to views of the railway embankment and power station beyond.

#### *Landscape and Trees*

**6.8.5** East Aberthaw lies on the edge of the Thaw estuary on the exposed coastal plain which lies between Port Road and the coast. Tree cover is sparse and set mainly within gardens and the protective tree banks to the south of Aberthaw Quarry. Embankments and sidings adjacent to the railway and to the west of Well Road define the western limits of the village

#### *Listed Buildings*

- Marsh House II
- The Blue Anchor Public House II\*

#### *Other Buildings of Note*

- Upper House Farm
- 1 and 2 Marsh Cottages

- The Granary

#### *Key Issues*

- The protection and management of important tree groups and the wooded embankments which frame the village to the west.
- The protection and repair of stone boundary walls adjoining the highway.
- The enhancement of open land created by surface car parking within the centre of the village when opportunities arise.
- The consideration of proposals with the benefit of Supplementary Planning Guidance relating to villages in the rural Vale.

### **6.9 Flemingston**

#### *Description*

**6.9.1** Flemingston lies on the eastern edge of the Thaw Valley in an elevated position on the ridge line running from north to the south. The conservation area is drawn around the entire settlement which has grown around the junction of a number of rural roads. The village comprises a number of farm holdings and supporting outbuildings, together with the houses and cottages which have been built around them.

**6.9.2** The settlement is laid out in a simple grid between Court Farm at the western entrance and Gregory Farm on the eastern ridge line. Cwrt-yr-lolo lies to the west.

**6.9.3** The village's function as a community set around three main farms has produced a number of stone agricultural buildings. Although many are still in use, or have been supplemented by contemporary farm buildings, those at the centre of the village have been converted to residential use. Their simple stone form, with brick openings and slate roofs endure, despite their domestic use.

**6.9.4** The farm houses around which these building groups have developed, are the oldest buildings in the village. These are Flemingston Court, Gregory Farm, Glebe Farm and White Farm.

**6.9.5** Beyond lie small groups of estate cottages ranging from the 19th Century "New Cottages"

constructed in render and stone and set within cottage gardens and orchards, to the contemporary Cwrt-yr-lolo at the western entrance to the village.

**6.9.6** A number of contemporary houses have been built within orchards and gardens. These have all sought to follow a local style and vernacular.

### *Landscape and Trees*

**6.9.7** The dramatic location of the village provides extensive views to the south which can be seen in glimpses towards the Thaw Valley between houses and across roof tops to the east.

**6.9.8** The settlement remains agricultural in character with the building, barns, and hay stores occupying prominent positions on the edge and within the settlement.

**6.9.9** The profile of buildings set on the ridge line is enhanced by the presence of a number of tall Scots pines set within the gardens of the Old Rectory, and around the church. In other areas, landscaping is domestic in scale and is formed by hedges, gardens and orchard trees. All frame the buildings and bound the rural lanes which run through the village.

**6.9.10** An open paddock on the west of the church enhances its setting and that of the enclosing walls of medieval Flemingstone Court.

**6.9.11** The setting formed by hedges and boundary walls play an important part in the character of the conservation area. They follow the line of roads and plot boundaries, and are in the main constructed in the local Blue Lias limestone.

### *Listed Buildings*

- Flemingston Court Farmhouse (II)
- Barns at Flemingston Court Farm (II)
- Telephone kiosk north of Parish Church (II)

### *Other Buildings of Note*

- The Rectory
- Gregory Farm
- Rose Cottage

- Church Cottages
- The Church

### *Key Issues*

- The maintenance care and enhancement of trees and woodland areas.
- The protection and restoration of stone boundary walls and hedges which surround the village.
- The identification and protection of important open areas which determine the character of the village.
- The enhancement and management of roadside verges within the village.
- The consideration of development proposals with the benefit of Supplementary Planning Guidance relating to villages in the rural Vale.

## **6.10 Gileston**

### *Description*

**6.10.1** Gileston is at the eastern end of the Glamorgan Heritage Coast. It is a small hamlet framed by woodland which rests above the low coastal plain behind Aberthaw Power Station and Limpert Bay. The growth of the village in response to the needs of the local farming community has determined its present form, comprised of substantial barns and agricultural buildings set around the junction of three lanes. Although a number of these buildings are now converted to residential use, the village retains an arrangement of stone buildings set within farmyards to east and west of the village centre. Gileston Farm is closely associated with Gileston Manor and is linked by stone boundary walls which run north from the village. The manor lies within heavily wooded grounds, and with church and stable block comprises an outstanding group of listed buildings.

**6.10.2** There have been modern extensions to the village to north and south. Detached houses using a wide variety of building styles and materials do not rest easily with the local building vernacular found at the centre of the village. The southern limit of the conservation area is marked by an early quarry

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which three detached houses of contemporary design are set.

### *Landscape and Trees*

**6.10.3** The conservation area includes the village and surrounding land forming a shallow ridge lying above flat countryside which runs south to the coast. Approaching views from the north show a settlement contained by trees within Gileston Manor, adjoining graveyard and farmhouse grounds.

**6.10.4** Thorn hedgerows grow along the approach roads and blend well with the stone boundary walls running into the village.

**6.10.5** Hedgelines and field boundaries are still in good condition and mark the outer boundaries of the conservation area.

**6.10.6** The village retains informal grass verges save on its north eastern section where a suburban road layout serves contemporary extensions to the village.

### *Listed Buildings*

- The Church of St. Giles (B)
- Gileston Manor (II)\*
- Telephone kiosk at the road junction in the centre of the village (II)

### *Other Buildings of Note*

- Rose Cottage

### *Key Issues*

- The maintenance of the informal arrangement of building groups at the centre of the village.
- To management and protection of woodland groups within the gardens and estate grounds which mark the outer limits of the village.
- The enhancement and management of roadside verges and village "green" at the centre of the village.
- The protection and repair of stone boundary walls adjoining the highway.

- The consideration of development proposals with the benefit of Supplementary Planning Guidance relating to villages in the rural Vale.

## **6.11 Llanbethery**

### *Description*

**6.11.1** Llanblethery is a linear village which has developed beyond the original settlement which was built around one of eight ancient chapels associated with Llanancarfan. Although these early origins are no longer visible, the linear form of the village remains with houses set within generous garden plots facing the road.

**6.11.2** The village has no church or Great House and is marked by a consistency in plot size and building orientation. Llanbethery farm lies in the centre of the village and at its western end lies the Wild Goose, a 19th Century Public House with gardens and car park to the side. Beyond a lane leads westwards to the Moors, and the Thaw Valley. There is evidence of a strong association with the valley and the Water Meadows of Llanblethery Moor, suggesting that the village may have at one time extended as far as the valley.

### *Landscape and Trees*

**6.11.3** The village is set on an elevated plateau stretching from the eastern edge of the Thaw Valley. The common building line adopted by houses has also determined the scale and arrangement of front gardens which are generous and well planted with ornamental stock.

### *Listed Buildings*

None.

### *Other Buildings of Note*

- The Manse.
- The Wild Goose Public House

### *Key Issues*

- The maintenance of the strong linear form of the village.

- The enhancement and management of roadside verges which run through the village.
- The protection and repair of stone boundary walls adjoining the highway.
- The consideration of development proposals with the benefit of Supplementary Planning Guidance relating to villages in the rural Vale.

## 6.12 Llancadle

### *Description*

**6.12.1** The village of Llancadle comprises a ribbon of houses set along the main road and around the road junction which provides access to Llancadle Farm to the west.

**6.12.2** The farm dominates the village and so highway and yard appear as one where the road turns to return towards the main road. The construction of a number of contemporary houses on sites between the Green Dragon pub and lower Llancadle Farm has changed the character of the conservation area. Despite this boundary walls and roadside verges are successful in drawing the varied building styles and arrangements together.

**6.11.3** The core of the village around Llancadle Farm is dominated by the historic group and the sombre limestone farm buildings which encircle the 18th Century farmhouse.

### *Landscape and Trees*

**6.12.4** The village stands on elevated ground overlooking the Kenton River. From the valley floor, the building line stands high on the ridgeline, with roof tops running in a north/ south arrangement along the road.

### *Listed Buildings*

None.

### *Other Buildings of Note*

- Llancadle House
- Lower Llancadle Farm

## *Key Issues*

- The protection and repair of stone boundary walls adjoining the highway.
- The protection and management of open verges and important tree groups which frame the village.
- The consideration of development proposals with the benefit of Supplementary Planning Guidance relating to villages in the rural Vale.

## 6.13 Llancarfan

### *Description*

**6.13.1** The village of Llancarfan lies deep within the valley of the Nant Carfan, surrounded by steep wooded valley sides, and woodland known as Coed yr Crinallt.

**6.13.2** The present form and character of Llancarfan does not reflect the earlier monastic activities which made the settlement in the 5th to 12th Centuries as important as Llantwit Major. In later centuries, the village functioned as a service centre for the Vale, providing wood and corn mills, smithies and other trade. Though altered, these 15th to 18th Century buildings at the core of the village can still be appreciated and show the importance of the village for the wider farming community during this period.

**6.13.3** The church dating from the 13th and early 14th Century dominates the village and is surrounded by an open church yard and stone boundary wall. Houses encircle this imposing church and tower and run north and south along the valley floor.

**6.13.4** The pre 1840 pattern of development shows two distinct cores; one centred on the church, the other on Cross Green and the Old Corn Mill. Open pastures between the two are now developed by contemporary houses set in generous plots.

### *Landscape and Trees*

**6.13.5** The presence of the stream and running water prevails throughout the village, and determines its character. The village remains attractive despite the construction of many

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contemporary houses in landscaped grounds and gardens.

**6.13.6** The Conservation Area extends east and west to include the slopes of the valley and benefits from the protection they offer in association with the wooded banks of the stream.

**6.13.7** Deep roadside verges and pockets of open grass at roadside fords open up the stream.

#### *Listed Buildings*

- Church of St. Cadoc (I)
- The Telephone Kiosk between the parish Hall and bridge (II)

#### *Other Buildings of Note*

- The Fox and Hounds
- The Bethlehem Baptist Chapel
- The Old Mill
- Chapel House and Vestry
- White Chapel
- Cross Green
- Wild Rose House
- The Primary School

#### *Key Issues*

- The protection and enhancement of roadside verges and fords.
- The maintenance and protection of stone boundary walls which define and enhance the linear form of the village.
- The protection and enhancement of the water ways and fords which run through the village.
- The protection of important tree groups which frame the village and its setting in the wider landscape valley.
- The consideration of proposals with the benefit of Supplementary Planning Guidance relating to villages in the rural Vale.

## **6.14 Llandow**

### *Description*

**6.14.1** Llandow is an isolated village lying at the western limits of lanes running to the west of Llandow Airfield. The village has grown around the junction of Ty Draw and Grove Road where Holy Trinity Church, Church Farm and the Great House form the nucleus of the village, and display its early importance as a farming community set around the Llandow Brook.

**6.14.2** In the early 1950's, the village was extended by the construction of a group of 28 Council houses along Grove Road and East View. The third phase of development is the recent construction of detached houses and bungalows on the east and westside of the original village. Most are built in a contemporary style using smooth white render and random stone.

### *Landscape and Trees*

**6.14.3** The village is marked by the number of streams and springs which rise in the area, and which form the headwaters of the Afon Afun. A small canalised brook runs through the village alongside Ty Draw before turning towards the old water mill which is now known as Mill Farm on the northern edge of the village.

**6.14.4** There are some fine groups of trees in the village which frame the centre and soften the impact of contemporary development set around it.

**6.13.5** The Conservation area extends outwards to include open fields to the north and south of the village, extending at the western boundary formed by the railway line. Contemporary houses at Heol y Nant and East View are excluded.

### *Listed Buildings*

- The Church of Holy Trinity (II\*)
- Church Farmhouse (II\*)
- The Great House (II)
- The barn to the east of Great House (II)
- Ty Fry Farmhouse (II)

### *Other Buildings of Note*

- Glenbrook
- Bridge Cottage
- Railway Cottages
- The Village Hall

### *Key Issues*

- The protection and enhancement of the nucleus of the village.
- The retention and enhancement of waterways and wayside verges and boundary walls which run through the village.
- The retention and protection of important tree groups which frame the village and its eastern entrance.
- The consideration of development proposals with the benefit Supplementary Planning Guidance relating to villages in the rural Vale.

## **6.15 Llangan**

### *Description*

**6.15.1** Llangan Conservation Area includes the historic core of this hilltop village which rises above a road of contemporary houses to the east. The early development of the village is centred around the road junction which leads to Treoes and is supported by three farm holdings between which a number of houses have developed. The village terminates in the north at St. Canna's Church and Rectory; both of which are set within a grove of fine sycamore and beech trees.

**6.15.2** The agricultural character of the village endures despite the conversion of a number of prominent farm buildings to residential use. The local limestone dominates as a building material. Slate roofs set at varying pitches and orientation highlight the informal building groups on either side of the road.

### *Landscape and Trees*

**6.15.3** The village is set on rising ground which continues to rise until it reaches St. Mary Hill Down in the north.

**6.15.4** The cross roads at the southern entrance to the village has an open southerly aspect, enhancing its hilltop location. To the north, mature trees frame building groups and paddocks. The Beech wood copse surrounding the ancient churchyard is impressive and provides a robust northern edge to the conservation area.

**6.15.5** Hedgerows are well preserved and run along roads and within farm holdings. They provide simple and rural boundaries to properties, retaining their rural character, despite the conversion of many to residential use.

### *Listed Buildings*

- St. Canna's Church (B)
- The telephone Box opposite Mount Pleasant Farm (II)

### *Other Buildings of Note*

- The Mount Pleasant Farm Group
- Bwthyn House
- Ty Mawr Farm
- The Rectory

### *Key Issues*

- The protection and management of stone boundary walls and hedges which define farm groups and enhance the rural character of the village.
- The protection and enhancement of the woodland area which encloses the Church and Rectory.
- The consideration of development proposals with the benefit of Supplementary Planning Guidance relating to villages in the rural Vale.

## **6.16 Llanmaes**

### *Description*

**6.16.1** The older parts of the Llanmaes Conservation Area are grouped into two distinct areas, around the Church to the south, and around Gadlys in the north. Extensive modern development has now joined the two.

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**6.16.2** The most important part of the Conservation Area lies in the south, where a number of notable historic buildings are located along lanes which converge in the area of the Church. These include the listed Saint Cattwg's Church, Llanmaes House and Plaisted House.

**6.16.3** The church lies at the centrepiece of the southern village and its setting is enclosed by groups of cottages to north and northwest. These are of significance within the Conservation Area, although some have been inappropriately altered. Llanmaes House forms a fine Grade 2\* listed country house, set in its own gardens. It presents important walls, gates and gate piers to the village street.

**6.16.4** The southern part of the village owes much of its character to its informal layout and interest provided by buildings of simple form and character. The curving road through the village is enclosed by wall and frontages, providing a sequence of views.

#### *Landscape and Trees*

**6.16.5** There is a close relationship between buildings and surrounding countryside, with open fields providing a foil to the built environment. The village is visible in its landscape setting from the Llantwit Major By-pass. Intervening fields to the north of the bypass form an important element of separation from modern housing estates located on the edge of Llantwit Major.

**6.16.6** Topography around Llanmaes is level, with few major groups of trees. An exception is the hedgerow/trees which follow the line of the stream which runs in an east-west direction on the southern boundary of the village.

**6.16.7** In the northern part of the village, the village green forms an attractive open space.

#### *Listed Buildings*

- Church of Saint Cadoc (B)
- Llanmaes House (II\*)
- Plaisted House (II)
- Telephone Kiosk, north of village centre (II)

#### *Other Buildings of Note*

- Nun House Cottage
- Former Coach House to northwest of Nun House
- Malifont Castle
- Brown Lion House
- Cross in Churchyard
- Gadlys Farm
- Former village smithy
- Village pump
- 1 and 2 Grove Cottages

#### *Key Issues*

- The maintenance of the framework provided by informal layout, stone boundary walls and garden edges.
- The sensitive alteration and repair of historic buildings.
- The consideration of development proposals with the benefit of Supplementary Planning Guidance relating to villages in the rural Vale.

### **6.17 Llanmihangel**

#### *Description*

**6.17.1** The conservation area embraces a historic group of buildings set within a secluded valley deep within the rural vale. The group is dominated by Plas Llanmihangel and its historic gardens, and reaches out to include the Church, fish ponds and the historic landscape which runs eastwards along the valley.

**6.17.2** The importance of the Conservation Area lies in the protection it affords a virtually complete medieval site consisting of the house, its 'Gardens of Pleasure', the Church, barn, fishponds and corn mill (possibly erected on an earlier site). The earliest records for the Church date from 1252 and 1254 and it is likely that the house predates this early construction. The structure of the house suggests a 13th Century house, the hall of which was refurbished in the 16th Century. Another wing (now demolished) was added to the house in the 17th Century, but this

was the only major alteration since 1560. The house now stands as an imposing stone building which dominates the valley and landscape beyond.

**6.17.3** The Church is also a limestone building constructed in the 13th Century with fortified 15th Century west tower. Adjoining it lies St. Anne's Well and a neglected fishpond. The river to the south is diverted around the Church and runs swiftly towards the other historic group comprising fish ponds, barns and derelict corn mill.

**6.17.4** The entire group is neglected and overgrown, but represents an outstanding demonstration of a medieval rural settlement. The seven bay barn completes the group. Built at the same time as the house, it is one of the best surviving early barns in the Vale. A four bay stable was added to the south in the 16th Century, with mullioned upper windows decorating the facade facing the house

**6.17.5** The whole group is defined and enhanced by stone boundary walls and outbuildings.

#### *Landscape and Trees*

**6.17.6** The Conservation Area embraces both the natural landscape created by wooded valley and meadows, as well as the man-made features described above. The garden is designed in the Dutch style, laid out in terracing, with parterred avenues flanked by yew trees. The 'waterworks' date from the same time.

**6.17.7** The whole group is now neglected and in a poor condition. Further silting up of waterways has led to the development of a different flora and character to the once open green around which church and pond once lay. The course of the river is unclear and the robust quality of the early stone bridge to the south of the village is lost.

**6.17.8** The Conservation Area extends in a westerly direction along the valley to include Rectory farm and its southern fields.

#### *Listed Buildings*

- The Church of St. Michael and All Angels (II\*)
- Plas Llanmihangel (I)

- Terrace and Steps at Yew Tree Pleasance (II)
- Barn and Stables to east of Plas Llanmihangel (II\*)
- St. Anne's Well (II)
- Rectory Farm (II)

#### *Other Buildings of Note*

- The 18th Century Stone Road Bridge

#### *Key Issues*

- The protection of the entire building group.
- The protection and management of historic engineered water works in association with the sensitive drainage and management of wetland areas.
- The restoration and repair of the St. Anne's Well and Well Head.
- The protection and restoration of the historic barns at Llanmihangel.
- The maintenance and enhancement of the historic landscape which frames the building group.
- The consideration of development proposals with the benefit of Supplementary Planning Guidance relating to villages in the rural Vale.

#### **6.18 Llantrithyd**

##### *Description*

**6.18.1** Llantrithyd is a small village set around a number of linking lanes which lie deep within the valley of the Tre gof. The form of the village appears as a necklace of cottages, farm buildings and contemporary houses set around a field enclosed by stone boundary walls. To the west, lies the village's main architectural group comprising the Church, Rectory and Llantrithyd Place. This historic group stands apart from the village on the gently sloping hillside from which the local building stone is derived.

**6.18.2** Llantrithyd Place is one of the great 16th Century mansions of the Vale of Glamorgan. Now ruined, it still stands as an imposing stone residence around which garden terraces and raised walkways are still evident. The church yard which stands

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adjacent enhances the historic group. Within stands the St. Illtyds Church; framed by an avenue of trees, and surrounded by gravestones and memorials recording the early history of the area.

**6.18.3** The Rectory to the east of the group is a well proportioned stone building showing ecclesiastic influences in style and decoration set within walled gardens.

**6.18.4** To the north east of the village lies a more informal group comprising farm buildings and rural estate cottages. There has been some contemporary development within the village, though it is secluded, and often set behind stone boundary walls, hedges and roadside verges.

#### *Landscape and Trees*

**6.18.5** The landscape around Llantrithyd Place is of historic importance and demands a sensitive approach to protection and management in association with the ruins of Llantrithyd Place. To the north is sited Sir John Aubrey's deer park recorded on John Ogilby's Ribbon Road Map of 1675. The encirclement of the central field by village houses and farm buildings is also a delicate arrangement which deserves protection in association with the wooded embankment that lies north and runs towards Bonvilston.

#### *Listed Buildings*

- Church of St. Illtyd (II\*)
- Ruins of Llantrithyd Place (II)
- Telephone kiosk north of Parish Church (II)

#### *Other Buildings of Note*

- The Rectory
- Cross Farm

#### *Key Issues*

- The identification and protection of the historic garden landscape around Llantrithyd Place.
- The stabilisation and protection of Llantrithyd Place.
- The maintenance and enhancement of the open field and its enclosing wall at the centre of the village.

- The care and management of open verges and woodland banks which frame the village.
- The consideration of development proposals with the benefit of Supplementary Planning Guidance relating to villages in the rural Vale

## **6.19 Llysworney**

### *Description*

**6.19.1** Llysworney Conservation Area extends around the entire village and into adjoining fields to the north, as far as the winding Stembridge Brook. The designation permits the protection of this substantial village whose early association with the surrounding farm land is evident in the number of farms, cottages and outbuildings which still display historic features and building forms.

**6.19.2** The village's importance as the administrative centre of the farming community to the west of Cardiff is still evident in the historic group at the centre of the village comprising Church, Pound and sheep washery and a number of historic farm holdings.

**6.19.3** From the 1940's, the village grew substantially with houses growing around farm holdings, or within garden and orchard plots. Despite this, the villages' layout has retained a close affinity with the early form of the settlement, with narrow lanes running from the main road to the centre of the village and then radiating out into the rural hinterland beyond.

**6.19.4** The village can be viewed as two areas possessing very different qualities. The first group comprises houses which face the main road and whose orientation and form is determined by the passage of fast moving traffic along the B4268. This is a historic north/south route across the Vale, confirmed by the presence of the Carne Arms, the mileage posts which stands outside and a number of early houses and farm holdings which adjoin the road. These older properties are constructed in stone, often rendered and finished in slate roofs.

**6.19.5** The second group comprises the gentler backwater of stone cottages and houses built around the Church and village "pound". This area is very attractive and is framed by stone boundary walls and verges. This area retains a historic

landscape too. From the Llysworney Great House in the north, to Moat Farm in the south; the village survives as an important nucleus of early and 17th Century buildings in the local vernacular.

### *Landscape and Trees*

**6.19.6** The village has developed over undulating land, with houses and roads sited on slopes looking north and west towards the Church and village "pound". The village pond set adjacent, acts as a focal point for the village and provides a valuable landscaped space from which roads and verges radiate into surrounding countryside.

**6.19.7** Within the conservation area, there are a number of important tree groups. Much of the village's charm lies in the informal mix of ornamental tree varieties within gardens alongside the mature indigenous species which survive as part of the former agricultural character of the village. The best and most impressive lie within the churchyard where pines and ashes frame the Church and adjoining housing groups.

**6.19.8** Hedges are well maintained throughout the village and often rise above the local limestone boundary walls.

**6.19.9** The fields which lie around the village and form the outer limits of the conservation area are bounded by hedges of thorn and hazel. They mark the course of the Stembridge Brook and frame the lanes and fields which radiate from the village pound.

### *Listed Buildings*

- The mileage post outside the Carne Arms (II)
- The School House (II)
- The Chapel (II)
- The Church of St. Merthyr (II)
- The Great House (II)
- The Sheep Washery (II)

### *Other Buildings of Note*

- Moat House
- Wolfe House
- Penylan Farm & Cottage

- White Gables
- Duffryn Maelog
- Keeper's Cottage
- Sydney House Farm
- Lower House
- Church Cottage
- The Carne Arms
- The village pound.

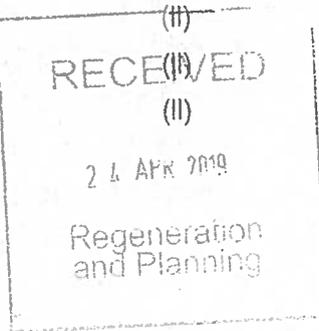
### *Key Issues*

- The identification and protection of important open areas and woodland groups on the approaches to the village.
- The protection and enhancement of the built form of the village by the identification and protection of important open spaces within the village.
- The identification and interpretation of the history of the village and surrounding hinterland.
- Provision for the care and maintenance of stone boundary walls, hedges and railings.
- The care and management of roadside verges and the green wedge that runs from the Great House to Village Pound and Pond.
- The mitigation of the effects of fast moving traffic along the B4268.
- The consideration of development proposals with the benefit of Supplementary Planning Guidance relating to villages in the rural Vale.

## **6.20 Michaelston Le Pit**

### *Description*

**6.20.1** Michaelston Le Pit is a sinuous village which runs along the side of the Cadoxton river as it runs north of Dinas Powys. At its centre, houses cluster around the Church of St. Michael and the principle farm holding, Home Farm. This group of buildings is dominated by a substantial barn whose form is in stark contrast to the domestic scale of estate housing to the west and south. The earliest group: Church Cottages were built in the mid to late 19th Century in a local stone with red brick dressings in a distinctive



Tudor manner. They were possibly associated with the Cwrt yr Ala Estate, and display many of the features which were later repeated on the early Rural District Council Crescent to the west of the village.

**6.20.2** The village pump marks the centre of the village where lanes runs north and east into the farming land beyond.

**6.20.3** A number of contemporary buildings are now established as part of the village.

#### *Landscape and Trees*

**6.20.4** Mature trees and hedges can be found throughout the village framing gardens and consolidating its rural character.

#### *Listed Buildings*

- The Church of St. Michael (II)
- Church Cottages (II)
- The telephone kiosk by Church Cottages (II)

#### *Other Buildings of Note*

- RDC Housing at: Fairleigh, Norman Cottages and St. Michaels Close
- Home Farm

#### *Key Issues*

- The maintenance of the informality of gardens and wayside verges created by estate housing in the centre of the village.
- The incorporation of residential units created by the conversion of Home Farm within the built form of the village.
- The maintenance and enhancement of tree groups which frame the Church and the houses which cluster around it.
- The consideration of development proposals with the benefit of Supplementary Planning Guidance relating to villages in the rural Vale.

### **6.21 Monkash**

#### *Description*

**6.21.1** Monkash lies in the shallow valley of the Nash Brook on the coastal plateau which lies behind Cwm Nash and the Heritage Coast.

**6.21.2** The settlement is of ancient origin, and present buildings have developed amongst the extensive medieval monastic remains which form an extensive Scheduled Ancient Monument site. The remains are a dominant feature in the landscape and can be identified in ground formations, scattered free standing ruins, with some forming part of more recent buildings or boundary wall.

**6.21.3** The eastern porch of the large ruined tythe barn has been converted into a two storey farm house in which the main archway of the original structure is still visible.

**6.21.4** The bleak and treeless coastal plateau is reflected in the character of buildings which are low roofed and huddled into hedges and lanes, sheltering from the prevailing westerly winds.

**6.21.5** Buildings are constructed in the local lias limestone stone, some rendered with slate roofs. The stone, in part plundered from ruins is also used in the field boundary walls, which are a feature of the area.

**6.21.6** At the northern end of the Conservation Area lies Broughton Farm which has a closer association with the village of Broughton to the north. Here also, lie the medieval remnants of the monastic college. At the Conservation Area's southern limits lies St. Mary's Church.

#### *Landscape and Trees*

**6.21.7** The Conservation Area includes the open landscape set around the Nash Brook, and is uninterrupted by tree cover, save within the northern and southern building groups where trees of a domestic scale are found.

**6.21.8** A small wayside green at Monkash is planted with ornamental trees.

#### *Listed Buildings*

- Parish Church of St. Mary (II\*)
- Church Farmhouse (II)
- Plough and Harrow Public House (II)
- Remains of Tythe Barn, (II)  
including Tythe Barn Cottage
- Remains of the Medieval Dovecote (II)
- Monkash Forge (II)

### Other Buildings of Note

- Smithy Cottage
- Lodge Cottage
- College Remains at Broughton Farm

### Key Issues

- The care and management of Scheduled Ancient Monuments in the Conservation Area.
- The investigation of opportunities for improved interpretation of historic buildings and archaeological remains.
- The maintenance and protection of stone boundary walls which define fields and building groups.
- The protection of important footpaths which lead to the Heritage Coast.
- The consideration of development proposals with the benefit of Supplementary Planning Guidance relating to villages in the rural Vale.

## 6.22 Penmark

### Description

**6.22.1** Penmark is an attractive settlement of approximately 50 dwellings. The Conservation Area boundary is widely defined to include Penmark Place, the Old Vicarage and the landscape setting of the village.

**6.22.2** Development has taken place in linear form from east-west, along a narrow village street. It is enclosed by buildings of different style and period, laid out informally, often fronted by stone walls. The listed church forms a centrepiece. To the north of the Church the ruins of the castle (a scheduled ancient monument) overlook the Weycock Valley. The character of Penmark is established by irregular building simplicity of building form and enclosing stone walls.

**6.22.3** A group of former local authority houses in Croft John are well designed. Constructed in 1954, they are carefully integrated with the remainder of the village. Recent new development at the eastern end of the village, at Barrenhill, and barn conversions at Penmark Farm are less successful in form scale and detail.

### Landscape and Trees

**6.22.4** The village is built on a promontory of land bounded by the heavily wooded valley of the River Weycock. There are several local, deeply incised valleys to the south (at Cwm) and south-west (Kenson Hill). That at Cwm contains a stream which rises from the south-east, creating steep slopes (below the Old Vicarage) which fall towards Barrenhill and the Weycock Valley.

**6.22.5** A steep hill also drops to the west into Barrenhill, creating good views between buildings within the village towards open countryside.

**6.22.6** The confluence of the Kenson and Weycock rivers occurs to the north of Kenson Bridge and is located at the extreme western edge of the Conservation Area. The flood plain is open, low-lying and enclosed by important stone walls. Views toward the village in the east provide an outstanding landscape context dominated by mature woodland.

**6.22.7** The village is generally set within important treescape. Important groups of trees occur around the Church (notably three mature yews) and to the south of Croft John.

**6.22.8** There are clear boundaries between development and open fields which lie to north and south of the village. To the south of barns formerly associated with Penmark Farm (now converted into residential use), open fields provide views from the B4265 of the eastern end of the village.

### Listed Buildings

- Church of Saint Mary (B)
- Telephone Kiosk at Centre of village, corner of Croft John (II)
- Penmark Castle (SAM)

### Other Buildings of Note

- Churchyard Cross, Saint Mary's Church
- Penmark Place
- Six Bells Inn
- Penmark Village Hall
- Housing at Croft John

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### *Key Issues*

- The maintenance of the built framework of the Conservation Area provided by informal layout, stone boundary walls and enclosed, landscaped frontages.
- The retention and repair of the historic built fabric.
- The maintenance and enhancement of the local landscape context.
- The consideration of development proposals with the benefit of Supplementary Planning Guidance relating to villages in the rural Vale.

## **6.23 Pendoylan**

### *Description*

**6.23.1** The village is clustered around the St. Cattwg's Church and Church Row, a terrace of early 19th Century almshouses which run parallel with the Church. This historic cluster has been enclosed by more contemporary development which consolidates the village form and the size of the rural community as well. The Pendoylan Church in Wales Primary School lies at the northern boundary of the Conservation Area. To the south lies Heol St. Cattwg, an estate of early Rural District Council housing set around a picturesque village green.

**6.23.2** Many houses on the estate still display early decorative features, typical of this building period, including stone windows and door openings, decorative porches and roof pitches set low over the front elevation. The enclosure of the village nucleus is completed by two further cul de sacs of detached houses.

### *Landscape and Trees*

**6.23.3** Trees in the Conservation Area are clustered around the church and pub garden. Those to the south are set on the banks of a stream which runs along the highway verge and then eastwards towards the 'St. Cattwg's Well' and the meadows which lie beyond.

**6.23.4** The village green draws the centre of the village southwards. To the north built form is broken by fields bounded by hedges which run through the

centre of the village. A copse of trees marks the entrance to the property known as Butleigh.

### *Listed Buildings*

- The St. Cattwg's Church (II\*)
- Church Row (II)
- The telephone kiosk at Heol St. Cattwg (II)

### *Other Buildings of Note*

- Heol St. Cattwg
- The Red Lion Public House
- The Church in Wales Primary School
- (19th Century stone buildings)

### *Key Issues*

- The enhancement of village green and roadside verges.
- The improvements of the turning area and forecourt to the public house as opportunities arise.
- The repair of houses within Heol St. Cattwg to ensure the protection of its unified appearance.
- The protection of important open areas and woodland groups on the approaches to the village and within the core of the Conservation Area.
- The consideration of development proposals with the benefit of Supplementary Planning Guidance relating to villages in the rural Vale.

## **6.24 Peterston Super Ely**

### *Description*

**6.24.1** The boundary of the Conservation Area bears little resemblance to the present built form of the village and is instead, drawn widely around a number of historic buildings and landscapes to north and south. The historic centre of the village is set around St. Peter's Church, where an informal farm access enclosed the church and provides access to the Church Hall, new housing at Backway Farm, as well as Village and Police House. The Conservation Area

boundary runs north to include the Old Rectory, a fine stone 19th Century house in a Victorian Gothic style. The southern boundary of the Conservation Area runs behind properties facing the main road and from the Three Horse Shoes Pub runs south west across the railway to include the open riverside embankment and footbridge leading to the Wyndham Park Estate.

**6.24.2** The centre of the village is dominated by St. Peter's Church and the cluster of cottages set around it. The village has a number of 19th Century estate cottages set within it, whose typical form is of stone construction with brick openings and steep slate roofs with decorative eaves to gables. The remains of the Peterston Castle lie within the grounds of Castle bungalow.

#### *Landscape and Trees*

**6.24.3** The River Ely and its wooded banks dominate the village. Ash and alder line the river, and frame the buildings which run from north to south beside open playing fields set between the Rectory and Village Hall. The banks of the river have been landscaped to provide attractive seating areas beside the river and stone bridge at the eastern end of the Conservation Area.

#### *Listed Buildings*

- Church of St. Peter (B)
- Remains of Peterston Castle
- Ancient Monument
- Telephone Kiosk outside Fir Cottage (II)

#### *Other Buildings of Note*

- The Old Rectory
- The stone road bridge over the River Ely

#### *Key Issues*

- The protection and enhancement of the river bank as further opportunities arise.
- The repair and protection of roadside boundary walls and field enclosures.
- The protection and enhancement of the quiet rural backwater around the church and former Backway Farm.

- The maintenance and protection of importance tree groups which frame the nucleus of the village and mark the northern and south easterly boundaries of the Conservation Area.
- The consideration of development proposals with the benefit of Supplementary Planning

## **6.25 Porthkerry**

#### *Description*

**6.25.1** Porthkerry is a small hamlet situated on the edge of the coastal plain which extends west of Barry overlooking the Bristol Channel. The village lies at the end of a lane running from the B4050 and the eastern boundary of the Rhoose Airport, but despite its location as a rural backwater, it is regularly disturbed by passing air traffic.

**6.25.2** Houses and farm buildings are clustered around a triangular village green. The school house lies adjacent to the church of St. Curig and with Church Farm House, a stone limewashed, reflects the early importance of the village for the agricultural community.

#### *Landscape and Trees*

**6.25.3** To the north and east the land is well wooded and falls sharply away to Porthkerry Park, an area of woods and open space now managed as a Country Park. To the south and located on the cliff edge lies a promontory fort and ancient settlement site known as The Bulwarks.

**6.25.4** The rural character of the Conservation Area depends on this woodland backdrop, as well as the field hedges and stone boundary walls which mark the entrance into the village.

#### *Listed Buildings*

- St. Curig's Church
- The School House

#### *Other Buildings of Note*

- Church Farm House

#### *Key Issues*

- The protection of the simple qualities of village green and roadside verges.

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- The enhancement of footpath links to Porthkerry Park.
- The consideration of development proposals with the benefit of Supplementary Planning Guidance relating to villages in the rural Vale.

## 6.26 St. Brides Major

### *Description*

**6.26.1** The conservation area includes land and buildings set around Pwll-y-Mor Pond and extends to include a series of farm buildings and estate cottages which lie on the Wick Road. In consequence, the Conservation Area has a rural character and is marked by the appearance and disappearance of fields behind hedges and boundary walls within the building line which runs to the south of the Wick Road.

**6.26.2** The buildings which surround the pond are of most interest, and form a picturesque focal point for the old village. The Rectory, Kings Hall Court and farm, and Pool Farm and cottage are all stone buildings set around the pond. Although they are of different ages, their rural, tree bound setting, and the common use of stone and slate create the Conservation Area's special character.

**6.26.3** The building arrangement to the east reflects one common to this part of the Vale. Houses and cottages are set at right angles to the road, reflecting and reinforcing the open windswept vistas of the coastal plain. Again, the common use of stone and slate characterises the buildings and their associated farm yards and enclosures, provides a unity of building form enhancing the Conservation Area's special character.

### *Landscape and Trees*

**6.26.4** The Conservation Area extends to include fields to the north and south of the village and pond, rising gently to the low wooded ridge line to the east of the village.

**6.26.5** To the west, the Conservation Area terminates at the war memorial where contemporary extensions to the settlement mark a change in building character and form.

**6.26.6** At its lowest western end, the Rectory and village hall are framed by a grove of tall trees which mark the gateway to the coastal plain beyond.

**6.26.2** The pond is surrounded by common land which adjoins fields to the south of Pool Farm. The pond, bull rushes and village pump lying snugly below the raised road is very attractive, though opportunities for further enhancement along the roadside and within the car park of the public house exist.

### *Listed Buildings*

- Pen Ucha'r Dre Farmhouse (II)

### *Other Buildings of Note*

- The Rectory
- Pool Cottage
- Pool Farm
- Little Wood
- Shop Farm
- Kings Hall Court
- Kings Hall Farm

### *Key Issues*

- The long term enhancement of Pwll-y-Mor, pump and roadside railings.
- The protection and management of common land around Pwll-y-Mor.
- The enhancement of the car park at the Public House as opportunities arise.
- The maintenance of woodland groups which frame the village.
- The consideration of development proposals with the benefit of Supplementary Planning Guidance relating to villages in the rural Vale.

## 6.27 St. George's

### *Description*

**6.27.1** The Conservation Area lies as an isolated hamlet between Drope and the major part of St. George's village to the west. The boundary of the Conservation Area is set to the south of the winding land and comprises some five households, an inn and the church. Open land to the north of the road is included as far as the railway.

**6.27.2** The village is unspoilt and set in an attractive group of mature trees set around the churchyard, comprising two rendered cottages, one with a flight of steps leading to an upper storey and the Church Cottages. To the east, the Greendown pub, a modernised public house lies on the edge of the group.

**6.27.3** The 13th Century church of St. George is the dominant building, it is cruciform in plan with a crossing tower surmounted by a 4 gabled top and decorated finials.

#### *Landscape and Trees*

**6.27.4** A winding hedge bounds the lane. Trees set around the churchyard frame the building group and define its presence in the open landscape formed by the Ely Valley.

#### *Listed Buildings*

- Church of St. George. (B)

#### *Other Buildings of Note*

- Church Cottages.

#### *Key Issues*

- The care and management of wayside hedges which line the lane around which buildings are set.
- The protection and enhancement of the historic building group for which the Church is the focal point.
- The care and management of important tree groups.
- The consideration of proposals with the benefit of Supplementary Planning Guidance relating to villages in the rural Vale.

### **6.28 St. Hilary**

#### *Description*

**6.28.1** St. Hilary lies on the south facing slope of St. Hilary Down. The Conservation Area includes the village and its surrounding fields, bringing both the nucleus of the village and its landscaped setting within the protected area.

**6.28.2** The village comprises a network of lanes and streets centred around the Church and a number of historic farm holdings. A small green with a crescent of rural estate house adjoins the Church to the north.

**6.28.3** Buildings are mostly two storeyed cottages and farm buildings built of local stone and roofed with Welsh Slate. There are also some good examples of thatching at the contemporary Old Hall Cottage, the Bush Inn and Kninkin.

**6.28.4** The north east corner of the village has been extended into the shallow Valley to the west of Bush Inn, by new buildings in a wide variety of styles.

**6.28.5** The most conspicuous feature of the village is the use of stone in both farm, domestic buildings and boundary walls which enclose building groups.

#### *Landscape and Trees*

**6.28.6** Mature trees play an important part in the character of the village. Many were planted in response to the needs of former estate owners and are reflected in the importance of a number of village houses and their grounds: notably the Cottage, The Manor and Glyn Coch and Tumblers Chase.

**6.28.7** The Conservation Area is further enhanced by boundary walls, roadside verges and land behind which enhance the rural character of the village and the simple building forms at its centre.

**6.28.8** The character of the Conservation Area is determined by the informal relationship between buildings, spaces and groups of trees. Buildings are often interspersed with gardens and open frontage areas, enclosed by stone walls and hedging.

#### *Listed Buildings*

- The Church of St. Hilary (II\*)
- The Basset Family Tomb Enclosure and Cross within the churchyard (II)
- The Cottage (II)
- The Pigsty in the garden of Church Cottage (II)



- The Manor (II)
- Nos. 1 and 2 Manor Cottages (II)
- The telephone kiosk, Llantrithyd Road (II)
- Bush Inn (II)
- Village Farm (II)

#### *Other Buildings of Note*

- The Lodge
- The Barn
- The Old Farm
- Little Hall Cottage
- Kninkin Cottage

#### *Key Issues*

- The establishment of a programme of woodland management to protect and enhance important tree groups within the village.
- The protection and reinforcement of the strong nuclear form of the village.
- The enhancement of the car park opposite the Public House as opportunities arise.
- The consideration of development proposals with the benefit of Supplementary Guidance relating to villages in the rural Vale

### **6.29 St. Nicholas**

#### *Description*

**6.29.1** The village of St. Nicholas appears severed by the A48 and its fast moving traffic, but on each side lies a quiet backwater of rural cottages and comfortable houses set within spacious grounds. The centre of the village is clustered around the parish Church of St. Nicholas where the original medieval building pattern has developed around a network of lanes running north into the farming land of the Cottrell and Coedarhydyglyn Estates. The earliest houses are those on the A48. "Smith Row" and "The Three Tuns" are both 17th Century cottages retaining thatch and stone interiors typical of the local vernacular.

**6.29.2** The early buildings and stone boundary walls which mark the centre of the village are now supplemented by buildings from two later

development phases: the first is evident within the 19th Century buildings set along the A48. These were built to support the farming community which lead to the expansion of the village. The Smithy, the Police Station and Church Hall were all constructed at the turn of the century and display the importance of the village in providing agricultural services during this time.

**6.29.3** The popularity of the village as a commuter settlement can be seen in the large number of detached houses that have grown around the village and along the A48. The village still retains a number of housing estates developed by the Rural District Council in the 1920s and 30s. These display many of the qualities of the Garden City Movement, and remain well maintained.

#### *Landscape and Trees*

**6.29.4** The accommodation of a variety of architectural styles within the village is assisted by the landscape framework provided by gardens and woodland areas. Those set within Llaneinydd are particularly impressive.

#### *Listed Buildings*

- Church of St. Nicholas (II\*)
- The Cory Family Chest Tomb at St. Nicholas (II)
- Nos. 3, 4 and 5 Smith Row (II)
- The Three Tuns (II)
- The telephone kiosk on the A48 (II)
- The GPO Pillar Box A48 (II)
- The Nicholas Church Hall and Hall House (II)

#### *Other Buildings of Note*

- Nos. 1 and 2 Manor Cottages
- RDC Estates at Button Rise, Meyrick Row,
- Dyffryn Close and Broadway Green
- The Church in Wales School
- Manor House
- Llaneinydd
- The Police Station
- The Smithy

### *Key Issues*

- The protection and maintenance of the framework provided by stone boundary walls and garden hedges.
- The maintenance and enhancement of tree groups which frame the entrance to the village from east and west.
- The enhancement of housing backwaters to the north and south of the A48.
- The mitigation of the effects of fast moving traffic along the A48.
- The consideration of development proposals with the benefit of Supplementary Planning Guidance to villages in the rural Vale.

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Directorate of Environmental & Economic Regeneration,  
Dock Office, Barry Dock, Barry. CF63 4RT.

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**IN THE MATTER OF LAND AT MAES Y FFYNON, BONVILSTON, VALE OF  
GLAMORGAN**

**IN THE MATTER OF AN APPLICATION UNDER SECTION 15(2) COMMONS ACT  
2006**

**APPLICATION NO: 01/2019/VG50**

**(1) MAES Y FFYNON RESIDENTS ASSOCIATION  
(2) BONVILSTON COMMUNITY COUNCIL**

**Applicants**

**-and-**

**VALE OF GLAMORGAN COUNCIL**

**Objector**

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**IN THE MATTER OF AN APPLICATION TO REGISTER LAND AS A TOWN AND  
VILLAGE GREEN UNDER SECTION 15 COMMONS ACT 2006**

**APPLICATION REFERENCE 1/2019/VG50**

**LAND AT MAES Y FFYNNON, BONVILSTON**

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**WRITTEN STATEMENT OF CASE AND SKELETON ARGUMENT  
ON BEHALF OF THE OBJECTOR**

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*References in the form [x] are to page numbers in the Objector's Bundle unless otherwise indicated.*

**INTRODUCTION & SUMMARY**

1. The Vale of Glamorgan Council (**VGC**) objects to an application (**Application**) made under section 15 Commons Act 2006 (**CA 2006**) to register land at Maes y Ffynnon, Bonvilston CF5 6TT (**Application Site**) as a town or village green, made by the Maes y Ffynnon Residents' Association (**MYFRA**). VGC is the registered owner of the freehold estate in land comprising the Application Site [39].
2. This written statement of case and skeleton argument is prepared in advance of a non-statutory inquiry, instituted by the commons registration authority (**CRA**).
3. VGC's case at the inquiry will be that the Application Site cannot be registered as a town or village green on three grounds:
  - a. First, to the extent that the Application Site has been used for lawful sports and pastimes, this use has at all material times been pursuant to a statutory right;

- b. Second, the registration of the Application Site as a town or village green would be incompatible with the statutory purposes for which it is held by VGC, namely for the provision of housing; and
  - c. Third, the part of the Application Site covered by an adopted public highway cannot be registered as a town and village green.
4. As such, VGC submits that the Inspector should advise the CRA to refuse the Application.

## **FACTUAL CONTEXT**

### **The Application Site**

5. The Application Site comprises an area of land forming an ‘L-shape’ around eight houses and an access road. Within the red-line of the location plan (Application Appendix 1) is a mixture of road, pavement, parking spaces, grassed area, and a hardstanding.
6. The road included in the red-line is a public highway adopted by the highways authority [66]. This road is continued by unadopted tarmacked road and hardstanding where garages once stood until their demolition in 2018.
7. The witness statement of Michael Ingram in support of VGC’s objection (**WS Ingram**) [32-37] exhibits various photographs showing parts of the grassed area on the Application Site [34], which hosts a number of mature trees and shrubs. Most of the trees present were planted on the site in the 1970s, and some are protected by Tree Protection Orders (see reference at [74]).
8. The Application Site is bounded to the north and east by mature hedgerow and shrubs, but it is otherwise unenclosed and is freely accessible from the road. A handrail was erected by VGC along the side of a path towards the front of the site (WS Ingram

para.18 [36]). Signage also erected by VGC in 2017 (Application Appendix 2.1 para.14; Application Appendix 2.12 para.8) requests dog walkers to clean up after their dogs.

### **History of development at and around the Application Site**

9. The history of the development of the Application Site and its surroundings is set out in the Statement of Jocelyn Ham (**WS Ham**) [26]. Until 1949, the area of land from the northern edge of the Application Site to the A48 was agricultural land, laid out in two field enclosures (Application Appendix 2.2 paras.1-2; cf maps at [47] and [55]). In 1949, the southern field was purchased by Cardiff Rural District Council (**CRDC**) by a conveyance of 11 July 1949 [43], having previously obtained planning permission for the erection of six dwellings [49]. Planning permission was granted on or around the 29 March 1950 for another six dwellings (WS Ham para.3(3) [27]).
10. The northern field, comprising the land including the Application Site, was purchased by CRDC by a conveyance of 9 January 1956 [53] (**1956 Conveyance**). Minutes of CDRC report the purpose of this purchase, namely that it “should be taken for housing purposes” [59]. Minutes of 24 January 1955 further confirm the purchase for £168 of the land “for housing purposes” [60] (cf: WS Ham para.3(10) [28]), and the 1956 Conveyance [53] expressly states that:

*[T]he Council in exercise of the powers in that behalf given to them by the Local Government Act, 1933, the Housing Act, 1936, and of all other powers enable them hereunto have agreed to purchase the hereditaments...[emphasis added]*

11. Houses were subsequently built on the land conveyed by the 1956 Conveyance, four along the southern edge, and eight along the western edge. On the rest of the land, which comprises the Application Site, a made-up road and a block of five garages were constructed (see Condition Survey [62]), with the rest of the site laid to grass. Minutes

of CRDC of 20 March 1956 record that consent had been received from the Ministry of Housing and Local Government to the development (WS Ham para.3(16) [29]). The housing was completed prior to the first tenants moving into the properties in 1958 (WS Ingram para.11 [34])

12. No substantial alteration has occurred to the Application Site since this point, except for demolition of the garages in 2018 (WS Ingram para.19 [36]).

13. The evidence in support of the Application asserts that the Application Site is “village green space”, and the Application Site was included “in the overall design and layout of the Maes y Ffynnon development” as an “integral original feature, tying together the overall development” (MYFRA, ‘Supporting Statement’). This accords with Mr Ingram’s evidence, that the Application Site “was developed as a housing estate with ancillary roads and open space areas” (WS Ingram para.5 [33]). In particular, the garages were provided primarily for tenants of the properties adjacent to the Application Site. The grassed area was provided as “an amenity area for tenants and other local people” (WS Ingram para.11 [34]). Since the area “was designed as an amenity space... access to this area has never been restricted or controlled” (WS Ingram para.13 [35]).

14. CRDC was abolished by the Local Government Act 1972, and, in respect of this area, replaced by South Glamorgan County Council (first-tier) and Vale of Glamorgan Borough Council (second-tier). By the Local Government (Wales) Act 1994, these were in turn abolished, and in respect of this area, the unitary authority of VGC was created. VGC is therefore the successor to CRDC (WS Ham paras.3(20)-(21) [29-30]).

15. VCG remains the registered owner of freehold title of an estate in land comprising the Application Site, under title number CYM410667 [39]. Most of the homes at Maes y

Ffynnon have been sold however, including under the Right to Buy Act 1980. Only two of the adjoining houses are still in VGC's ownership (WS Ingram para.14 [35]).

16. Planning permission was granted for residential development on part of the Application Site (reference no. 1989/00578/RG5), although this permission was not implemented (WS Ham para.2(21) [30]). In 2010, an application was made and subsequently withdrawn for planning permission for three houses on the Application Site (reference no. 2010/00113/RG4) (WS Ham para.2(23) [30]).

### **Current state and use of Application Site**

17. The Application is supported by written evidence and photographs showing various recreational uses that the grassed area of the Application Site has been put to by local residents in general, and in particular residents of the adjoining properties. This use commenced at the time the dwellings 16-24 Maes y Ffynnon were constructed and the Application Site laid out as an access road, garages, and amenity space.
18. No evidence has been produced however of use of the access road for anything other than as a thoroughfare and for the parking of vehicles. Further, only very limited evidence has been provided that the garages (and since 2018, the hardstanding on which they used to stand) have been used for lawful sports and pastimes. Lynne Mary Price relates kicking balls against the wall of the garages and trying to climb on the roofs in the 1960's and 1970's (Application Appendix 2.3 para.6), and her brother Gareth reports the same (Application Appendix 2.4 para.5). In addition, Ceri Louise Hunt relates an episode in 2016 when she saw her son Oliver on the roof of the garages and "needless to say I shouted from the window to get down" (Application Appendix 2.12 para.4).

19. The Application Site has been managed continually by VGC and its statutory predecessors since its acquisition. Examples of the work undertaken on the Application Site include the installation of more lighting, the removal of fallen trees, the erection of signage and handrails, and regular maintenance such as the cutting of grass (WS Ingram paras.17-18 [35-36]). This evidence is supported by that of Mr Mustow (Application Appendix 2.1 para.13) who related that “the council have regularly cut the grass and kept up the look of the green” from the outset.
20. In line with its managements of the area, VGC undertook an appraisal of all garages within its ownership (see in respect of these garages at [62ff]) and a decision was taken to demolish the garages on the Application Site. This was carried out in 2018 (WS Ingram para.19 [36]).

### **Recent planning application**

21. On 19 September 2019, an application was made by VGC for planning permission for the construction of ten affordable housing units on the northern part of the Application Site (WS Ham para.3(28) [30-31]; cf Design and Access Statement [69ff]).

### **Application for registration**

22. The Application for the registration of the Application Site was submitted by MYFRA on 23 May 2019.

## LEGAL FRAMEWORK

### Registration of new town and village greens

23. The Commons Act 2006 (CA 2006) provides at section 15 that:

*(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)... applies.*

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

24. A town or village green, and the public rights appurtenant, does not exist unless and until registered as such (R (Barkas) v North Yorkshire CC [2015] AC 195 per Lord Carnwath at paras.68 and 84 – see also Oxfordshire CC v Oxford City Council and Robinson [2006] 2 AC 674 (HL) at paras.43 and 110 in respect of the Commons Act 1965, approving Carnwath LJ in the Court of Appeal ([2006] Ch. 43) at para.100).

### “As of right”

25. The requirement that the use claimed must be “as of right” means that it must be “without the permission of the landowner...but is actually carried on as if it were by right”. “The expression “as of right” [is] effectively the antithesis of “of right” or “by right”” (Barkas at para.14).

26. In R v Oxfordshire County Council ex parte Sunningwell [2000] 1 AC 335, the phrase “as of right” was equated to the common law test of prescriptive rights, namely that the use must be “nec vi, nec clam, nec precario” (“without force, without secrecy, without permission”) (at 349-351; cited in Barkas at paras.14-15) . This tripartite test gives

effect to the “general proposition” that persons claiming a prescriptive right (R (Lewis) v Redcar and Cleveland Borough Council (No.2) [2010] 2 AC 70 at para.30):

*[M]ust by their conduct bring home to the landowner that a right is being asserted against him, so that the landowner has to choose between warning the trespassers off, or eventually finding that they have established the asserted right against him.*

27. This general principle in the context of town or villages greens was further explored by Lord Carnwath in Barkas. Having referred to Lord Scott’s dicta in R (Beresford) v Sunderland City Council [2014] 1 AC 889 at para.34, he states:

*[T]he 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.*

### **Use pursuant to a statutory right**

28. Whether the land for which registration is sought is land owned by a public authority is “plainly a relevant matter” when considering whether the use claimed is “as of right” or not (R (Beresford) v Sunderland City Council [2001] 1 WLR 1327 per Smith J

approved by Lord Carnwath in Barkas at para.74). Where a public authority allocates land for public recreational use in the exercise of statutory powers, the public enjoy a public right, or a publicly-based licence, to use the land for that use and thus do so “by right” and not “as of right”. (Barkas per Lord Neuberger at paras.23 and 47).

29. Any act by the public authority landowner to tolerate or encourage the use, or to maintain the land in the knowledge of the use, must be seen in the light of the statutory purpose for which they hold the land. In such circumstances (Barkas at para.24):

*[I]t is impossible to see how, at least in the absence of unusual additional facts, it could be appropriate to infer that members of the public have been using the land “as of right”, simply because the authority has not objected to their using the land. It seems very unlikely that, in such a case, the legislature could have intended that such land would become a village green after the public had used it for 20 years. It would not merely be understandable why the local authority had not objected to the public use: it would be positively inconsistent with their allocation decision if they had done so.*

### **Acquisition and ownership of land for housing purposes**

30. Local authorities are empowered to acquire land in order to fulfil their statutory functions in relation to housing. So far as relevant to this case, the Housing Act 1936 provided:

*73. A local authority shall have power under this Part of this Act—*

*(a) to acquire any land, including any houses or other buildings thereon, as a site for the erection of houses for the working classes; [...]*

*80. (1) The powers of a local authority under this Part of this Act to provide housing accommodation, shall include a power to provide and maintain with*

*the consent of the Minister [...] in connection with any such housing accommodation, any building adapted for use as a shop, any recreation grounds, or other buildings or land which in the opinion of the Minister will serve a beneficial purpose in connection with the requirements of the persons for whom the housing accommodation is provided. [...]*

31. These provisions were repealed by section 191 and Schedule 11 of the Housing Act 1957, and re-enacted. The Housing Act 1957 was in turn repealed and the relevant provisions re-enacted by the Housing Act 1985. Sections 9, 12, and 13 of the Housing Act 1985 provide so far as relevant:

*9. (1) A local housing authority may provide housing accommodation—*  
*(a) by erecting houses, or converting buildings into houses, on land acquired by them for the purposes of this Part [...]*

*12. (1) A local housing authority may, with the consent of the Secretary of State, provide and maintain in connection with housing accommodation provided by them under this Part—*

*(a) buildings adapted for use as shops,*

*(b) recreation grounds, and*

*(c) other buildings or land which, in the opinion of the Secretary of State, will serve a beneficial purpose in connection with the requirements of the persons for whom the housing accommodation is provided. [...]*

*13. (1) A local housing authority may lay out and construct public streets or roads and open spaces on land acquired by them for the purposes of this Part...*

### **Consequences of registration**

32. Although registration of land as a town or village green does not extinguish a landowner's rights over their land, it renders them subject to the use by the public of

the land for sports and recreation. Moreover, the land becomes subject to the protections of two criminal statutes (Oxfordshire CC at paras.54-56):

- a. Section 12 of the Inclosure Act 1867 makes it a criminal offence to damage a green or to interrupt its use and enjoyment as a place for exercise and recreation; and
- b. Section 29 of the Commons Act 1876 makes “any erection” on a green “a public nuisance” within the scope of section 12 of the Inclosure Act 1867.

### **Statutory incompatibility**

33. Land held by a public body under statutory powers for a particular purpose cannot be registered as a town or village green where the effects of registration would frustrate that statutory purpose. (R (Newhaven Port & Properties Ltd) v East Sussex CC [2015] AC 1547 per Lord Neuberger at paras.91-96; 101; R (Lancashire CC) v SSEFRA [2020] 2 WLR 1 per Lord Carnwath at paras.42-64.

34. Whether registration is prevented by reasons of compatibility is not determined by considering whether or not the user shown is incompatible with how the land in question is used at present or may be used in the future (Lancashire at paras.66-71. Rather–

*what matters for statutory incompatibility to exist so as to prevent the application of the 2006 Act is a comparison with the relevant statutory powers under which the land is held, not any factual assessment of how the public authority might in fact be using or proposing to use the land. (Lancashire at para.69)*

## **SUBMISSIONS**

### **Summary**

35. VGC's objection can be summarised as follows:

- a. It is accepted that the majority of the Application Site which is grassed over has been used for lawful sports and pastimes by a significant number of inhabitants of the locality over a long period of time, from the 1950's onwards.
- b. It is denied that this user has been "as of right" so as to satisfy the test in section 15(2) CA 2006. Rather, the user for lawful sports and pastimes has been "by right" in exercise of a statutory right to use land which has been provided for those purposes by a local authority.
- c. In respect of the rest of the Application Site comprising the adopted access road and hardstanding, there is insufficient evidence of use by a significant number of inhabitants of these parts for lawful sports and pastimes.
- d. In any event, the registration of the Application Site as a whole or any part of it as a town or village green would be incompatible with the statutory purposes for which it is held by VGC and with the status of part of the Application Site as an adopted highway.

### **Land acquired and held for housing purposes**

36. It is clear that the Application Site was acquired by CRDC for housing purposes under section 73 of the Housing Act 1936. CRDC meeting minutes for 24 January 1955 report the purchase of a wider site of 1.87 acres including the Application Site "for housing purposes", and the purchase was effected by the 1956 Conveyance, which was expressed to be "in exercise of the powers ... given to them by... under the Housing Act, 1936" (see para.10 above).

37. Although part of the Application is now covered by an adopted highway, there has been no appropriation by VGC or its statutory predecessors of this land to any other purpose. The only finding available to the Inspector is therefore that the Application Site is held by VGC for housing purposes.

### **Use of Application Site**

38. The Application Site falls in to three distinct identifiable parts: (i) access road, (ii) hardstanding where the garages once stood, and (iii) grassed open space. The use of each will be addressed in turn.

39. No evidence has been advanced by MYFRA to show that the access road has been used for any other purpose than as a thoroughfare, allowing residents to come to and from their houses or the garages, or for the parking of vehicles in connection with that use. As such, it cannot be shown that a significant number of the inhabitants of the locality have used the access road for lawful sports and pastimes rather than as a highway.

40. Turning to the garage site, the Application includes some limited evidence of use of this area in the statements of Lynne Mary Price, Gareth Morgan, and Ceri Louise Hunt (see above para.18). This is the only evidence for the whole period from the construction of the garages in the 1950's as to this area being put to a use other than for the storage and stationing of cars. Even after the demolition of the garages in 2018, it is clear that this remained the primary use of the hardstanding. Photographs accompanying the Application show the hardstanding being used for this purpose in

April 2019 – even during the fete of that year, the hardstanding was not used for any recreational purpose (Appendices 3.33 and 3.34).

41. VGC submits that:

- a. The evidence advanced with the Application is clearly insufficient to demonstrate that the hardstanding area has been used by a significant number of the inhabitants of the locality for lawful sports and pastimes.
- b. There is no consistency to the evidence, which is limited to an undefined period of time in the 1960's and 1970's, and a single episode in 2016. It is clearly insufficient to show continuity of user for 20 years prior to the making of the Application.
- c. The use alleged cannot be said to be “of such amount and in such manner as would reasonably be regarded as being the assertion of a public right” (Lewis at para.67). It cannot be said to be clear from the conduct of these children that a public right was being asserted or that the public right was a town or village green right (Barkas at para. 61).

42. Finally, in respect of the area of land laid to grass covering the majority of the Application Site, it is accepted that the evidence in support of the Application shows consistent use of this area for lawful sports and pastimes. This use commenced with the occupation of the social housing constructed adjacent to the Application Site, which was substantially completed by 1958, and the use was primarily undertaken by occupants of those properties.

### **Use by statutory right**

43. Given the statutory purpose for which the Application Site is held, the recreational use of the Application Site since the 1950's is clearly ascribable to the exercise by local

people of a statutory right. This case falls squarely within the principles set out in Barkas. As such the use of the land is “by right” and registration should be refused.

44. The evidence submitted by MYFRA and VGC concurs that the agricultural field purchased by the CRDC in 1956 and including what is now the Application Site was developed, together with the land to the south, as a new social housing estate. In addition to houses, this scheme of development included (i) an access road, (ii) garages, and (iii) open amenity space, and the consent of the relevant central government minister was acquired for the scheme. VGC’s case is that each of these elements was provided in accordance with CRDC’s powers under the Housing Acts for clear purposes.

45. In respect of the last element, the wide powers now in section 12(1)(c) and section 13(1) of the Housing Act 1985 are capable of encompassing informal open space intended for amenity purposes and informal recreation. The parties agree that the provision of this space was a conscious decision and choice on the part of CRDC, and part of the “design” of the housing scheme overall.

46. That the land has been provided under the Housing Act for recreational and amenity purposes and that the use shown by MYFRA is “by right” is the only reasonable inference which can be drawn from the following matters:

- a. The lack of any physical restrictions on access to the land at any time;
- b. The provision of regular maintenance and management of the Application Site from the 1950’s to the present day (cf Barkas at para.84). This extends beyond grass cutting. The planting of trees on the Application Site in the 1970’s is said to have been undertaken to increase the amenity value of the land (Application Appendix 2.1 para.13), whilst their maintenance, including by the removal of

damaged trees or branches, is clearly ascribable to the facilitation of the public right to use the land recreationally;

- c. MYFRA assert that use of the Application Site has “always been encouraged by the respective local authority ... to be utilised for social activities and this was previously endorsed by Cardiff Rural District Council, when Maes Y Ffynnon was designed” (Application Supporting Statement). Although no express acts of encouragement are pointed to, the belief of local residents that the local authority encouraged the use of the land lends force to the inference that the land was provided for the purposes encouraged under statutory powers (cf Barkas at para. 82);
- d. The placing of signs on the Application Site asking dog walkers to clear up after their animals (Application Appendix 2.1 para.14; Appendix 2.12 para.8);

47. As such, registration should be refused on the basis that the use of the land for lawful sports and pastimes has not been “as of right”, but by statutory right.

### **Registration of Application Site incompatible with statutory purpose**

48. Further and/or alternatively, the registration of the Application Site would clearly be incompatible with the statutory purpose for which the land is held by VGC.

49. The judgment of the Supreme Court in Lancashire makes clear that it is not relevant that the majority of the Application Site is currently used by VGC in a manner which is not inconsistent with town or village green rights. Rather, the matter is one of statutory construction, and does not involve “any factual assessment of how the public authority might in fact be using or proposing to use the land” (Lancashire at para.69).

50. VGC holds the Application Site for the statutory purpose of the provision of housing. Sections 9, 12, and 13 Housing Act 1985 empower VGC to “erect houses”, construct

“buildings adapted for use as shops”, erect “other buildings”, and construct roads on the land. Should the Application Site be registered, these steps would be precluded, not least by the operation of the Inclosure Act 1867 and the Commons Act 1876 which would make the erection of buildings on the Application Site unlawful and subject to criminal sanction.

51. The incompatibility in the present case is vividly demonstrated by the fact that the registration of the Application Site would defeat the pending planning application for planning permission for ten affordable dwellings on the Application Site. The building out of these dwellings is a paradigm example of the exercise of VGC’s statutory functions to provide housing.
52. Moreover, the registration of the part of the Application Site occupied by the access road would be incompatible with the status of that land as adopted highway, including for vehicles. The free exercise of a town or village green right to pursue lawful sports and pastimes on a highway would clearly conflict with the public’s right to pass and repass freely along that highway.
53. Regardless of whether or not the recreational use of the Application Site is by right therefore, the creation of town or village green rights over the Application Site by registration would be incompatible with the statutory purposes for which the land is held, and thus registration should be refused.

## **CONCLUSIONS**

54. For these reasons, VGC respectfully requests the Inspector to advise the CRA to refuse the Application.

**MICHAEL BRENDAN BRETT**

18 January 2021

Francis Taylor Building, Inner Temple, London

## COMMONS ACT 2006

### APPLICATION UNDER SECTION 15 TO REGISTER LAND AS A TOWN OR VILLAGE GREEN

#### LAND AT MAES Y FFYNNON, BONVILSTON

#### NOTICE OF OBJECTION

##### Background/Introduction

1. The Vale of Glamorgan Council (**'the Council'**) (acting through the Environment and Housing Services Department – Housing Services Division) wishes to object to the application made to register land at Maes Y Ffynnon, Bonvilston (**'the Land'**) as town or village green (**'TVG'**). This objection is made by the Council in its capacity as landowner. The Council is separately represented in its capacity as town and village green registration authority for the county borough area under the Commons Act 2006. All references to the Council in this notice of objection refer to the Council in its capacity as landowner. References to 'Registration Authority' are references to the Council acting in that capacity.
2. As stated, the Council is the owner of the Land at Maes Y Ffynnon, Bonvilston. The Council's predecessor authority Cardiff Rural District Council acquired the Land by way of a conveyance dated 09 January 1956 (**'the 1956 Conveyance'**). The 1956 Conveyance states that the Land is purchased in exercise of the powers given to Cardiff Rural District Council by the Local Government Act 1933, the Housing Act 1936 and other unspecified powers.
3. The Land was subsequently appropriated to housing and developed as a housing estate with ancillary roads and open space areas in accordance with Cardiff Rural District Council's powers under the Housing Act 1936.
4. The Land is registered in the name of the Council at Land Registry under title number CYM410667 where it is described as land at Maes Y Ffynnon, Bonvilston. The Land comprises a former garage site, roadway and grassed open space areas.

5. The application to register the Land as TVG was made on behalf of the residents of the Maes Y Ffynnon Residents Association together with St Nicholas and Bonvilston Community Council (**'the Applicant'**) on the 23 May 2019 (**'the Application'**). The Registration Authority notified the Council of Application to register the Land as TVG on the 13 September 2019. The Registration Authority has provided the Council with a copy of the Application.
6. The Council has submitted a planning application to the Local Planning Authority for the development of 10 affordable housing units on a 0.3ha part of the Land to the north of the existing housing at Maes y Ffynnon. The proposed development lies within the settlement boundary of Bonvilston and is situated on land which can be considered a mix of previously developed land and open space. The loss of open space under the proposal is 0.18ha and therefore, a significant part of the existing open space will be retained despite the proposed development. It is believed that the Application is an attempt to frustrate this development.

#### **Basis for Objection, Legal Framework and Application of Legal Framework**

7. As stated above, the Council wishes to object to the Application and believes that the Application should be refused by the Registration Authority in its entirety and further, that no public inquiry should be necessary on the basis of the following.
8. Before addressing the Council's substantive objection, it should be noted that parts of the Land are intersected and covered by roadway, pathway and disused garages. Most of the roadway is adopted highway and therefore cannot be registered as TVG because use of this part by the public is by legal right.
9. Furthermore, any use that may not be considered lawful for highway purposes could not be reasonably discernible to a landowner so as to give rise to public usage sufficient for a TVG application. Consequently, such use would be incompatible with this part of the Land being TVG in any event.
10. In a similar vein, it is asserted by the Council that the parts of the Land covered by unadopted roadway/pathway and disused garages do not have the physical characteristics or purpose to be included in a TVG application. The use of the

former disused garage site (including access to it and the car parking area) would have been with the Council's permission and the inclusion of these parts of the Land are therefore incompatible with a TVG application also.

11. Moving onto the substantive legal objection to the Application.
12. The Application is made pursuant to section 15(1) of the Commons Act 2006 (**'the 2006 Act'**) on the basis that section 15(2) of the 2006 Act applies. The relevant criteria to be established is therefore whether "*a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years; and they continue to do so at the time of the application*".
13. The burden of proving that the Land has become TVG lies with the Applicant. All the criteria required to establish that the Land has become TVG must be properly and strictly proved by the Applicant on the balance of probabilities. The case law for this is **Beresford** (although **Beresford** has been overruled by **Barkas** – see below - it was not done so on this particular point which remains good law.
14. The Council is not disputing the criteria that a 'significant number of inhabitants' have used parts of the Land for 'lawful sports and pastimes' for a period of 'at least 20 years' and 'continue to do so'. Instead this is relied upon in support of its objection to the Application.
15. The Council's objection to the Application is on the basis that the use of the Land for lawful sports and pastimes by local inhabitants has been 'by right' (i.e. in exercise of a legal right to do so) and not 'as of right' within the meaning of section 15(2) of the 2006 Act (i.e. without permission, force or secrecy).
16. Accordingly, the Council maintains that the statutory criteria under the 2006 Act has not been met or correctly asserted by the Applicant.
17. The legal framework in support of the Council's objection are the cases R (Beresford) v Sunderland City Council (2004) 1 AC 889 (**'Beresford'**) and Barkas v North Yorkshire County Council (2012) EWCA Civ 1373 (**'Barkas'**)

18. In *Beresford*, the House of Lords gave strong guidance - albeit *obiter* - that where user is pursuant to a legal right, it cannot be user 'as of right' as required under section 15(1) of the Commons Act 2006. Following this, and more recently, it was accepted in ***Barkas*** that *Beresford* is authority for the proposition that there is a distinction between use of land 'by right' and use of the land 'as of right'.
19. The Supreme Court's decision in ***Barkas*** is the leading case on 'by right' use. The Court held that recreational land provided and maintained by a local authority pursuant to section 12 of the Housing Act 1985 or its statutory predecessors was used by the public 'by right' and not 'as of right' within the meaning of section 15 of the 2006 Act. Therefore, if local inhabitants are indulging in lawful sports and pastimes on land 'by right' and not 'as of right' an application to register land as TVG will fail.
20. It further held that a recreation ground provided for public use by a local authority pursuant to any of its statutory powers would similarly be used by the public 'by right' and not 'as of right'. Where land is held by a local authority for the statutory purpose of recreation, and members of the public then use the land for that purpose, then they so use it pursuant to a statutory right to do so. They are accordingly not trespassers, which is a pre-requisite of land being used 'as of right'. A use 'by right' was instead found to be *precario*.
21. In applying the established legal principles derived from ***Barkas*** specifically to the Land and this Application, please note the following.
22. When the Land was acquired by Cardiff Rural District Council (a predecessor in title of the Council and itself a creature of statute) in 1956 it was by virtue of the 1956 Conveyance and as stated above, in exercise of the powers given to the Rural District Council by the Local Government Act 1933, the Housing Act 1936 and other unspecified powers.
23. Following this, the Rural District Council developed the housing on this part of Maes Y Ffynnon and duly laid out road, open space and other facilities ancillary to the housing development on the Land.
24. It is apparent from the evidence contained in the Application itself that this was done and that since that time, it has been held and managed by the Council as housing land pursuant to the powers conferred on it (and its predecessor

authorities) by sections 79 and 80 of the Housing Act 1936 and in accordance with any subsequent housing legislation.

### **Conclusion**

25. It is therefore proper to assume that the Council has been holding the Land for recreational purpose and associated amenity areas connected with the housing located at Maes Y Ffynnon and for the benefit of the residents. Therefore, any use of that part of the Land that is actually open space by the public for lawful sports and pastimes has been 'by right' and not 'as of right'.
26. It is furthermore proper to assume that the local inhabitants i.e. the residents of Maes Y Ffynnon, have had a statutory right to use the Land since it was acquired by the 1956 Conveyance and requirements of section 15(1) of the Commons Act 2006 in connection with the registration of the Land as TVG are therefore, not met and for the reasons stated in this notice, the Application must fail.

### **Further grounds**

27. The Council reserves the right to add to and amplify these grounds for objection at a later stage if required.

Jocelyn Ham, solicitor on behalf of the Council

Date: 04 December 2019.

# Maes Y Ffynnon TVG Application

Ham, Jocelyn <JHam@valeofglamorgan.gov.uk>

To: Docherty, James <jdocherty@valeofglamorgan.gov.uk>; James Docherty <jdocherty.vogc@gmail.com>;

Dear James

With reference to the letter you have received from the Applicant in this matter, MYFRA and your email response of 02 March 2020.

I have flagged up a couple of the issues raised by the Applicant and would respond/comment (**in bold**) as follows:

- *At no time has any resident of Maes Y Ffynnon, or Village Farm ever been required to seek permission to use the land for lawful sports and pastimes.*

**This is correct, the residents of Maes Y Ffynnon use the land with the consent of the Council i.e. by right. This means that an application to register land as new TVG must fail, in the Council as landowner's view.**

- *The areas of land that flank the hardstands that used to hold the garages have provided the identified green space for this usage over the years.*

**This is not disputed.**

- *The Council has provided limited maintenance, or upkeep of this land and over the last 10 years this has only been the intermittent cutting of grass.*

**The land belongs to and is maintained by the Council. The perceived frequency and standard of maintenance is not a relevant factor here.**

- *We recognise and understand that the hard stands and road area, cannot be classed as a green space, but they sit inside of the area we wish to protect and our evidence proves that the areas either side have been used extensively and are central to village life in Bonvilston, since the 1950s.*

**It is important to correctly identify the area of land that is to be subject to the TVG application and as stated in the 'Notice of Objection' the parts of the land covered by unadopted roadway/pathway and disused garages do not have the physical characteristics or purpose to be included in a TVG application. Further, the use of the former disused garage site (including access to it and the car parking area) would have been with the Council's permission and the inclusion of these parts of the land are therefore also incompatible with a TVG application.**

- *Your 'Notice of Objection', does not dispute the fact that the area has been used continuously by residents for over 50 years. It acknowledges the use but in referring us to the case history of Barkus, is asserting that we have used it 'by right' and not 'as of right'.*

**This is correct. 'By right' means that the land has been used with the Council's permission whereas 'as of right' means it has been used without the Council's permission. 'As of right' is a critical part of the lexicological jigsaw in a TVG application and if permission to use land is essentially granted or allowed, then an application must fail.**

- *As the Council acknowledges the usage of the land for these activities, it should concur and appreciate how important this area is to the residents of Maes Y Ffynnon and the wider population of Bonvilston.*

**This comment is noted but as previously stated in the 'Notice of Objection', a significant part of the existing open space will be retained despite the proposed development.**

- *The use of this land either 'by right' or 'as of right' has been extensive and consistent since the 1950s and therefore has formed a significant part of Bonvilston's history and continues to unite the community.*

**The use of the land has been by right – see above. As the MYFRA are aware, the Council's predecessor authority acquired the land in the 1950s under powers given to it by the Local Government Act 1933, the Housing Act 1936 and other unspecified powers. The land was subsequently appropriated to housing and developed as a housing estate with ancillary roads and open space areas in accordance with Cardiff Rural District Council's powers under these Acts.**

**As stated in the 'Notice of Objection' it is therefore proper to assume that Cardiff Rural District Council and now this Council as a statutory successor has held the developed land for housing and the other parts for recreational purpose and associated amenity areas connected with this housing. In other words, some of the land was specifically provided for amenity and recreation purpose and any subsequent use in this regard is with the Council's permission.**

- *The fact that the Council is not disputing the usage of the land, by implication are accepting the importance of it providing an area for children to safely play, provide dog walking spaces, social events and lawful sports.*

**It is not disputed that parts of the land subject to the TVG application has been provided for recreational purposes. However, use of the land for this purpose is with the Council's permission and the Council intends to continue to preserve and maintain a proportion of the land for this purpose as the new development will primarily focus on the former garage site and the area around this.**

- In your 'Notice of Objection' you state that our motivation for protecting the area is to 'frustrate' a planning application for dwellings at Maes Y Ffynnon. MYFRA refute this suggestion and feel the need to assert that our motive for protecting the area has been misrepresented, by this statement.

**The comment is duly noted but it is common for a TVG application to be made to restrict or even prevent development and as far as landowner is aware, this application was made once the garage area land had been identified for redevelopment and a public consultation event was held at Bonvilston Reading Rooms on the 4th February 2019, as part of a statutory pre-application consultation process.**

- As described in our application we are driven by the wish to maintain, a safe natural area where children can play and adults can socialise, at village events, or walking their dogs. Any development, or encroachment on the green area would be environmentally degrading and socially damaging to the community.

**The comment is duly noted but the intention of the landowner is to preserve some open space despite the development.**

- Our wish is to preserve the much-threatened wildlife that is in abundance in the area. This includes ancient trees, Bats, the reptile population of snakes, toads and Greater Crested Newts, Tawny, Barn and Little Owls and every species of wild birds, such as Finches, Woodpeckers, Cuckoo's, and Tits.

**The comment is duly noted but preservation of wildlife etc is not the objective of a TVG application. Most of the preservation and ecology issues will be considered as part of the planning process in any event.**

- We understand that the Council has operated a 'Chinese wall' approach in relation to this application. Whilst we accept that this is a standard practice where another department is objecting to a village green application being dealt with by the same council, in its role as Registration Authority, it would also be standard to avoid a 'conflict of interest' and to ensure transparency to hold a non-statutory inquiry, which would address any issue of potential prejudice.

**I believe this issue has been addressed by yourself in your email response to the Applicant dated 02 March 2020.**

- In your 'Notice of Objection' you state that a public inquiry is not necessary for this application. We would therefore ask how the issue of potential prejudice has been addressed in the processing of this case, to ensure transparency and avoid a conflict of interest, particularly in light of any future plans the council may have for the land.

**The 'Notice of Objection' came from myself on behalf of the Council as landowner. It is standard to say in a such a notice that no inquiry is needed if the landowner feels it has a strong case. However, the Council as landowner will still participate in an inquiry as appropriate and as required.**

- We would like to highlight that recent planning applications and proposed developments in other parts of Bonvilston, incorporate as central features within their designs, green areas depicting children playing. The clear message being that a green space in a village like Bonvilston is central to the community. It is not logical, or in the interests of the community to leave a green space that has been used for over 50 years vulnerable, unappreciated or unrecognised, for its significant part in serving the community.

**As stated above, the intention of the landowner is to preserve a proportion of the open space.**

- Recent development plans in Bonvilston identify areas for potential green space in locations that are unsafe for children to play, due to the close proximity to traffic and the A48 main road. Maes y Ffynnon for over 50 years has provided a safe place for children to play and if protected could continue to do so in the future.

**See above.**

- We understand that Welsh legislation in this area falls behind that in place in England and that this is not favourable in terms of our application. We do not wish in any way to antagonise the council in relation to the enclosed responses, following the rejection of our application and also aim to avoid any conflict. We request that the council takes time to listen to our concerns in a pragmatic and objective way, that is not purely focused on a legal approach around meeting eligibility criteria for registering a green space. As residents of MYFRA we ask the council to look beyond the criteria of how the land was originally purchased over 50 years ago, in a post war climate and consider how Maes Y Ffynnon, has subsequently evolved and understand how important the green is to the whole community.

**I understand the English legislation on TVG applications is more rigid than the Welsh which was introduced to circumvent the abuse of the TVG process to prevent development. Therefore, I am not sure why Welsh legislation is perceived to be less favourable to their application.**

**I believe you have addressed the issue of rejection of the application in your email response to the Applicant dated 02 March 2020.**

- MYFRA formally requests the opportunity to discuss further with the Vale of Glamorgan Council an exploration of the options available around a voluntary registration of the village green under section 15 (8) of the Commons Act 2006.

**Voluntary registration of all the land subject to the current TVG application is not an option.**

Regards

Jocelyn

Jocelyn Ham  
Senior Lawyer / Uwch Gyfreithiwr  
Legal Services / Gwasanaethau Cyfreithiol  
Vale of Glamorgan Council / Cyngor Bro Morgannwg

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mob / sym:

e-mail / e-bost: [JHam@valeofglamorgan.gov.uk](mailto:JHam@valeofglamorgan.gov.uk)

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Ewch i'n gwefan yn [www.bromorganwg.gov.uk](http://www.bromorganwg.gov.uk)

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Correspondence is welcomed in Welsh or English / Croesewir Gohebiaeth yn y Gymraeg neu yn Saesneg.

**IN THE MATTER OF LAND AT MAES Y FFYNON, BONVILSTON, VALE OF  
GLAMORGAN**

**IN THE MATTER OF AN APPLICATION UNDER SECTION 15(2) COMMONS ACT 2006**

**APPLICATION NO: 01/2019/VG50**

**(1) MAES Y FFYNON RESIDENTS ASSOCIATION  
(2) BONVILSTON COMMUNITY COUNCIL**

**Applicants**

**-and-**

**VALE OF GLAMORGAN COUNCIL**

**Objector**

---

**WITNESS STATEMENT OF JOCELYN SARAH HAM**

---

I, Jocelyn Sarah Ham, Senior Lawyer for the Vale of Glamorgan Council of Civic Offices, Holton Road, Barry CF63 4RU will say as follows:

1. I have been employed by the Vale of Glamorgan Council and its predecessor authorities ('the Council') since August 1988. During that time, I have held various positions within the Council's Legal Services Department and I currently hold the position of Senior Lawyer. I was admitted as a solicitor on the 02 November 1998.
2. Following receipt of an application to register land at Maes Y Ffynnon Bonvilston as new town or village green, I was instructed by the Council's Head of Housing and Building Services to object to the application and to investigate the history of the site in terms of the provision of housing.
3. On referring to the Council's records including deeds and documents relating to the site and on further making enquiries of the Glamorgan Archives, which is a county record office

and repository based in Cardiff which holds records for the whole of the historic county of Glamorgan and the post-1974 counties of Mid and South Glamorgan including records of Cardiff Rural District Council, Vale of Glamorgan Borough Council and the Vale of Glamorgan Council, I have been able to establish the following chronology of events in relation to the provision of housing at Maes Y Ffynnon:

(1) 18 November 1948

According to records held by the Glamorgan Archives, Cardiff Rural District Council ('the Rural District Council') made a planning application on this date for the erection of 6 no. houses at Bonvilston. These houses are to be reserved for occupation by members of the agricultural population.

(2) 11 June 1949

The Rural District Council acquire land at Bonvilston by virtue of a conveyance dated 11 June 1949 for its proposed housing development and the first 6 houses are built.

(3) 22 February 1950 and 29 March 1950

According to records held by the Glamorgan Archives, the Rural District Council propose the erection of 6 no. additional houses at the site now known and referred to as Maes Y Ffynnon, Bonvilston. The local planning authority approve amended scheme for the additional housing subject to the making up and construction of Maes Y Ffynnon Road.

(4) January 1953

According to records held by the Glamorgan Archives, the Rural District Council is again looking to further extend its housing site at Maes Y Ffynnon, and considering acquiring additional land for this purpose. This is the land subject to the town and village green application.

(5) 4 September 1953

The Glamorgan Archive records indicate that the Rural District Council are considering a housing scheme at Peterston Road, Bonvilston (Women's Land Army Hostel) as an alternative to the Maes Y Ffynnon site.

(6) 28 Sep 1953

As stated above, minutes show that the Rural District Council were initially planning to convert the Women's Land Army Hostel in Bonvilston into dwellings and had applied to

the Glamorgan County Council Planning officer for permission to do this. However, the Council were planning to revert to the building more houses on the Maes Y Ffynnon site should this application be unsuccessful.

(7) 25 January 1954

Having considered an alternative site, the Rural District Council resolve to acquire and develop the Maes Y Ffynnon site instead.

(8) 22 Feb 1954

Minutes refer back to decision taken at previous meeting to abandon plans to convert the Hostel and acquire and develop the Maes Y Ffynnon site instead.

(9) 24 Jan 1955

The minutes of 24 Jan 1955 record the terms for the acquisition of additional land at the Maes Y Ffynnon site for £168

(10) 4 Feb 1955

According to records held by the Glamorgan Archives, Glamorgan County Planning Authority approve consent for 16 dwellings at Maes Y Ffynnon, Bonvilston.

(11) 28 March 1955

The Rural District Council received tenders for the site construction at Maes Y Ffynnon. Tender from Messrs Chiltern and Davies of Bridgend is accepted.

(12) 13 December 1955

The Rural District Engineer and Surveyor reports on urgent Housing schemes and these include the building of 8 houses in Bonvilston.

(13) 09 January 1956

The Rural District Council formally acquires the additional land at Maes Y Ffynnon by a conveyance dated 09 January 1956. The conveyance states that the land is purchased in exercise of the powers given to Cardiff Rural District Council by the Local Government Act 1933, the Housing Act 1936 and other unspecified powers

(14) 17 Jan 1956

The Rural District Council's Engineer and Surveyor reported that a tender from Charles Winstone had been received for the erection of eight houses on the Maes Y Ffynnon site

and that negotiations were in progress to effect the necessary reduction to secure Ministry approval.

(15) 21 Feb 1956

The Rural District Council report that they are awaiting approval from the Ministry of Housing and Local Government for the tender of Charles Winstone for the erection of eight houses.

(16) 20 Mar 1956

Approval received from the Ministry of Housing and Local Government to the acceptance of the tender of Charles Winstone for the erection of the block of eight houses on the Maes y Ffynon site.

(17) 23 Oct 1956

The Rural District Council's Engineer and Surveyor reported that due to the erection of further Council houses (now nearing completion) at Maes Y Ffynnon, it was necessary to renumber the existing twelve Council houses, the first block of six (erected in 1949) having been numbered incorrectly.

(18) Late 1956

The Maes Y Ffynnon Housing Estate is complete and the final houses are let by the Rural District Council. The Estate comprises 24 houses in total built over three phases together with ancillary roads and open space areas.

The land and houses at Maes Y Ffynnon, Bonvilston would have been managed under the Housing Revenue Account requirements contained in the Housing Act 1936.

(19) Late 1950s/1960s

At some point during the late 1950s or early 1960s, garages were also constructed by the Rural District Council on the site which would have been primarily provided for the tenants on the site although they were never included in the housing tenancies and instead were let separately.

(20) 1974

As a result of the Local Government Act 1972, Cardiff Rural District was abolished and in 1974, its area was divided amongst the new local authority districts of Cardiff, Rhymney Valley, Taff-Ely and Vale of Glamorgan. The land and houses at Maes Y

Ffynnon Road, Bonvilston were transferred by statutory order to the Vale of Glamorgan Borough Council.

(21) 1989

Planning application approved for a residential development. Approval not implemented.

(22) 1996

As a result of the Local Government (Wales) Act 1994, the Vale of Glamorgan Borough Council was abolished and replaced with a new unitary authority, the Vale of Glamorgan Council and the land and houses at Maes Y Ffynnon Road, Bonvilston transferred by statutory order to the new unitary authority.

(23) February 2010

Council submit application for the development of 3 no. houses at Maes Y Ffynnon which is subsequently withdrawn.

(24) 2018

The garages are demolished.

(25) 3 December 2018

Council representatives attend a meeting of St Nicholas with Bonvilston Community Council at the Trehill Church Hall, Bonvilston to discuss the development proposals in detail with the Community Council and members of the public who were in attendance.

(26) 4 February 2019

A public engagement event was held at the Reading Rooms, Bonvilston as part of the Pre-application Consultation (PAC) process. In attendance were the Council's Senior Planner; the Council's Architects; and representatives from the Council's Housing and Building Services Department.

(27) 13 September 2019.

The Registration Authority notified the Council of application to register land at Maes Y Fynnon Bonvilston as new town or village green

(28) 19 September 2019

The Council Housing Development Team submit a planning application for new development submitted to the Local Planning Authority, which is pending.

4. I believe that the facts stated in this witness statement are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

Signed :

A handwritten signature in black ink, appearing to read 'A. S. Han', written over a faint horizontal line.

Date : *15 January 2021*

**IN THE MATTER OF LAND AT MAES Y FFYNON, BONVILSTON, VALE OF  
GLAMORGAN**

**IN THE MATTER OF AN APPLICATION UNDER SECTION 15(2) COMMONS ACT 2006**

**APPLICATION NO: 01/2019/VG50**

**(1) MAES Y FFYNON RESIDENTS ASSOCIATION  
(2) BONVILSTON COMMUNITY COUNCIL**

**Applicants**

**-and-**

**VALE OF GLAMORGAN COUNCIL**

**Objector**

---

**WITNESS STATEMENT OF MICHAEL INGRAM**

---

I, Michael Ingram, Head of Housing and Building Services for the Vale of Glamorgan Council based at the Alps Depot, Quarry Road, Wenvoe, CF5 6AA will say as follows:

1. I am employed by the Vale of Glamorgan Council ('the Council') as the Head of Housing and Building Services and I have held this position since May 2017. I am based at the Council's offices at Alps Depot, Wenvoe and I have overall responsibility for the Council's Housing and Building Services function as well as looking after and managing assets (land and property) that fall under the Council's Housing portfolio.
2. I have worked for the Council (and its predecessor authority, the Vale of Glamorgan Borough Council) for around 32 years in a variety of roles

connected with the Council's Housing function and over the course of that time, I have had reason to visit the Maes Y Ffynnon site on several occasions. I have also dealt directly with several issues raised in relation to the site which means I have a personal knowledge of the site location, history and layout.

3. To gather the information needed in respect of this matter, I have consulted with colleagues from the Parks section of the Council. The Parks section have confirmed that they carry out routine cutting and maintenance of land which fall under the responsibility of the Housing service/ function including the land at Maes Y Ffynnon. The staff I have consulted have worked for the Council and have carried out grass cutting and grounds maintenance work for over 30 years.

### **The land/ site**

4. The Council is the owner of the land at Maes Y Ffynnon, Bonvilston. I am aware from the Council's legal records and deeds that the Council's predecessor authority Cardiff Rural District Council acquired the Land by way of a conveyance dated 09 January 1956 ('the 1956 Conveyance'). The 1956 Conveyance states that the Land is purchased in exercise of the powers given to Cardiff Rural District Council by the Local Government Act 1933, the Housing Act 1936 and other unspecified powers.
5. I am also aware from the Council legal records and deeds that the land was developed as a housing estate with ancillary roads and open space areas, including the part now subject to the town and village green application, in accordance with Cardiff Rural District Council's powers under the Housing Act 1936.
6. At that time or sometime soon afterwards, and in order to provide further facilities on the site, garages were constructed.
7. The land itself is a mixture of road, pavement, parking space and green area, in addition to concrete hardstandings left following the demolition of garages which were previously located on the site. The following site plan and images show the location and nature of the land. There is green space at the junction

of Maes Y Ffynon with the A48 and a further section towards the top of the site towards where the garages were formerly located. The green spaces comprise mainly grassed area with several mature trees and shrubs.

8.



9.



10. Following the demolition of the garages, flat hardstandings have been left to ensure the site remains safe and secure pending any future changes in land use.

### **Use of site**

11. The site is a residential development comprising 24 homes. The first tenants moved into the properties on or around 1958. The garages were primarily provided for the tenants on the site and the green space was an amenity area for tenants and other local people.

12. The garages were not provided with the homes but have always been let separately under a licence agreement. The Council operates a waiting list system for garages and tenants and other members of the public are able to rent a garage. Council tenants have priority on the waiting list when letting garages, however when there is not sufficient interest in the garages from local tenants, they are let to other people within the local community. Persons renting a Council garage sign a lease agreement and are required to pay a weekly charge for the use of the garage (which needs to be used for vehicle storage).
13. The green area at Maes Y Ffynon was designed as an amenity space for local people and access to this area has never been restricted or controlled.
14. Most of the homes at Maes Y Ffynon have been sold under the relevant legislation including the Right to Buy Act 1980 and there are now only 2 Council owned homes remaining on the site. These are both tenanted. The abolition of the Right to Buy legislation in Wales means that no further homes will be sold by the Council at the site.
15. The cost of maintaining and managing the Council land at Maes Y Ffynon is met by the Housing Revenue Account. Essentially this is the income from rent received from Council-owned properties and garages. This means that things like grass cutting, tree maintenance, upkeep of buildings etc is paid for exclusively by Council tenants. Private owners living in the vicinity, including people who have purchased their homes from the Council do not make any financial contribution towards the upkeep of the land.
16. The only exception to this being the adopted highway which is maintained by the Council's Highways team and funded from the Council's General Fund I.e. Council Tax receipts and other income.

### **Management of site**

17. The site has been managed by the Council since it was first acquired. Typical management activities include maintenance of homes and garages; regular

grass cutting and routine maintenance of trees/ vegetation; site visits/ checks. There are extensive records held of correspondence relating to the site which includes notes of tenancy visits, written requests to the Council, tenancy agreements, garage licence agreements etc. In addition, it is possible to provide testimony from Council staff who have over many years, carried out management and maintenance works at the location.

18. By way of some specific examples, the records show the Council's Housing staff arranged for a fallen tree to be removed from site; there was a request by residents for the Council to widen the road; another request to install additional lighting in the garage forecourt area and an approach from an individual to buy a section of the green space from the Council. More recently, the Council erected a handrail along section of footpath towards the front of the site. These types of requests demonstrate the Council has managed the site constantly and continuously since its first adoption.

19. Following an appraisal exercise of all garages within the Council's property portfolio, the decision was made to demolish the garages at Maes Y Ffynnon, Bonvilston. This decision was made on the basis of the physical condition of the garages, future levels of investment required to maintain the garage structures at an acceptable standard and levels of demand for garages in that areas. The demolition work was later carried out on or around 2018 by a contractor appointed by the Council and the area was made safe in the short term pending any decisions regarding the future use of the land.

20. I believe that the facts stated in this witness statement are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

Signed :  \_\_\_\_\_

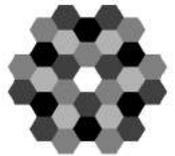
Date : \_\_\_\_\_ 15<sup>th</sup> January 2021

The electronic official copy of the register follows this message.

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Mae'r copi swyddogol electronig o'r gofrestr yn dilyn y neges hon.

Sylwch mai hwn yw'r unig gopi swyddogol a ddarparwn. Ni fyddwn yn darparu copi swyddogol papur.



Official copy  
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title  
Copi  
swyddogol o  
gofrestr teitl

Title number / Rhif teitl  
CYM410667

Edition date / Dyddiad yr  
argraffiad 11.08.2008

- This official copy shows the entries on the register of title on 18 JAN 2021 at 11:29:46.
- This date must be quoted as the "search from date" in any official search application based on this copy.
- The date at the beginning of an entry is the date on which the entry was made in the register.
- Issued on 18 Jan 2021.
- Under s.67 of the Land Registration Act 2002, this copy is admissible in evidence to the same extent as the original.
- This title is dealt with by HM Land Registry, Wales Office.
- Mae'r copi swyddogol hwn yn dangos y cofnodion yn y gofrestr teitl ar 18 IONAWR 2021 am 11:29:46.
- Rhaid dyfynnu'r dyddiad hwn fel y "dyddiad y chwilir ohono" mewn unrhyw gais am chwiliad swyddogol sy'n seiliedig ar y copi hwn.
- Y dyddiad ar ddechrau cofnod yw'r dyddiad y gwnaethpwyd y cofnod yn y gofrestr.
- Cyhoeddwyd ar 18 Ionawr 2021.
- Dan adran 67 Deddf Cofrestru Tir 2002, mae'r copi hwn yn dderbyniol fel tystiolaeth i'r un graddau â'r gwreiddiol.
- Gweinyddir y teitl hwn gan Gofrestrfa Tir EM Swyddfa Cymru.

## A: Property Register / Cofrestr Eiddo

This register describes the land and estate comprised in the title.

Mae'r gofrestr hon yn disgrifio'r tir a'r ystad a gynhwysir yn y teitl.

THE VALE OF GLAMORGAN/BRO MORGANNWG

- 1 (11.08.2008) The Freehold land shown edged with red on the plan of the above title filed at the Registry and being Land at Maes Y Ffynnon, Bonvilston, Cardiff.

## B: Proprietorship Register / Cofrestr Perchnogaeth

This register specifies the class of title and identifies the owner. It contains any entries that affect the right of disposal.

Mae'r gofrestr hon yn nodi'r math o deitl ac yn enwi'r perchennog. Mae'n cynnwys unrhyw gofnodion sy'n effeithio ar yr hawl i waredu.

### Title absolute/Teitl llwyr

- 1 (11.08.2008) PROPRIETOR: THE VALE OF GLAMORGAN COUNCIL of Civic Offices, Holton Road, Barry CF63 4RU.

## B: Proprietorship Register continued / Parhad o'r gofrestr perchnogaeth

- 2 (11.08.2008) A Conveyance of the land in this title and other land dated 9 January 1956 made between (1) William Powell & Sons Limited (Vendor) and (2) The Council For The Rural District of Cardiff (the Council) contains purchaser's personal covenant(s) details of which are set out in the schedule of personal covenants hereto.

### Schedule of personal covenants Atodlen cyfamodau personol

- 1 The following are details of the personal covenants contained in the Conveyance dated 9 January 1956 referred to in the Proprietorship Register:-

"The Council hereby covenant with the Vendors that they the Council or their successors in title will at their own expense forthwith make and for ever hereafter maintain along the eastern and northern sides of the said piece of land hereby conveyed a good and sufficient boundary fence and will form a new access to Enclose No 38 in the position marked A on the attached plan to the Vendors` satisfaction using the existing posts and field gate from the existing access to enclosure No. 69 aforesaid."

NOTE: Enclosure 38 referred to is the field lying to the north of the land in this title. The point marked A referred to has been reproduced on the title plan.

## C: Charges Register / Cofrestr Arwystlon

This register contains any charges and other matters that affect the land.

Mae'r gofrestr hon yn cynnwys unrhyw arwystlon a materion eraill sy'n effeithio ar y tir.

- 1 (11.08.2008) The land is subject to rights of support for structures and buildings erected on adjoining land.
- 2 (11.08.2008) The land is subject to rights of drainage and rights in respect of the supply of water, gas, electricity and other services.
- 3 (11.08.2008) The roads and footpaths included in the title are subject to rights of way.
- 4 (11.08.2008) The garage forecourts are subject to rights of way and user.
- 5 (11.08.2008) The land is subject to the rights granted by a Deed dated 6 May 1969 made between (1) Cardiff Rural District Council and (2) Frederick Arthur Lewis.

*NOTE: Copy filed.*

## End of register / Diwedd y gofrestr

**These are the notes referred to on the following official copy**

The electronic official copy of the title plan follows this message.

Please note that this is the only official copy we will issue. We will not issue a paper official copy.

This official copy was delivered electronically and when printed will not be to scale. You can obtain a paper official copy by ordering one from HM Land Registry.

This official copy is issued on 18 January 2021 shows the state of this title plan on 18 January 2021 at 11:29:46. It is admissible in evidence to the same extent as the original (s.67 Land Registration Act 2002). This title plan shows the general position, not the exact line, of the boundaries. It may be subject to distortions in scale. Measurements scaled from this plan may not match measurements between the same points on the ground.

This title is dealt with by the HM Land Registry, Wales Office .

**Dyma'r nodiadau y cyfeirir atynt ar y copi swyddogol canlynol.**

Mae'r copi swyddogol electronig o'r cynllun teitl yn dilyn y neges hon.

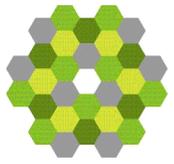
Sylwch mai hwn yw'r unig gopi swyddogol a ddarparwn. Ni fyddwn yn darparu copi swyddogol papur.

Anfonwyd y copi swyddogol hwn yn electronig a phan gaiff ei argraffu ni fydd wrth raddfa. Gallwch gael copi swyddogol papur trwy archebu un o Gofrestrfa Tir EM.

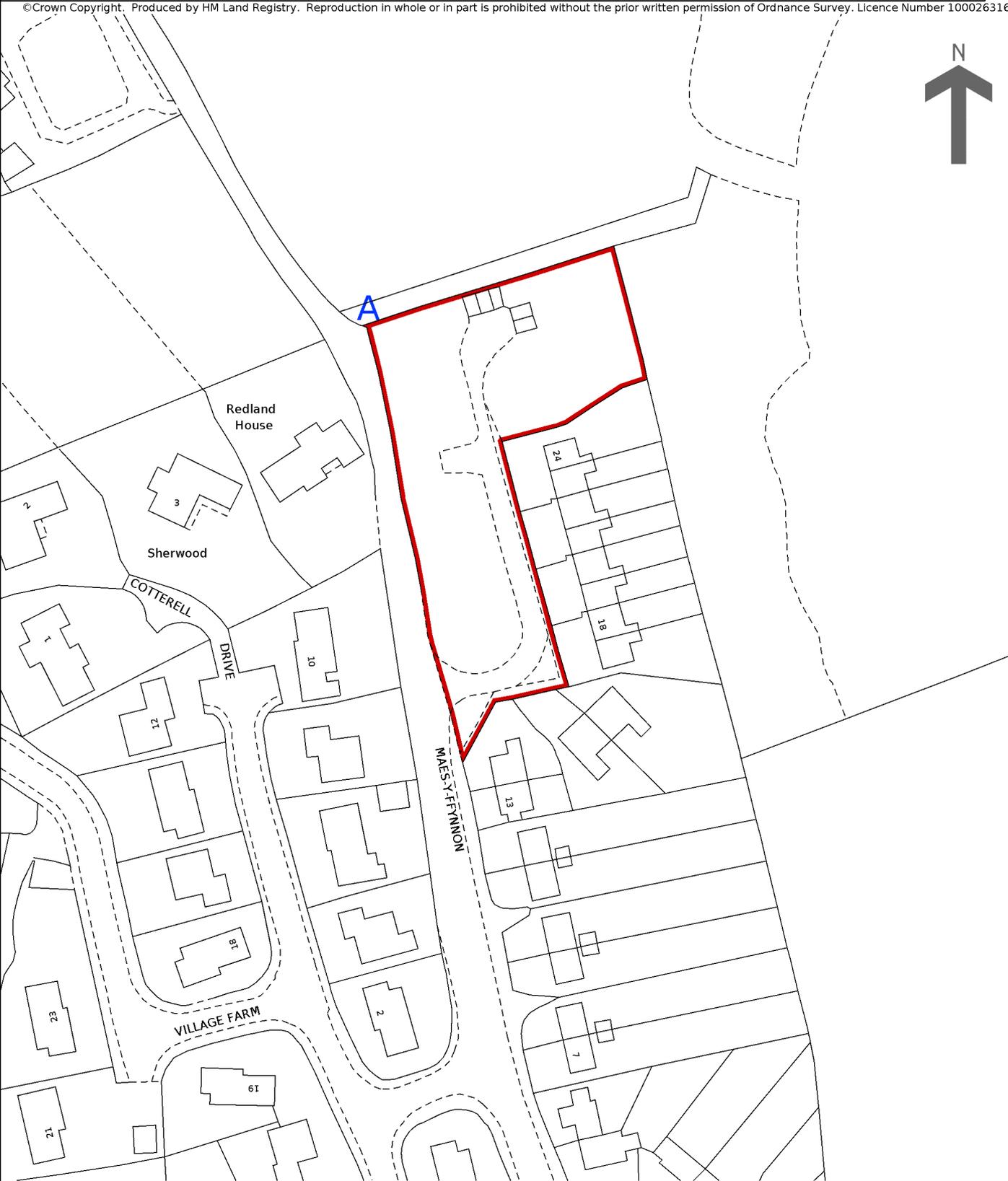
Mae'r copi swyddogol hwn a gyhoeddir ar 18 Ionawr 2021 yn dangos sefyllfa'r cynllun teitl hwn ar 18 Ionawr 2021 am 11:29:46. Mae'n dderbyniol fel tystiolaeth i'r un graddau â'r gwreiddiol (adran 67 Deddf Cofrestru Tir 2002). Mae'r cynllun teitl hwn yn dangos safle cyffredinol, nid union linell, y terfynau. Gall fod gwyriadau yn y raddfa. Mae'n bosibl na fydd mesuriadau wedi eu graddio o'r cynllun hwn yn cyfateb â mesuriadau rhwng yr un pwyntiau ar y llawr. Gweinyddir y teitl hwn gan Gofrestrfa Tir EM Swyddfa Cymru.

# HM Land Registry Official copy of title plan

Title number **CYM410667**  
Ordnance Survey map reference **ST0674SE**  
Scale **1:1250 enlarged from 1:2500**  
Administrative area **The Vale of Glamorgan**  
**/ Bro Morgannwg**



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**This** CONVEYANCE is made the

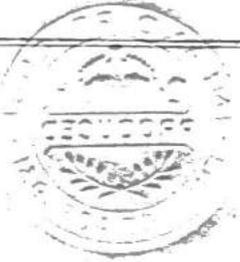
day of *July* One thousand nine hundred and forty nine  
BETWEEN WILLIAM POWELL AND SONS LIMITED whose Registered  
Office is at Colonial House in the City of Cardiff  
(hereinafter called "the Vendors") of the one part and  
the RURAL DISTRICT COUNCIL OF CARDIFF of 20 Park Place  
Cardiff aforesaid (hereinafter called "the Council") of  
the other part

WHEREAS the Vendors are seised in fee simple  
free from incumbrances of the hereditaments hereinafter  
described and have agreed with the Council for the sale to  
them of the said hereditaments for a like estate at the  
price of ONE HUNDRED AND FIFTY POUNDS

NOW THIS DEED WITNESSETH as follows:-

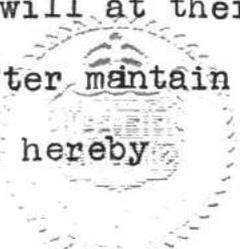
1. In pursuance of the said agreement and in consideration  
of the sum of ONE HUNDRED AND FIFTY POUNDS now paid by the  
Council to the Vendors (the receipt of which sum the Vendors  
hereby acknowledge) the Vendors as Beneficial Owners hereby  
convey unto the Council ALL THAT piece or parcel of land  
situate at Bonvilston in the County of Glamorgan being the  
southernmost portion of enclosure Number 69 on the Ordnance  
Survey Glamorgan Sheet XLVI 2. (Edition 1920) and containing  
in the whole by admeasurement two acres or thereabouts and  
which said hereditaments are more particularly delineated





on the plan annexed hereto and thereon coloured pink TO HOLD the same unto the Council in fee simple .

2. The Council hereby covenants with the Vendors that they the Council or their successors in title will at their own expense forthwith make and for ever hereafter maintain along the boundaries of the said piece of land hereby conveyed a good and sufficient boundary fence



3. The Vendors hereby acknowledge the right of the Council to production and delivery of copies of a Conveyance dated the Thirtieth day of September One thousand nine hundred and forty two and made between Alexander Francis Part and Lewis Erskine Wyndham Williams of the one part and the Vendors of the other part

4. IT IS HEREBY CERTIFIED that the transaction hereby effected does not form part of a larger transaction or of a series of transactions in respect of which the amount or value or the aggregate amount or value of the consideration exceeds FIVE HUNDRED POUNDS

IN WITNESS whereof the Vendors and the Council have caused their respective Common Seals to be hereunto affixed the day and year first before written

THE COMMON SEAL OF WILLIAM POWELL AND SONS LIMITED was hereunto affixed in the presence of:-

*John Powell* Director  
*[Signature]* Acting Secretary



THE COMMON SEAL OF THE CARDIFF RURAL  
DISTRICT COUNCIL was hereunto affixed  
in the presence of:-



*W. J. Parry*

Clerk of the Council.

MEMORANDUM: The following properties have been sold by virtue of conveyances listed below:

| <u>Date of Conveyance</u>      | <u>Property</u> |
|--------------------------------|-----------------|
| 8 <sup>th</sup> January 1979   | 3 Maes yffynon  |
| 1 <sup>st</sup> September 1980 | 10 " "          |
| 16 <sup>th</sup> February 1981 | 5 " "           |

MEMORANDUM

By conveyance dated the 30<sup>th</sup> day of September 1964 made between the within-named Council for the Rural District of Cardiff of the one part and Roland Arthur Watts of the other part All That piece or parcel of land at Bonvilston in the County of Glamorgan together with the dwelling-house messuage and premises situate thereon and known as Number 1 Maesyfynon Bonvilston the whole containing an area of 648 square yards or thereabouts shown coloured to the pink on the plan annexed to the conveyance to the said Roland Arthur Watts for an estate in fee simple such conveyance including an undertaking for production and safe custody of the within-written Deed



DATED

11<sup>th</sup> July

1949

MESSRS. WILLIAM POWELL AND SONS LIMITED

to

THE CARDIFF RURAL DISTRICT COUNCIL

165

C O N V E Y A N C E

of

a piece of land at Bonvilston

in the County of Glamorgan.

Phillips and Buck,  
Cardiff.

Ref. 8/8/D. 370.

Applicant's Ref. ....



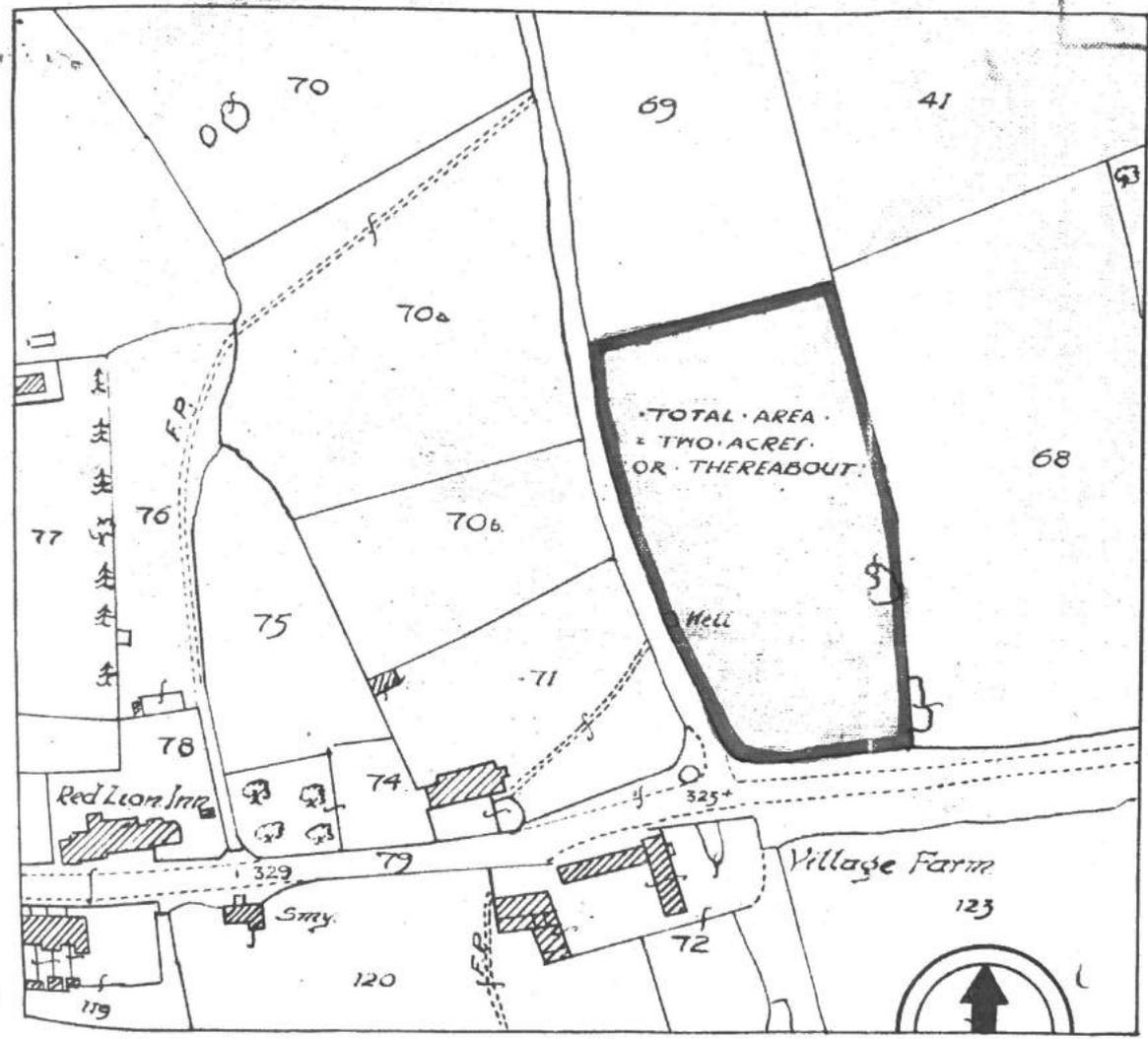
11<sup>th</sup> July 1950.  
Recd 13<sup>th</sup>

DEAR SIR,

TOWN AND COUNTRY PLANNING ACT, 1947

PLAN REFERRED TO

19 JUN 1950  
C.P.D.O.



SCALE - R.F. 1/2500

Ref. 8/8/D. 370.



11<sup>th</sup> July 1950.  
Recd 13<sup>th</sup>

Applicant's Ref. ....

DEAR SIR,

TOWN AND COUNTRY PLANNING ACT, 1947

Proposed development: Erection of six traditional  
type houses at Banwiltston,  
Glamorgan-shire.

Planning Authority Welsh Board of Health

Reference No. L.A. 399/658

Date of Planning Permission 4<sup>th</sup> August 1948.

I am directed by the Central Land Board to refer to your letter of 8/7/50  
and to the cheque for £ 150-0-0 enclosed therein  
in payment of the development charge provisionally assessed  
as a single capital payment of £ 150-0-0 in respect of the development  
described above.

The Board reserve the right to review the assessment if the development is  
delayed beyond 12 months from to-day. You should inform me when you are  
about to begin the development. The right to review the assessment is also  
reserved if you sell your interest in the land or grant a lease of the land before the  
development is carried out. Subject to these conditions, the Board hereby give  
their consent to the development.

It should be clearly understood that this consent does not relieve you of  
the responsibility for compliance with building licensing Regulations.

Yours faithfully,

*J. Roberts*  
Regional Manager.

The Clerk:-  
Cardiff Rural District Council  
Park House  
20 Park Place  
Cardiff.



253

Regional Office,  
76, Taff Embankment,  
CARDIFF.



### CENTRAL LAND BOARD

#### CERTIFICATE THAT DEVELOPMENT CHARGE HAS BEEN PAID OR SECURED

WHEREAS the Welsh Board of Health Court on  
4th August, 1948 under their reference number L.A. 399/658 granted planning permission  
on the application of The Clerk, Cardiff Rural District Council of Park House,  
20 Park Place, Cardiff, for the building as specified in that permission of six  
traditional type houses at Bonvilston, Glamorganshire;

AND THE CENTRAL LAND BOARD HAVE determined the development charge payable in respect of  
that building as a single capital payment of  
£180 (One hundred and eighty pounds)

THE CENTRAL LAND BOARD HEREBY CERTIFY that the said development charge has  
been paid in accordance  
with the provisions of Part VII of the Town and Country Planning Act, 1947.

Date 24th July, 1952.

*[Signature]*  
for and on behalf of  
the Central Land Board.

Form D.8.

45131. Wt. 29415/C404. 20M. 9/51. B. & S., Ltd. 628.

may

A separate form must be used if additional space is required.

Signature of solicitor or applicant

*Phillips & Buck*  
Date when signed 4th July, 1949.

The prescribed adhesive Land Registry fee stamp, which may be purchased at Head Post Offices, having been affixed to the duplicate, this form should be sent by prepaid post addressed to the Land Charges Superintendent, H.M. Land Registry, Lincoln's Inn Fields, London, W.C.2.

NO COVERING LETTER REQUIRED.

NAME AND ADDRESS IN BLOCK LETTERS TO WHICH CERTIFICATE IS TO BE SENT.

MESSRS. PHILLIPS AND BUCK.

This space

FORM LC11.

Fix fee stamps  
Duplicate within

Land Charges Act, 1925.  
Official Search No.

# LAND CHARGES

## 364773/49

Law of Property (Amendment) Act, 1926.

### APPLICATION FOR AN OFFICIAL SEARCH

(To be completed in duplicate)

We hereby apply for an Official Search to be made in the **Alphabetical Index** to the **Registers** kept under the above Acts for any subsisting entries therein under the undermentioned names, addresses and descriptions affecting land in the county of Glanorgan,  
 \*parish of Bonvilston, (formerly parish of .....),  
 place or district of Bonvilston,  
 \*known as a piece of land at Bonvilston  
 (formerly known as .....

\* If there has been a change of parish name, or in the description of the land the former name and description MUST be given. A short description of the property (e.g. 4 Smith Square) may be added.

We have paid the fee of 1/6d.

| Name (in block letters)         | Christian names (in block letters) | All addresses, title, trade or profession, to be set out below |
|---------------------------------|------------------------------------|--|
| WILLIAM POWELL AND SONS LIMITED |                                    | Registered Office - Colonial House in the City of Cardiff      |

may

A separate form must be used if additional space is required.

Signature of solicitor or applicant Phillips & Buck

Date when signed 4th July, 1919

The prescribed adhesive Land Registry fee stamp, which may be purchased at Head Post Offices, having been affixed to the duplicate, this form should be sent by prepaid post addressed to the Land Charges Superintendent, H.M. Land Registry, Lincoln's Inn Fields, London, W.C.2.

NO COVERING LETTER REQUIRED.

It is hereby certified that the Official Search applied for has been made up to the closing of the Office on the date given on the Official Stamp below.

The Result is as follows:—

**NO SUBSISTING ENTRIES  
ON THE FOLLOWING DATE**

| Names and addresses   | Nature of registration | Date and reference number of registration | Situation of land |                             | Short description of land in Index (if any) |
|---|------------------------|---|-------------------|-----------------------------|---|
|   |                        |   | County            | Parish or Place or District |   |
|  |                        |   |                   |                             |   |
|  |                        |   |                   |                             |   |

**WARNING.**

This certificate refers to the description of the land, if any, given in the Alphabetical Index. Alterations of description subsequent to the date of registration cannot be made in the register and not have been made in the Alphabetical Index.

**NOTES.**

- Neither the Act nor the Rules require particular parcels of land to be entered in the Alphabetical Index. The convenience of searchers, however, short descriptions of particular parcels are entered in the Index, where practicable. This is not practicable in all cases. A certificate of the result of an official search may, consequently, contain (in addition to entries affecting the parcel of land specified in the application therefor) entries in the Index where no particular parcel of land is given therein. Such entries may or may not affect the land in which the searcher is interested. Having obtained notice of them, a purchaser is, however, in a position to call on his vendor to show him that they do not affect the land he is purchasing, or have them dealt with as provided by S. 43 of the Land Registration Act, 1925. It is also open to him to apply on Form LC 14 for an office copy of the entry in the Index.
- Certificates of official search are normally posted to the applicant if received before 10 a.m.

Contents of Official Certificate.

Normal time for issuing Certificates of Official Searches.



THE SOLICITORS  
LAW STATIONERY SOCIETY LTD

# This Conveyance

is made the 9<sup>th</sup> day of

January One thousand nine

hundred and fifty six BETWEEN WILLIAM POWELL & SONS LIMITED whose Registered Office is at Colonial House, Millicent Street in the City of Cardiff (hereinafter called "the Vendors") of the one part and the COUNCIL FOR THE RURAL DISTRICT OF CARDIFF of Park House, 20, Park Place, Cardiff aforesaid (hereinafter called "the Council") of the other part

## WHEREAS

1. The Vendors are seised in fee simple free from encumbrances of the hereditaments hereinafter described
2. The Vendors have agreed to sell and the Council in exercise of the powers in that behalf given to them by the Local Government Act, 1933, the Housing Act, 1936, and of all other powers enabling them hereunto have agreed to purchase the hereditaments hereinafter described in fee simple in possession free from encumbrances but subject to the covenant hereinafter contained at the price of ONE HUNDRED AND SIXTY EIGHT pounds.

## NOW THIS DEED WITNESSETH as follows :-

1. In pursuance of the said agreement and in consideration of the sum of ONE HUNDRED AND SIXTY EIGHT pounds now paid by the Council to the Vendors (receipt of which sum the Vendors hereby acknowledge) the Vendors as beneficial owners hereby convey unto the Council all that piece or parcel of land situate at Bonvilston in the County of Glamorgan containing an area of 1.87 acres or thereabouts and being part of the Enclosure No.69 on Ordnance Survey Sheet Glamorgan XLVI-2 (Edition of 1919) for the Parish of Bonvilston which said hereditaments are more particularly delineated on the plan annexed hereto and thereon edged pink TO HOLD the same unto the Council in fee simple
2. The Council hereby covenants with the Vendors that they the Council or their successors in title will at their own expense forthwith make and for ever hereafter maintain along the eastern and northern sides of the said piece of land hereby conveyed a good and sufficient boundary fence and will form a new access to Enclosure No.38 in the position marked A on the attached plan to the Vendors' satisfaction using the existing posts and field gate from the existing access to Enclosure No.69 aforesaid
3. The Vendors hereby acknowledge the right of the Council to production and delivery of copies of a Conveyance dated the 30th day of September 1942 made between Alexander Francis Part and Lewis Erskine Wyndham Williams of the one part and Vendors of the other part
4. It is hereby certified that the transaction hereby effected does not form part of a larger transaction or of a series of transactions in respect of which the amount or value or the aggregate amount or value of the consideration exceeds £500

IN WITNESS whereof the Vendors and the Council have caused their respective Common Seals to be hereunto affixed the day and year first before written

THE COMMON SEAL OF WILLIAM POWELL )  
AND SONS LIMITED was hereunto )  
affixed in the presence of :- \_\_\_\_\_ )



*Wm Powell* Director  
*[Signature]* Secretary

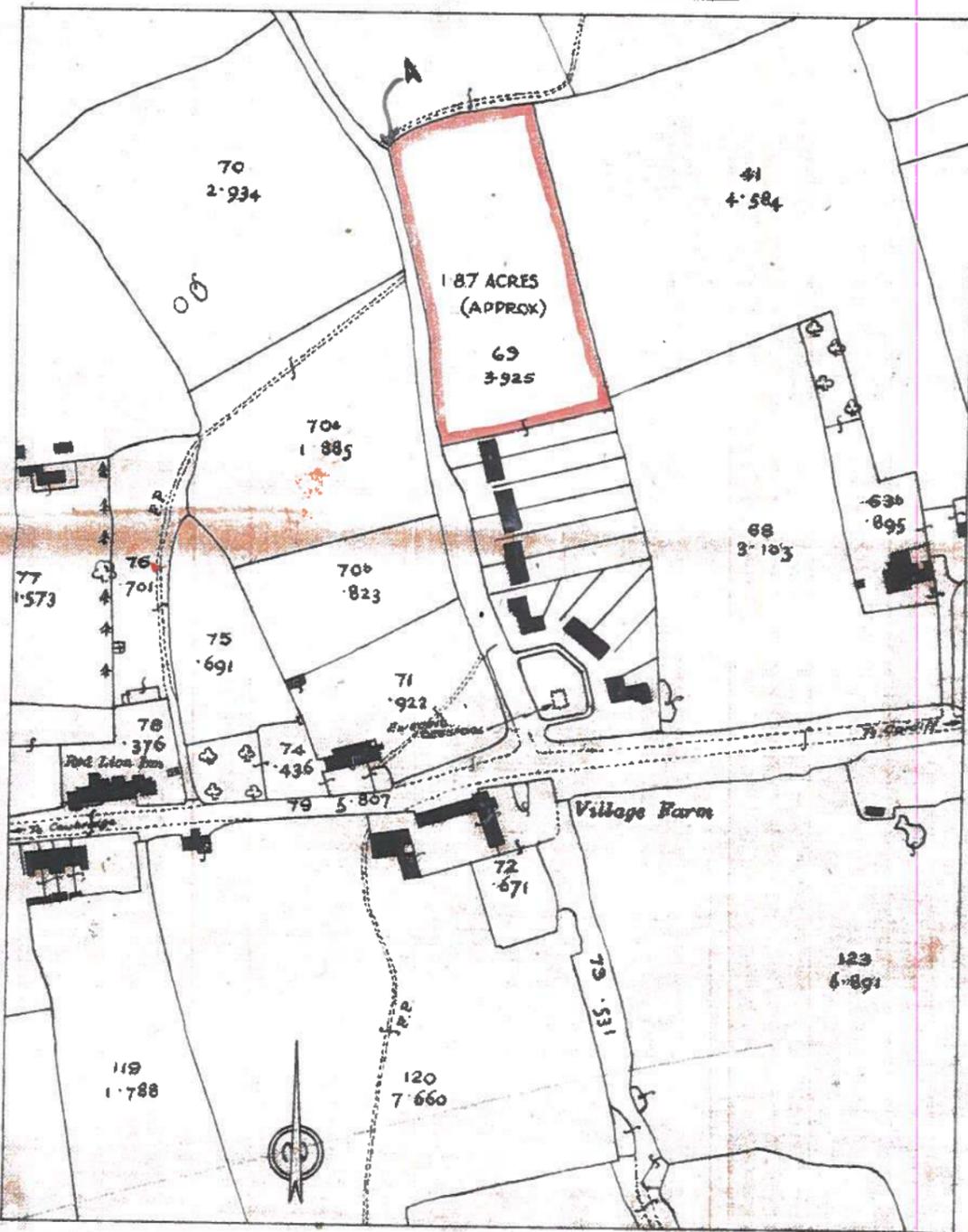
THE COMMON SEAL OF THE CARDIFF RURAL )  
DISTRICT COUNCIL was hereunto affixed )  
in the presence of :- \_\_\_\_\_ )



*[Signature]*  
Clerk of the Council,

CARDIFF · RURAL · DISTRICT · COUNCIL

PROPOSED · HOUSING · SITE  
AT  
BONVILSTON



SCALE : 1/2500

S. P. YOULDON, M.C., F.R.I.C.S., M.I.MON.E.,  
ENGINEER & SURVEYOR,  
20, PARK PLACE, CARDIFF.

ORD. SURV. GLAM. XLVI. 2. (1919)

J.M.F.A. 22-3-54.

Land Charges Act, 1925.  
Official Search No.  
**9963/56**

Affix fee stamps  
on Duplicate within

**LAND CHARGES ACT**  
Law of Property (Amendment) Act, 1926

**APPLICATION FOR AN OFFICIAL SEARCH**  
(To be completed in duplicate)

We hereby apply for an Official Search to be made in the **Alphabetical Index** to the Registers kept under the above Acts for any subsisting entries therein under the undermentioned names, addresses and descriptions affecting land in the county of Glamorgan,  
\*parish of Bonvilston, (formerly parish of -)  
place or district of Bonvilston  
\*known as 1.87 acres of land being part of Enlosure No.69 on O.S. Sheet Glamorgan XLVI-2 (Edition of 1919) for the Parish of Bonvilston.  
(formerly known as -)

\* If there has been a change of parish name, or in the description of the land the former name and description MUST be given. A short description of the property (e.g. 4 Smith Square) may be added.

We have paid the fee of 1/6d and request that the result of the search be posted.  
† N.B.—Insert "posted", "telegraphed" or "telephoned" as required. Telegrams and telephone messages can only be sent after 2 p.m. and on payment of a minimum extra fee of 1/6.

| Surname (in block letters) | Christian names (in block letters) | All addresses, title, trade or profession, to be set out below |
|----------------------------|------------------------------------|--|
| WILLIAM POWELL AND         | SONS LIMITED                       | Colonial House, Milllicent Street, Cardiff.                    |

A separate form must be used if additional space is required.

Signature of solicitor or applicant [Signature] Date 4/1/56.  
Solicitor's reference BHW/ADW. Telephone No. Cardiff 23231-7.

The prescribed adhesive Land Registry fee stamp, which may be purchased at Head Post Offices, having been affixed to the duplicate, this form should be sent by prepaid post addressed to the Land Charges Superintendent, H.M. Land Registry, Station Approach Buildings, Station Approach, Kidbrooke, London, S.E.3.

**NO COVERING LETTER REQUIRED.**

This space must be filled in

NAME AND ADDRESS IN BLOCK LETTERS TO WHICH CERTIFICATE IS TO BE SENT.  
Clerk of the Cardiff R.D.C.,  
Park House,  
20, Park Place,  
Cardiff.

DATED 9<sup>th</sup> January 1956

**286**  
MESSRS. W. L. JONES & SONS LIMITED

- to -

THE RURAL DISTRICT COUNCIL OF CARDIFF

# Conveyance

- of -

1.87 acres or thereabouts of land being part of Enclosure No. 69 on O.S. Sheet Glamorgan XVI-2 (Edition of 1919) in the Parish of Bonvilston in the County of Glamorgan.

Park House,  
20, Park Place,  
Cardiff.

MEMORANDUM By a Deed dated the 6th day of May One Thousand Nine Hundred and Sixty Nine and made between the within-named Cardiff Rural District Council (the Grantor) of the one part and Frederick Arthur Lewis (the Grantee) of Sunnyside Farm Bonvilston of the other part the Council as beneficial owner granted unto the Grantee in consideration of the payment of the sum of Twenty Pounds (£20) full right and liberty to lay and construct beneath the surface a line of pipes one inch in diameter for the supply of water to property between the points marked "A" and "B" on the plan annexed thereto and thereon delineated by a blue line and to enter upon the said land as and when necessary for the purpose of inspecting cleaning renewing relaying maintaining and repairing the said line of pipes

MEMORANDUM : The following properties have been sold by virtue of the Conveyances mentioned below :

| <u>Date of Conveyance</u>       | <u>Property</u>              | <u>Transferee</u>      |
|---------------------------------|------------------------------|------------------------|
| 23rd May 1977                   | 17 Maes y Ffynnon Bonvilston | Mr and Mrs H.C. Mustow |
| 17 <sup>th</sup> September 1979 | 24 .. ..                     | .. ..                  |
| 29 <sup>th</sup> September 1980 | 19 .. ..                     | .. ..                  |
| 17 <sup>th</sup> November 1980  | 14 .. ..                     | .. ..                  |
| 29 <sup>th</sup> December 1980  | 21 .. ..                     | .. ..                  |
| 26 <sup>th</sup> January 1981   | 18 .. ..                     | .. ..                  |
| 29 <sup>th</sup> June 1981      | 13 .. ..                     | .. ..                  |

(ix) Van.

Site Works.

(x) Wanvoo.

(a) Site Works.

(b) Erection of 32 Dwellings.

(xi) Whitchurch.Eglwys Wan Estate.

Erection of 56 Flats.

Tongwynlais.

Erection of 72 Dwellings.

BONVILSTON.Proposed Conversion of Women's Land Army Hostel Buildings.

1538† The Committee considered the recommendation to them of the Housing Management Committee "That the proposal to convert the Hostel Buildings into seven two-bedroom dwellings be proceeded with, such dwellings to be used primarily for the accommodation of persons who are on the list of applicants for housing accommodation in Bonvilston or adjacent Parishes" and

Arising thereon the Engineer and Surveyor reported :-

(a) That Planning permission has been received for the conversion of the Hostel into housing accommodation for a limited period of 20 years, but it has been pointed out to the County Planning Officer that a period of at least 30 years would be necessary to obtain an Exchequer contribution under the Housing Act, 1949, and the Planning Officer has replied that the question of extension of the planning permission for a period of 30 years would receive sympathetic consideration.

(b) That, according to the County Planning Officer, a proposal to erect permanent dwellings on this site would not be likely to receive approval on the grounds that the site is not related to the village and, in due course, should revert to agriculture.

The Committee recommends -

(A) That the proposal to use the above-mentioned site for housing purposes be not proceeded with unless planning permission is obtained -

(i) for the conversion of the Women's Land Army Hostel Buildings without any limitation of time.

(ii) for the use of the land adjoining the Hostel site for permanent housing purposes.

(B) That the Engineer and Surveyor inform the Glamorgan County Council of the decision set out in (A) above and indicate that, unless planning permissions are given as sought, the Council must revert to their original proposal to erect further houses adjoining the Maesyffynnon Site.

LISVANE.Site for Police Houses.

1539† The District Valuer reported that he considers the price to be paid by the Glamorgan County Council for the above-mentioned site should be £50, the sale to be subject to the following conditions :-

25th January, 1954.

Tongwynlais - Greenmeadow Site.

- (a) Erection of 42 Dwellings.
- (b) Final Street Works.

BONVILSTON.

Women's Land Army Hostel.

2680† The Engineer and Surveyor referred to the discussion between the Sub-Committee of the Council's Planning Committee and a Sub-Committee of the County Council at a meeting held at the County Hall, Cardiff, on the 19th January, 1954, when the District Council's representatives agreed to recommend the withdrawal of the application for planning permission for the conversion of the Women's Land Army Hostel into dwellings and for the erection of six permanent dwellings within the site; and

After a full discussion, during which Councillors H.P. Templeton, J.P., and Tudor Thomas expressed their concern that further good agricultural land at Maesyffynon, Bonvilston, should be taken for housing purposes instead of utilising the Hostel Site, which was formerly agricultural land and, most probably, could not now be restored to that use,

The Committee recommends -

(a) That the above-mentioned application for planning permission in respect of the Hostel Site be withdrawn.

(b) That the necessary steps be now taken with the view to the acquisition and development of the site adjacent to the Airoy Houses at Maesyffynon. Note - An amendment that the matter stand in abeyance until the next Meeting, in order that enquiries may be made of the various Government Departments concerned as to whether arrangements can be made for the buildings on the Hostel Site to be demolished and the site cleared before acquisition of the land by the Council for housing purposes, (thus saving the Council the sum of approximately £500 on demolition works), in the event of the County Council being persuaded to reconsider their decision with regard to the site, was defeated by 15 votes to 14.

LISVANE.

Final Street Works.

2681. The Engineer and Surveyor reported that the necessary survey to enable the plans to be prepared for the final street works on this site is now in hand.

MICHAELSTON-LE-PIT.

2682. The Engineer and Surveyor reported that he understands the planning consent for the four houses to be erected at Michaelston-le-Pit will be received shortly.

PENDOYLAN.

Proposed further 8 Dwellings.

2683. The Engineer and Surveyor reported that the tender submitted by Messrs. Robert Thomas & Son of Cowbridge for the erection of the eight dwellings proposed on this site is too high for approval by the Ministry and, accordingly, negotiations are taking place with the Firm on the matter.

24th January, 1955.

The Engineer and Surveyor having pointed out that the area of land which will be left to the Council after excluding the above-mentioned portion to be purchased by a private developer will only be sufficient for 4 dwellings,

The Committee recommend -

- (a) That a scheme for the proposed erection of <sup>2</sup> houses at Llancadle be proceeded with - a site for <sup>4</sup> additional houses to be selected elsewhere.
- (b) That a site adjoining the Village Playground at Llancarfan be considered for the purpose of the erection of the last-mentioned <sup>4</sup> two additional houses.

Penmark Re-development.

088. In reply to a question raised by Councillor Sir Hugo R. B. Boothby, Bart., J.P., D.L., the Engineer and Surveyor stated he would take the necessary steps in connection with the demolition of the buildings on the Council's land to safeguard the occupied private cottage adjoining the re-development site.

BONVILSTON.

Terms for acquisition of Maesyffynon No.2 Housing Site.

089† The District Valuer reported, as follows, as to the terms which he has negotiated, subject to confirmation by the Council, in respect of the proposed acquisition of 1.87 acres of land at Maesyffynon, Bonvilston, for housing purposes:

|  | £   | s. | d. |
|--|-----|----|----|
| Purchase Price   | 168 | 0  | 0  |
| (The District Valuer pointed out that there is no admitted claim under Part VI of the Town and Country Planning Act, 1947) |     |    |    |
| <u>Plus</u> (a) Surveyor's Fees  | 14  | 14 | 0  |
| (b) Proper Legal Costs   |     |    |    |
| Tenant's Compensation  | 26  | 7  | 6  |
| <u>Plus</u> Surveyor's Fees  | 5   | 5  | 0  |

The Committee recommend -

That the above-mentioned proposed terms of purchase and tenant's compensation be adopted.

PENTYRCH.

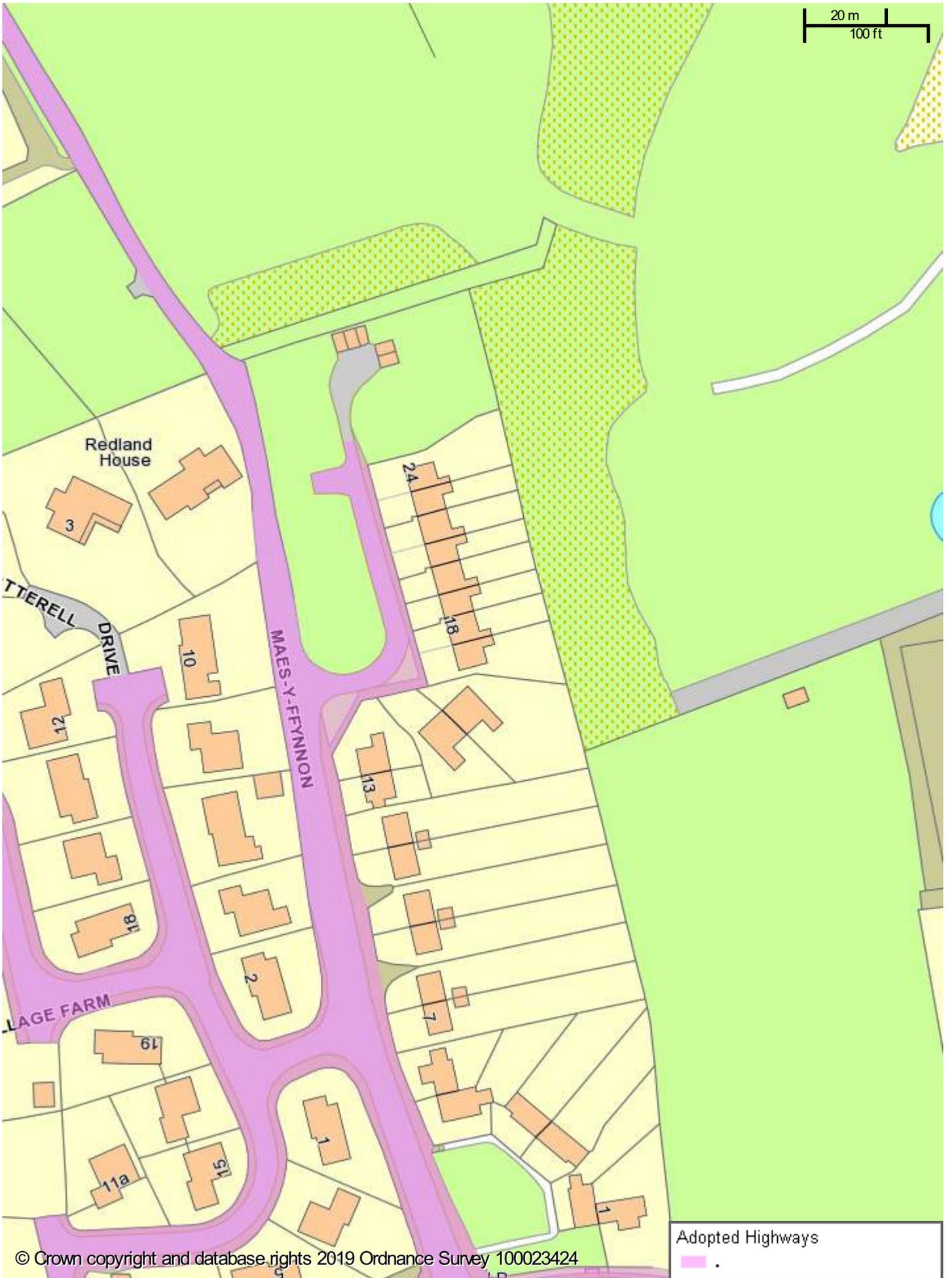
Bronllwyn Site.

090. The Engineer and Surveyor was directed to report further on the question of the provision of garages at this site.

PORTHKERRY.

Romilly Road Housing Site.

091. The Engineer and Surveyor reported that tenders will be invited for the erection of the proposed garages on this site for submission to the February meeting of the Committee.



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### 1-5 MAES-Y-FFYNNON



#### LOCATION,

1-5 Maes-y-Ffynnon, Bonvilston.

This block of 5 garages are built at the end of a cul-de-sac in a residential street. The road leading to the garage block is covered in loose stone chippings and the surrounding area is a cluster greens and trees, some of which have TPO against them. Which are highlighted in figure 1.

The survey was undertaken on the 2/9/16.

#### CONSTRUCTION TYPE

This block of 5 garages were built circa 1950 and are of a traditional, single skin, clay brick construction mixed with precast concrete side and rear elevations. They are built on a concrete hard stand. The roof itself is a presumed asbestos material and runs from front to back and has a fall of under 15 degrees making this a flat roof structure. The garage fascia's to the rear and side are precast concrete and are decaying fast.

The doors are an up and over style door, all 5 doors are in need of replacing, (see figure 12)

## CONDITION SURVEY AND REPORT

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### CONDITION,

All five garage doors are in need of replacing along with their timber surrounds, (see figure 12)

The brickwork fronts show signs of cracking and splitting due to compaction, movement and age. The precast concrete panels also show signs of cracking due to the above reasons. The precast concrete fascia's are also falling away and decaying through age and movement.

The roof is original as well as the fixings which have corroded and are no longer preventing water from entering the structure. There is a significant amount of debris and vegetation growing over and onto the roof.

### IMMEDIATE ACTION TAKEN,

Surveyor made a point highlighting this block in his survey sheets to address these issues ASAP

### MAINTENANCE AND REVENUE

The overall costs to remove the roof material and repair this block would be an estimated £7500-10,000. As removing and replacing the roof alone would come close to £3500 and Renewing the doors alone would cost £4000. Working on the assumption that all 5 the units were rented out once complete, the yearly income would be in the region of £1800. In summary the cost to repair far outweighs the income gained, as it would take between 3-5 years to turn a profit and that also depends on whether all three units are rented out for the five years.

### RECOMMENDATIONS,

- I recommend that any rented units be re-housed.
- Demolish the entire block as renewing the roof and doors repairing the precast concrete panels would be too expensive
- Make good surrounding area and fencing
- Concrete hard stands removed and the ground to be made good
- This plot would make an ideal place for redevelopment .Further assessment should be taken on whether the land could be re-used in a housing capacity. (see figure 1)

# CONDITION SURVEY AND REPORT

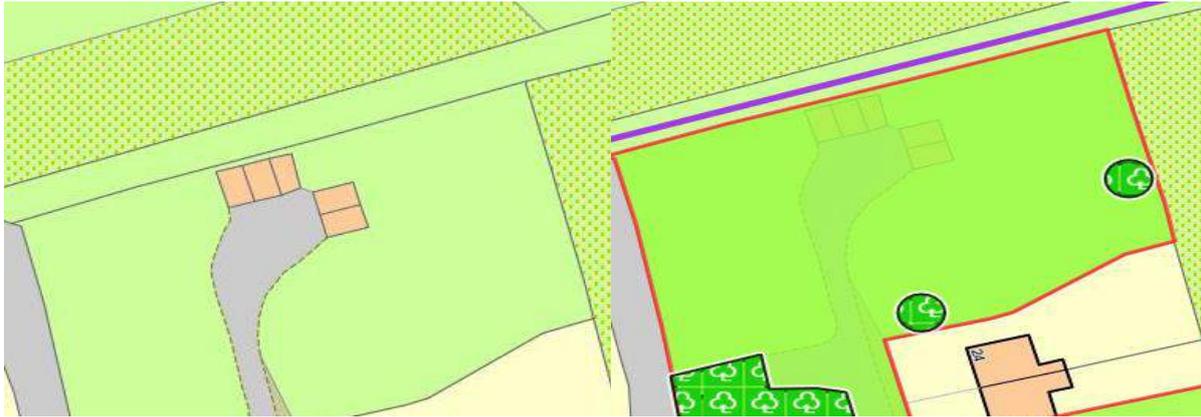


Fig 1, location of 1-3 Duffryn close garages, garage layout and also shows the councils housing land boundary.



Fig 2 overall view of garage block



Fig 3 garage number 4-5 and the general state of the brick work and vegetation



Fig 4 closer look the garage block showing the state of the doors and the vegetation

# CONDITION SURVEY AND REPORT

---



Fig 5 shows garage number 1



Fig 6 shows garage 2



Fig 7 shows garage number 3



Fig 8 shows the side elevation of garage number 1

## CONDITION SURVEY AND REPORT

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Fig 9 shows the side elevation of garage 5 and the state of the precast concrete panels



Fig 10 shows the rear elevation of garage number 4+5



Fig 11 shows the rear elevation of garage number 1-3 with the decayed concrete fascia and overgrown vegetation



Fig 12 shows the roof of garage number 2+3.

## CONDITION SURVEY AND REPORT

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Fig 13 shows the roof of garage 1 and the poor state that it is in along with the splitting of the clay bricks.



Fig 14 shows a closer look at the rear of garage number 4



Fig 15 shows the inside of garage 4



Fig 16 shows the surrounding area leading up to the block garages

## CONDITION SURVEY AND REPORT

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Fig 17 shows the vegetation growing to the rear of the garage block



Fig 18 shows the surrounding area adjacent to the block.



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## **1. Introduction**

- 1.1.1. On behalf of the Vale of Glamorgan (VoG) Council's Housing Department, the Operational Manager for Planning and Building Control of the Vale of Glamorgan Council has directed the Planning Policy Department to act as a planning consultant to bring forward Land to the North of Maes y Ffynnon, Bonvilston for a 100% affordable housing scheme.
- 1.1.2. The proposed development relates to a site located within the settlement of Bonvilston. The application site is currently owned by the Council's Housing Department and previously accommodated garages associated with the existing housing along Maes y Ffynnon. The parcel of land the proposal relates to is approximately 0.3ha and is situated at the northern end of Maes y Ffynnon as shown in Figure 1.
- 1.1.3. The proposal is for a 100% affordable housing scheme and seeks to meet the affordable housing need for the housing market area of Wenvoe as defined in the Council's Local Housing Market Assessment (2017) and which includes the settlement of Bonvilston.

## **1.2. Purpose and Scope of Design and Access Statement (DAS)**

- 1.2.1. The DAS is intended to explain and justify the objectives and concepts of good design used within a development proposal and how these design principles are reflected throughout the scheme. The DAS reflects the tenets of good design, as outlined within Planning Policy Wales (PPW) Edition 10 (2018)<sup>1</sup> and Technical Advice Note (TAN) 12: Design (2016)<sup>2</sup>; and how these have been considered from the beginning of the development process.
- 1.2.2. Welsh Government has produced guidance called 'Design and Access Statements in Wales' (2017) which sets out what a DAS should cover in the Welsh context. This DAS has been produced in accordance with the Town and Country Planning (Development Management Procedure) (Wales) Order 2012 (as amended) which sets out the following minimum requirements a DAS should include:
  - The design principles and concepts that have been applied to the development; and
  - How issues relating to access to the development have been dealt with.

---

<sup>1</sup> PPW (2018) - <https://beta.gov.wales/sites/default/files/publications/2018-12/planning-policy-wales-edition-10.pdf>

<sup>2</sup> TAN 12: Design (2016) - <https://gov.wales/docs/desh/publications/160504-technical-advice-note-12-en.pdf>

## 2. Planning History

2.1. The following planning history relates to the site:

- 1989/00578/RG5
  - Location - Land adjacent to 24 Maes-y-Ffynnon
  - Proposal - Residential Development (Regulation 5)
  - Decision - Approved (4<sup>th</sup> September 1989)
  
- 2010/00113/RG4
  - Location - Land at end of cul-de-sac, Maes Y Ffynnon, Bonvilston
  - Proposal - Outline application for residential development of land for 3 houses
  - Decision - Withdrawn (12<sup>th</sup> March 2010)

2.2. Any approved planning consents have lapsed. The garages which occupied the land have been recently demolished and only the hard standing now remains leaving the site vacant. The previous residential development permitted under 1989/00578/RG5 was not implemented and since its approval there have been a number of material changes to national and local policy which must be considered under this application.

### 3. Summary of the Proposal

3.1.1. The proposed development is for 10 affordable housing units on 0.3ha site on land to the north of Maes y Ffynnon. The proposal lies within the settlement boundary of Bonvilston and is situated on land which can be considered a mix of previously developed land and greenfield land.

### 3.2. Location



Figure 1: Site Location

3.2.1. The development site is located within the residential settlement boundary of Bonvilston identified as a Minor Rural Settlement in the Council's adopted Local Development Plan (LDP). The site is positioned at the end of the cul-de-sac known as Maes Y Ffynnon and which serves as primary access to eight residential properties. The street scene mainly consists of two storey residential terraced properties which previously formed a part of the Rural District Housing Council estate. The properties are finished in white or cream render and share a reasonably uniform design. There are a number of similar semi-detached and detached properties within the vicinity of the site.



**Photograph 1: Entrance to Maes y Ffynnon Cul-de-Sac**



**Photograph 3: Adjacent Detached Property to the West**



**Photograph 2: Row of Terraced Housing along Cul-de-Sac**



**Photograph 4: Row of Houses along Maes y Ffynnon**

3.2.2. The site lies on the northern boundary of the Bonvilston facing out towards Cottrell Park Golf Course which borders the site to the north and east. The site adjoins the curtilage of no.24 Maes y Ffynnon to the south and an area of informal amenity open space which benefits from the presence of a number of mature trees a number of which are protected by a Tree Preservation Order(s). The western boundary of the site is bordered by an adopted highway which leads to the property known as Sunnyside to the north. Opposite the site to the west is a large detached dwelling known as Redland House which overlooks the site.



**Photograph 5: Approach to Site**



**Photograph 8: View of South Western Corner**



**Photograph 6: View of North Western Corner**



**Photograph 9: View towards Maes y Ffynnon Cul-de-Sac**



**Photograph 7: View to the West**



**Photograph 10: View to the East**





Figure 3: Access to Site

3.2.6. The site benefits from reasonably good highway access from the A48 which is accessed directly from Maes y Ffynnon to the south of the site. To the north Maes y Ffynnon continues and provides access to the residential property known as Sunnyside. The A48 offers wider links to the M4 and surrounding settlements such as Barry, St Nicholas and Culverhouse Cross which have a wider range of services and facilities. The road which currently serves Maes y Ffynnon is identified as an adopted highway although the hard standing/access area that served the now demolished garages is not adopted. All access roads serving the proposed development would be constructed to current highway standards.

## 4. National and Local Planning Policy

### 4.1. National Policy

- 4.1.1. Planning Policy Wales Edition 10 (PPW) (December 2018) published by Welsh Government provides the national planning policy context for Wales. PPW is also supported by various topic based Technical Advice Notes (TANs) which provide detailed guidance on a number of issues.

#### **Planning Policy Wales (PPW) Edition 10 (2018)**

- 4.1.2. PPW sets out the land use policy context for the consideration and evaluation of all types of development to promote sustainable development which is defined by the Well-being and Future Generations (Wales) Act (2015) as “the process of improving the economic, social, environmental and cultural well-being of Wales by taking action, in accordance with the sustainable development principle, aimed at achieving the well-being goals.” (PPW, p.9, 2018). The sustainable development principle seeks to ensure the needs of the present are met without compromising the ability of future generations to meet their own needs. This concept of sustainable development is promoted by PPW relating to both the preparation of development plans and in the determination of planning applications.
- 4.1.3. PPW sets out the national planning policy approach to ensure the requirements of the Well-being and Future Generations (Wales) Act (2015) are met through adopting a placemaking approach to plan making, planning policy and decision making. Placemaking is defined in national policy as “a holistic approach to the planning and design of development and spaces, focused on positive outcomes. It draws upon an area’s potential to create high quality development and public spaces that promote people’s prosperity, health, happiness, and well-being in the widest sense.” (PPW, p.16, 2018). To ensure those involved in the planning system follow the placemaking approach, PPW outlines the key principles that should be adhered to:
- Growing our economy in a sustainable manner;
  - Making best use of resources;
  - Facilitating accessible and healthy environments;
  - Creating and sustaining communities;
  - Maximising environmental protection and limiting environmental impact.
- 4.1.4. Paragraph 3.3 of PPW emphasises the importance good design plays in creating sustainable development. The scope of good design goes beyond the architecture of the building and includes “the relationship between all elements of the natural and built environment and between people and places.” (PPW, p.26,

2018). To ensure good design is achieved developments should meet the objectives of good design through the five key aspects set out in figure 4 below:

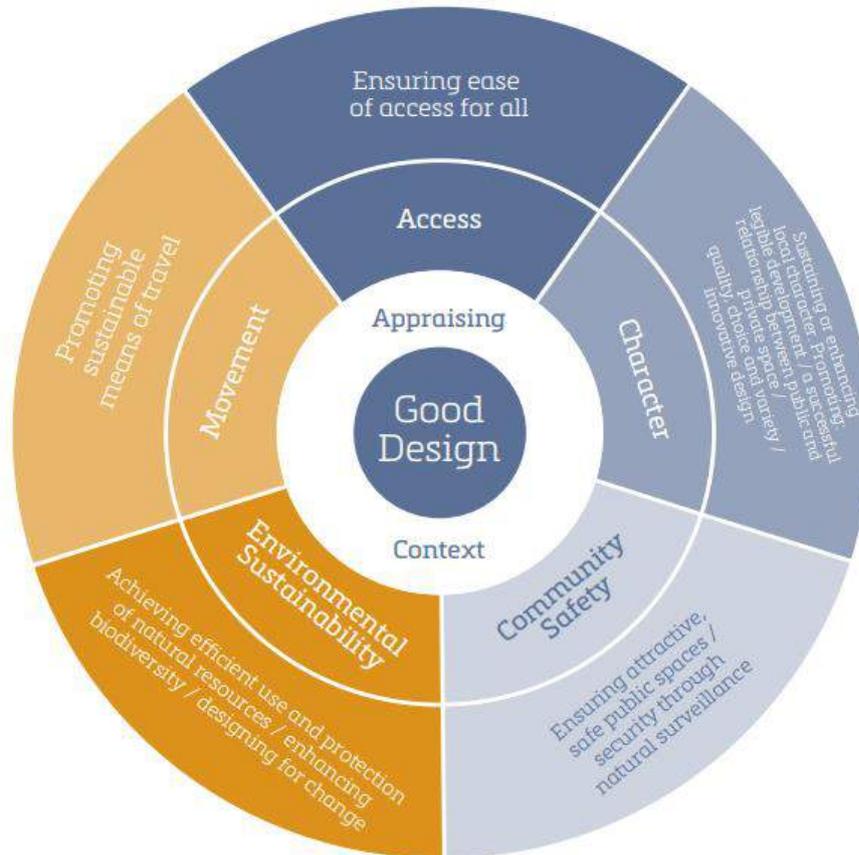


Figure 4: Objective of Good Design (Source: PPW 2018)

4.1.5. PPW endorses the use of previously developed land wherever possible to be used in preference to greenfield sites. Where the land is located within settlements PPW states “such land should generally be considered suitable for appropriate development where its re-use will promote sustainability principles and any constraints can be overcome” (PPW, p.37, 2018). For the purposes of planning previously developed land is defined as:

*“Previously developed (also known as brownfield) land is that which is or was occupied by a permanent structure (excluding agricultural or forestry buildings) and associated fixed surface infrastructure. The curtilage of the development is included, as are defence buildings and land used for mineral extraction and waste disposal where provision for restoration has not been made through development management procedures.*

*Excluded from the definition are:*

- *land and buildings currently in use for agricultural or forestry purposes;*

- *land which has not been developed previously, for example parks, recreation grounds, golf courses and allotments, even though these areas may contain certain urban features such as paths, pavilions and other buildings;*
  - *and where the remains of any structure or activity have blended into the landscape over time so that they can reasonably be considered part of the natural surroundings;*
  - *and which is species rich and biodiverse and may qualify as section 7 habitat' or be identified as having nature conservation value; in Environment Act; and*
  - *previously developed land subsequently put to an amenity use.” (PPW, p.38, 2018)*
- 4.1.6. Paragraph 4.2.25 of PPW relates to Affordable Housing and states “A community’s need for affordable housing is a material planning consideration which must be taken into account in formulating development plan policies and determining relevant planning applications.” (PPW, p.59, 2018).
- 4.1.7. In regards to the provision of affordable housing PPW emphasises the importance of affordable housing exception sites which help to meet identified requirements and ensure the viability of the local community. PPW stresses “Where such policies are considered appropriate it should be made clear that the release of small housing sites within or adjoining existing settlements for the provision of affordable housing to meet local needs which would not otherwise be allocated in the development plan, is an exception to the policies for general housing provision” (PPW, p.60, 2018) Furthermore, the affordable housing provided on exception sites should meet the needs of local people in perpetuity and must meet all the other criteria which housing development would usually be judged (PPW, 2018).

### **Technical Advice Notes (TANs)**

- 4.1.8. **Technical Advice Note (TAN) 2: Planning and Affordable Housing (2006)** defines affordable housing for the purposes of planning as “housing where there are secure mechanisms in place to ensure that it is accessible to those who cannot afford market housing, both on first occupation and for subsequent occupiers.” (TAN 6, p.4, 2006) and includes social rented and intermediate housing. TAN 6 places a strong presumption in favour of affordable housing being provided on application sites to contribute to development of socially mixed communities (Para.5.4, 2006).
- 4.1.9. **Technical Advice Note (TAN) 12: Design (2016)** builds upon the objectives of good design set out in PPW providing further guidance on the elements of good design which should be included within development proposals. The design context is individual to each proposal however there are broad areas which should be covered in any proposal which are outlined in TAN 12. The key guidance relating to the proposed development are:

- “Those involved in the design process need to recognise existing urban qualities and find ways of ensuring that new development strengthen or complement these.” (para.5.7.2, 2016)
- “Building at higher densities is not synonymous with high rise development and innovative good design is a prerequisite to the success of higher densities. The perception of lower density can be influenced by skilful design. Clearly defining public and private space and ensuring suitability for purpose will be particularly important where densities are high.” (para.5.7.4, 2016)
- “The design of housing layouts and built form should reflect local context and distinctiveness, including topography and building fabric. Response to context should not be confined to architectural finishes. The important contribution that can be made to local character by contemporary design, appropriate to context, should be acknowledged. To help integrate old and new development and reinforce hierarchy between spaces, consideration should be given to retaining existing landmarks, established routes, mature trees and hedgerows within housing areas as well as introducing new planting appropriate to the area. All residential proposals should seek to minimise energy demand, larger schemes should investigate the feasibility of a district heating scheme especially when mixed uses are proposed for the site.” (para.5.11.3, 2016)
- “The location and definition of public and private space and the design of boundary treatment are particularly important for housing. New development should take account of the existing relationship of buildings to landscape and the local means of boundary definition such as hedges, walls and fences. In general, every effort should be made to orientate dwellings so that they front existing roads and spaces, ensuring a balance with the need to promote features of environmental sustainability. The relationship of the perimeter of a development to its setting is important and developments which turn their back on existing roads do not integrate well with their context.” (para.5.11.4, 2016)

## 4.2. Local Planning Policy

### Vale of Glamorgan Local Development Plan 2011-2026 (Adopted June 2017)

4.2.1. The Local Development Plan (LDP) is the principle planning policy document for the Vale of Glamorgan. The following policies are considered to be relevant to the proposal and are reflected in the proposed development:

4.2.2.

- Policy SP1 - Delivering the Strategy

- Policy SP3 - Residential Requirement
- Policy SP4 - Affordable Housing Provision
- Policy MD1 - Location of New Development
- Policy MD2 - Design of New Development
- Policy MD5 - Development within Settlement Boundaries
- Policy MD6 - Housing Densities
- Policy MD7 - Environmental Protection
- Policy MD9 - Promoting Biodiversity

### **Supplementary Planning Guidance (SPG)**

4.2.3. The Council has prepared a suite of SPG documents which support the policies in the LDP and are material considerations in the determination of planning applications. The following SPG are considered to be relevant to this proposal:

- Affordable Housing SPG (2018)
- Biodiversity and Development SPG (2018)
- Parking Standards SPG (2015)
- Planning Obligations SPG (2018)
- Residential & Householder Development SPG (2018)
- Trees, Woodlands, hedgerows and Development SPG (2018)

### **Other Relevant Background Papers**

4.2.4. **Local Housing Market Assessment (2017) (LHMA)** - In accordance with the requirements of TAN 2, a LHMA was produced in 2017 which analyses the housing market within the Vale of Glamorgan and calculates the net need for affordable housing over a 5 year period. In order to meet the identified demand, the LHMA identifies a need to deliver 579 affordable units per year.

4.2.5. **Sustainable Settlements Appraisal Background Paper (2016)** - The Sustainable Settlements Appraisal was prepared as background evidence to the LDP and provides an audit of services and facilities within the Vale of Glamorgan in order to assess settlement sustainability and identify areas suitable to accommodate additional development. The Appraisal lists Bonvilston as a Minor Rural Settlement with a population of approximately 354 (2016). Bonvilston scores 9 in sustainability due to the range of facilities available and access to public transport and is ranked 17 out of the 57 settlements assessed.

## **5. Design Considerations**

### **5.1. Brief and Vision**

- 5.1.1. The client proposes to bring forward a 100% affordable housing scheme on the application site to meet the identified need for affordable housing within the market area of Wenvoe. The Council's Local Housing Market Assessment (2017) identified an over provision of affordable housing of 3 units within the Wenvoe area. However the LHMA stresses "The assessment should be considered an art and not a science, as the data is only correct at the time the calculation is conducted and should only be used as a periodic review of the housing market." (LHMA, p.7, 2017). Since the LHMA assessment in 2017 the Council's Housing Department has advised that there is still a waiting list of potential occupants seeking affordable housing in the Wenvoe Area with 144 people currently on the waiting list for an affordable home. Therefore, it is considered there is an evidenced need for further affordable housing within the area to which the proposed development would help address.
- 5.1.2. The vision for the proposed development is to establish an affordable housing scheme to meet local demand which creates a welcoming environment enabling a strong sense of community that respects the existing character of the surrounding area.

## 5.2. Site Context Analysis

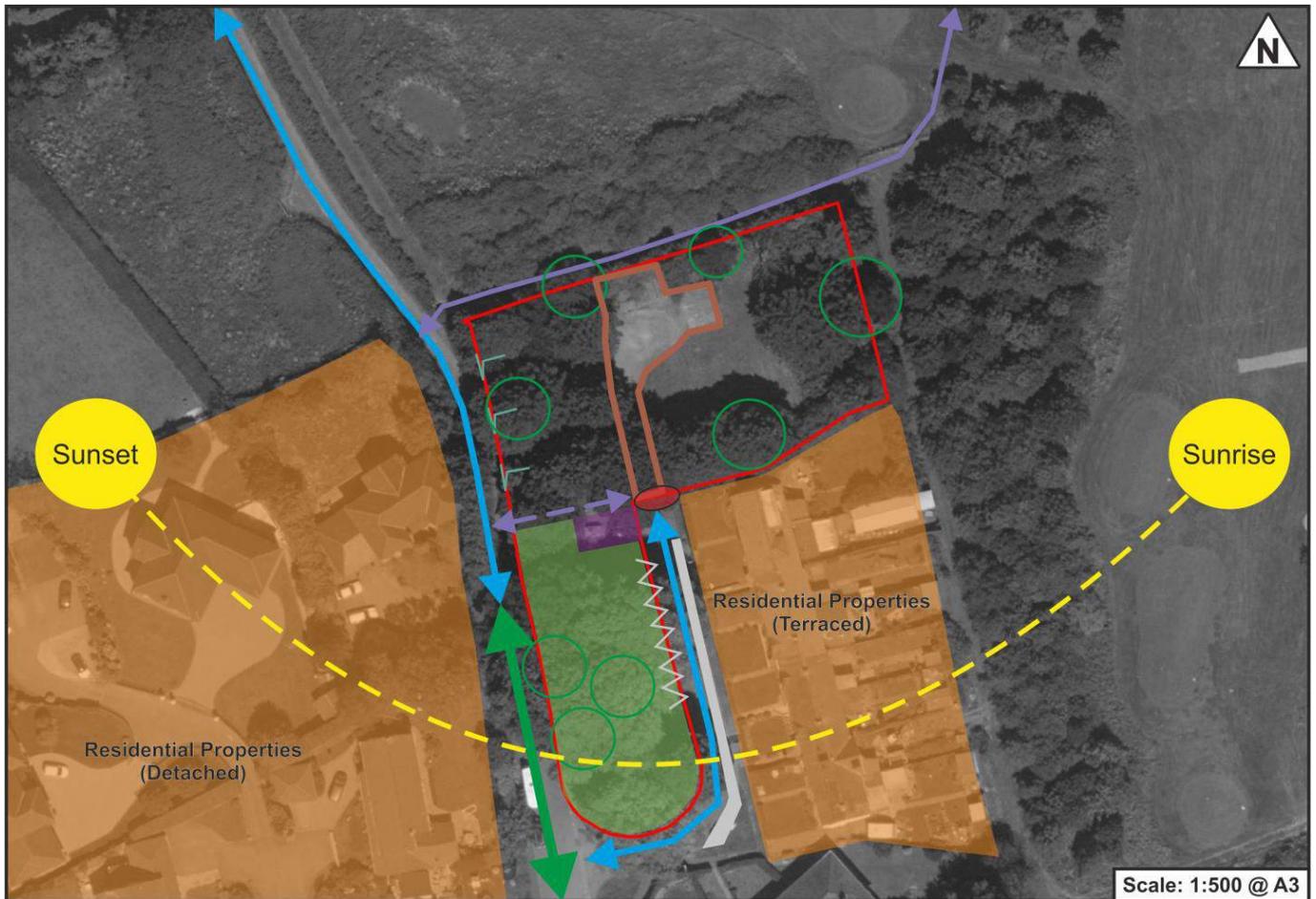
5.2.1. The design of the proposed development has been influenced by the intended use, the physical opportunities and constraints of the application site and the relevant national and local policies. The opportunities and constraints on the site have been identified in Figure 5 below:

Figure 5: Site Constraints and Opportunities



5.2.2. To ensure the proposal meets the criteria for good design the identified opportunities and constraints of the site were assessed to understand the how these would influence the design of the proposal. Figure 6 below has been used to convey the key information relating to the site analysis:

Figure 6: Site Analysis



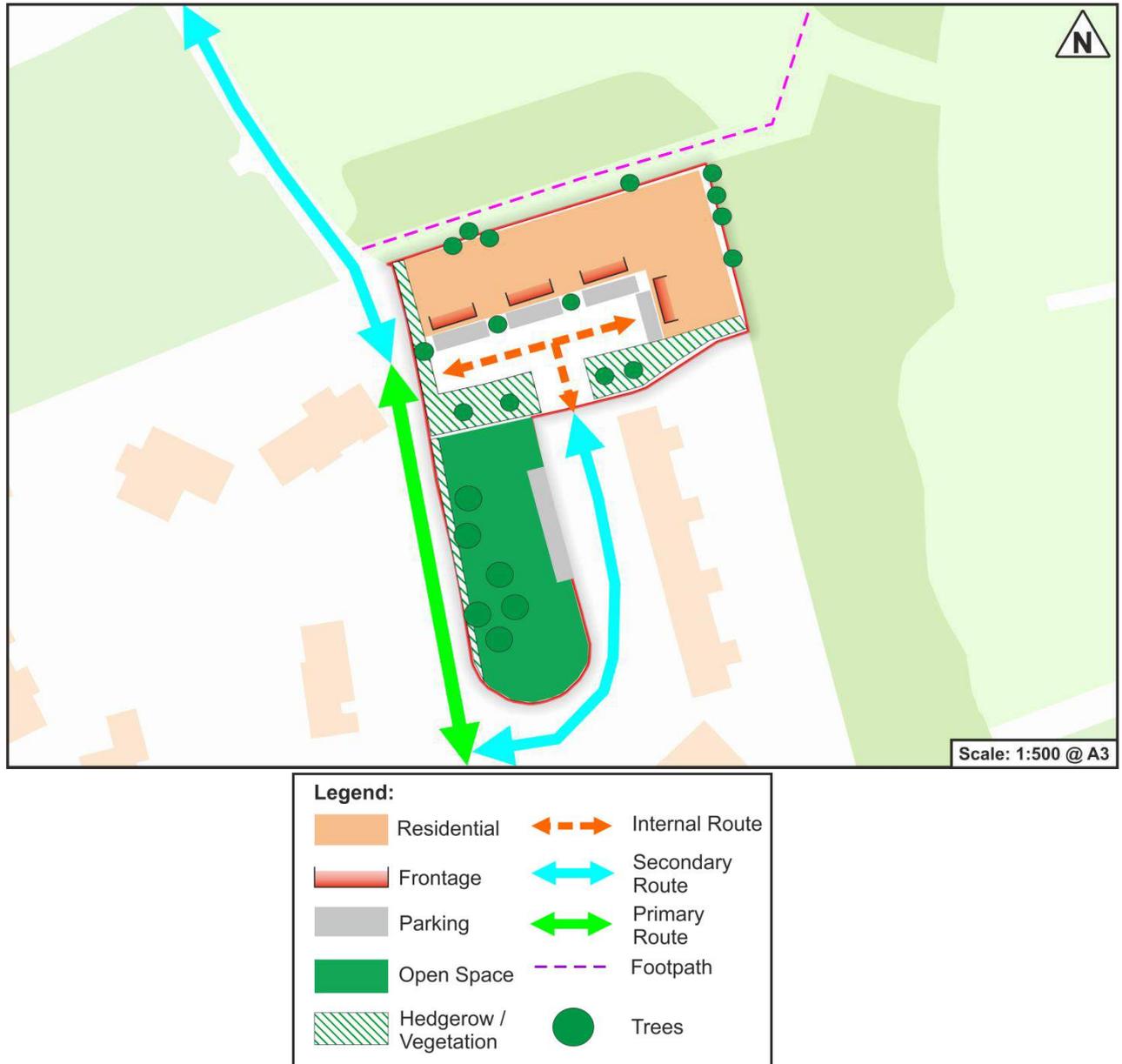
| Legend:   |                            |   |
|---|----------------------------|---|
|  | Residential                |  Primary Road                            |
|  | Open Space                 |  Secondary Road                          |
|  | Existing Turning Circle    |  Footpath                                |
|  | Brownfield Land            |  Potential Footpath                      |
|  | Existing On-Street Parking |  Existing Access                         |
|   |                            |  Potential Off-Street Parking Provision |
|   |                            |  Sun Path                               |
|   |                            |  Sloping Ground                         |
|   |                            |  Potential to Retain Tree               |
|   |                            |  Site Location                          |

- 5.2.3. The site analysis shows the site itself includes an area of previously developed land (brownfield) however; the majority of the site functions as open space and contains a high number of trees and other mature vegetation. A tree survey was carried out on the site by Treescene Arboricultural Consultants (Supporting Document 'Tree Survey' refers) which categorised the trees on the site. The tree survey where possible the development has sought to incorporate these and other existing trees into the design of the proposal.
- 5.2.4. The site gently slopes towards the east which leads to a steep verge along the eastern boundary of the site which drops approximately 1m to the level of the highway. It is recommended the levels of the proposal reflect existing topography of the site to ensure the development fits within the landscape. The site benefits from an existing access point at the end of the Maes y Ffynnon Cul-de-Sac. It is considered that it would be appropriate to enhance the existing access and continue the existing highway serving the Cul-de-Sac to serve the proposed development.
- 5.2.5. The existing residential development along Maes y Ffynnon is characterised by terraced properties whereas the residential properties adjacent to the application site to the east are mainly large detached properties. Based upon the location of the site it is considered the proposal should seek to reflect the character of the housing along Maes y Ffynnon to ensure the development fits within the existing street scene. Consequently the form and massing of proposed residential units should be two storeys and follow a similar design scheme to the existing residential development along Maes Y Ffynnon. However, the continuation of the existing terraced housing is not considered to be appropriate within this context as it would not represent the best use of the available land.
- 5.2.6. On street parking can detract from the existing street scene within an area. Therefore, the proposed development seeks ensure all future residents would have access to off street parking in line with the Council's Parking Standards SPG. However, there would be a shortfall in off street visitor parking by 2 spaces under the maximum standards outlined in the Parking Standards SPG. Although this would result in an element of on street parking it is considered minimal and there is sufficient space along Maes y Ffynnon to accommodate the additional visitor spaces.
- 5.2.7. To help promote sustainable travel to and from the site a footways have been incorporated into the design which join the wider walking network. This will allow future residents of the proposal easier access to facilities and services within the settlement. Figure 6 details a potential pedestrian link to the north west of the site which represent an opportunity for the proposed development to create an easier access to an existing footpath which runs along the northern boundary of the site.

### 5.3. Interpretation

5.3.1. The DAS includes a concept frame work which seeks to capture the key opportunities and alleviate the constraints identified through the site analysis together with the brief and vision for the site. Figure 7 provides a clear summary of the key elements that will structure the development:

Figure 7: Concept Framework

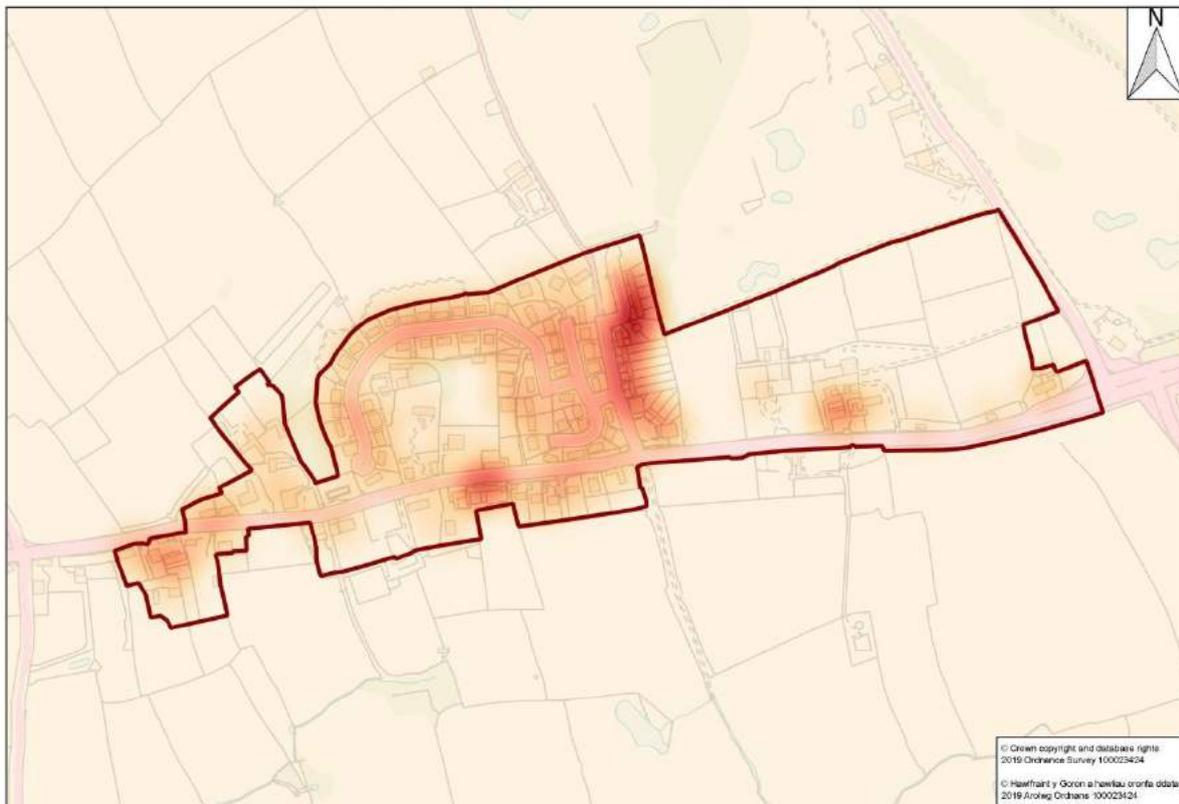


## 6. Design of the Proposal

### 6.1. Amount

- 6.1.1. The proposed development is for 10 affordable dwellings on a 0.3ha site. In terms of density LDP Policy MD6 - Housing Densities requires development proposals within minor rural settlements, such as Bonvilston, to provide a minimum density of 25 dwellings per hectare. In relation to the application site this would equate to a minimum of 5 residential units on the site. The proposed development exceeds the minimum by a further 5 units, however, policy MD6 does not place a limit on higher densities instead it states “higher densities will be permitted where they reflect the character of the surrounding areas and would not unacceptably impact upon local amenity” (LDP, p.108, 2017).
- 6.1.2. The area of Maes y Ffynnon has a higher density of development than other areas within Bonvilston. (Figure 8 refers). Notwithstanding the above, there is an identified need for affordable housing within the area which the proposed development at this density would help to meet. Therefore, it is considered the proposed density would not represent a form of over development in this instance.

Figure 8: Residential Density of Bonvilston



## **6.2. Layout**

- 6.2.1. The layout of the proposed development is based upon a robust and detailed analysis of the constraints and opportunities of the sites and its surrounding context. The site has been developed around a small adoptable road which would serve all properties. Appropriate parking provision has been provided on site in line with the Council's Parking Standards SPG (2015). The Parking Standards SPG identifies the proposed development as being in Zone 5 (Countryside) which sets a maximum parking requirement of 1 space per bedroom and on visitor space per 5 units. Overall 14 car parking spaces are provided which would be an under provision of two spaces. However, it is considered that there is sufficient on-street parking provision along Maes y Ffynnon to accommodate the additional two visitor spaces. The existing trees on the site also influenced the layout which aims to incorporate trees identified as having amenity value within the development wherever feasible. Initially it was identified that there was an opportunity to provide communal off street parking. However, following engagement with locally residents during the Pre-application Consultation it was considered on balance the proposed development and the existing residents would benefit from a maintained area of existing open space rather than additional parking provision.
- 6.2.2. In regards to the potential footpath access to the north west of the site, due to the change in levels between the site and the adjoining road way, it was considered the incorporation of a pedestrian access would not be feasible in this location. However, pedestrian access into the settlement of Bonvilston has been maintained.

Figure 9: Site Layout



6.2.3. The Council's Residential and Householder Development SPG (2018) sets a standard for the amount of amenity space that types of residential development require. The proposed layout ensures that each dwelling meets the minimum requirement for amenity provision set out under Design Standard 4 and 5 of the SPG which states:

*"4. For houses, a minimum of 20sq.m amenity space per person\* should be provided, and the majority should be private garden space.*

*\*typically a 2 bed house would have 3 persons, 3+ bedrooms would typically have 4 persons.*

*5. For flats, between 12.5sq.m and 20sq.m of amenity space per person should be provided, depending on the size of development\*. Communal areas of amenity space may be acceptable, but these must be directly accessible for all occupiers.*

*\*typically a 1 or 2 bedroom flat would have 2 persons.*

*1-20 people = 20sq.m per person*

*21-40 people = 17.5sq.m per person*

*41-60 people = 15sq.m per person*

*61+ people = 12.5sq.m per person" (VoG, p.39, 2018)*

### 6.3. Scale

6.3.1. The proposed units within the development would be of a similar scale to the existing properties within the street scene in terms of height and massing. The residential units will not exceed two stories and would have a pitched roof design similar to the existing terraced housing along Maes y Ffynnon.



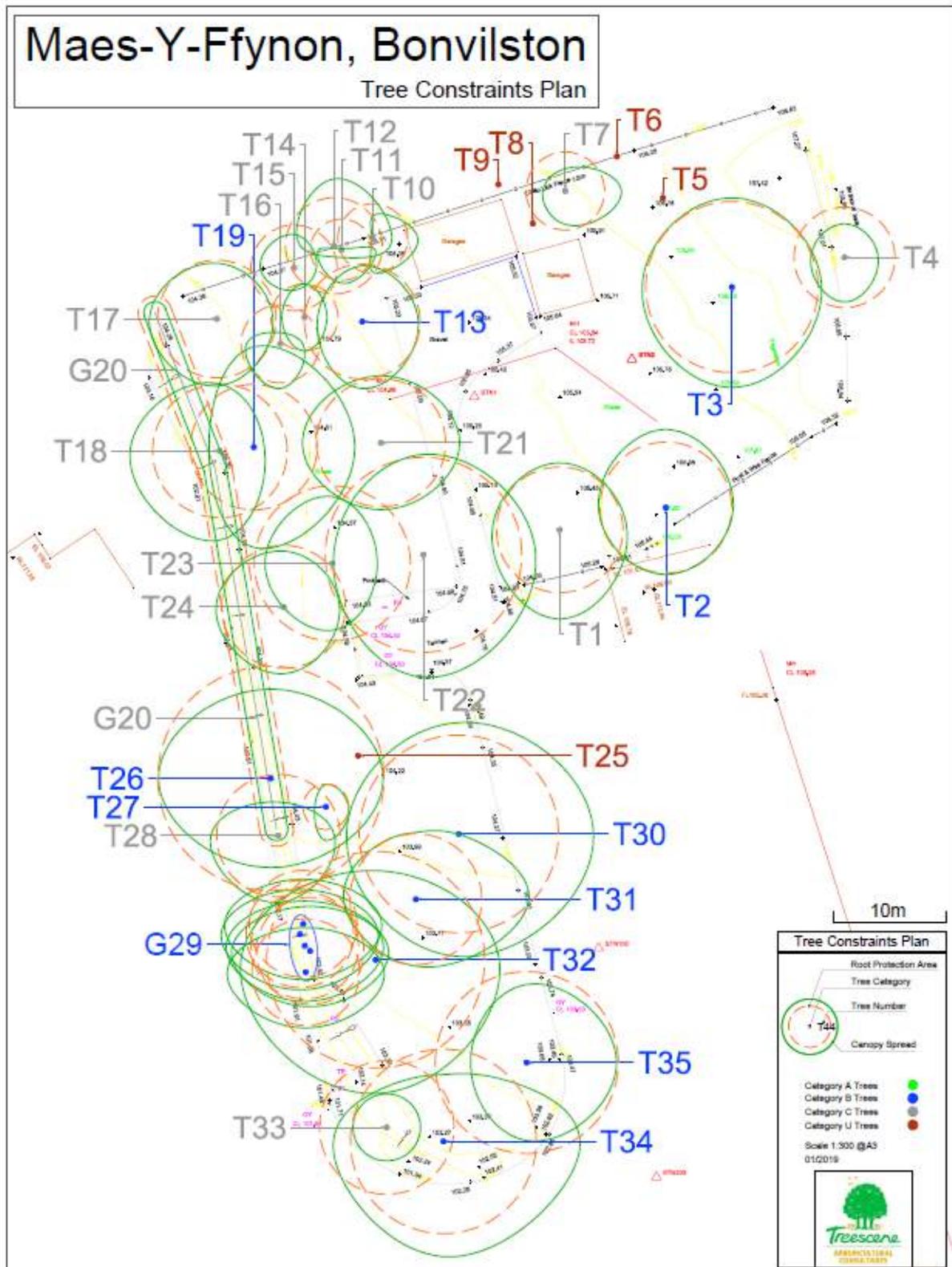
### 6.4. Landscaping

6.4.1. The proposed development will wherever possible maintain the existing soft landscaping features at the site and will include extensive new tree planting around the perimeter of the site to supplement existing tree cover. Furthermore, the enhancement of vegetation and planting of new mature trees to the perimeter of the site will ensure the development clearly defines the edge of the settlement

and help demonstrate the transition from the built environment to the rural character of the adjoining land to the north of the site.

- 6.4.2. A tree survey was undertaken by Treescene on behalf of the Council which identifies a number of trees which should be protected. The full report can be found under the supporting document referred to as Tree Survey; Figure 10 outlines the trees which should be protected within the site.

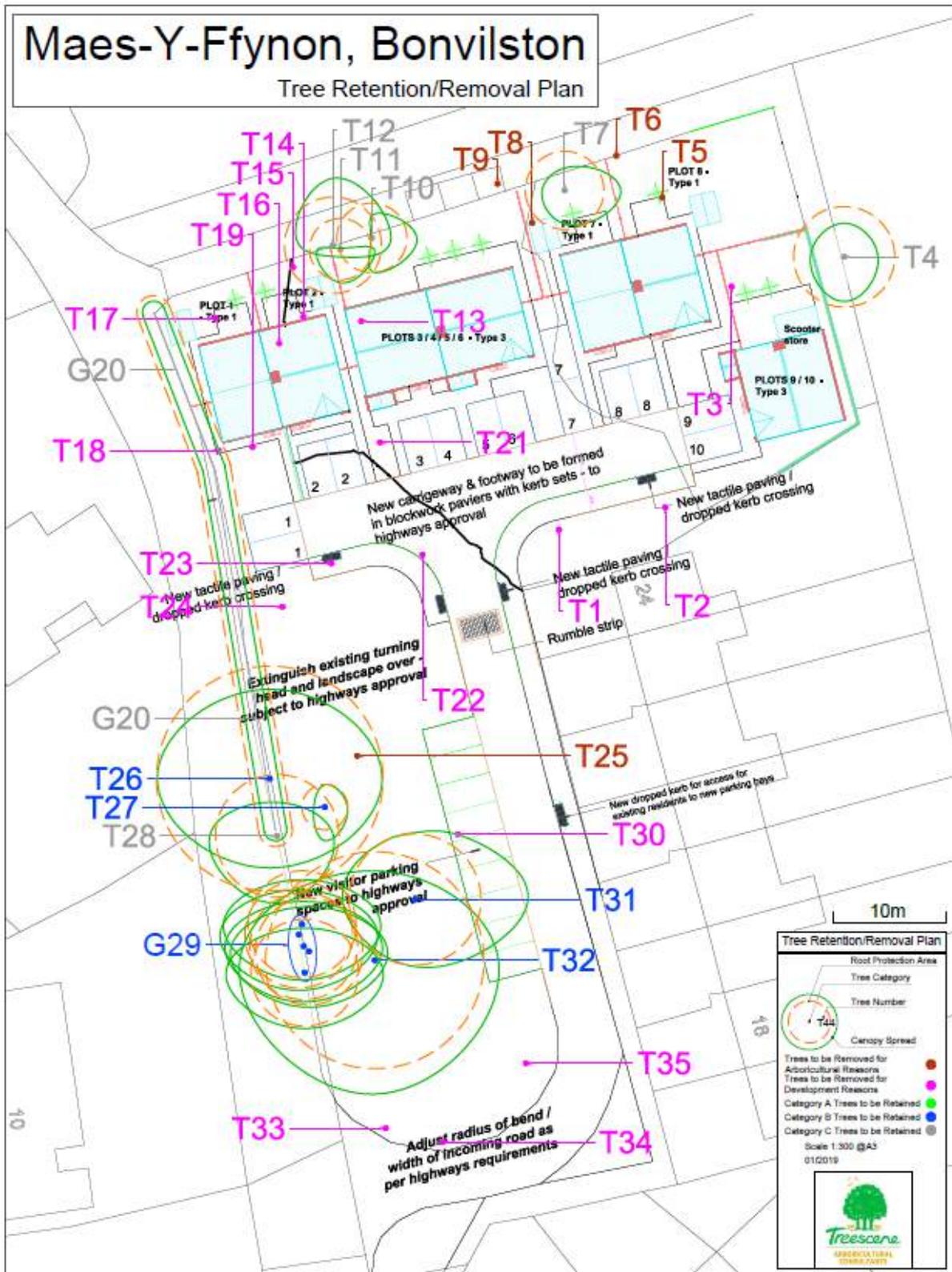
Figure 10: Tree Constraints Plan



6.4.3. The tree constraints plan classifies 4 trees as Category B which add visual amenity to the area. The majority of trees on the site have been identified as Category C trees which as a group of trees have visual amenity value however, individually the trees offer low or no visual benefit. 5 trees have been identified as

Category U which are in a poor condition and have been recommended to be removed. To ensure the development of the land is feasible a Tree Strategy has been implemented to guide the development and retain those trees of the highest amenity value and where existing trees of high value need to be removed to facilitate development which have been outlined in the Arboricultural Impact Assessment undertaken by Treescene. Figure 11 identifies the trees that will be retained and those that will be removed to facilitate the development. Particular attention to landscaping has been given to the northern and eastern boundary to retain the existing trees to the boundary of the settlement and include new mature planting where appropriate which is considered to create a transition from the built form of Bonvilston and the surrounding rural character outside of the settlement boundary.

Figure 11: Tree Retention and Removal Plan



## 6.5. Appearance

6.5.1. To ensure the development will be in keeping with the local character the palette of materials proposed to be used in the scheme have been chosen to compliment the character of the existing buildings and surrounding setting. Table 1 outlines the proposed schedule of materials intended to be used in the proposed development scheme and figure 12 – 14 illustrate artist’s impressions of how the development will look.

**Table 1: Schedule of Materials**

| Element of proposal | Material                         | Detail  |
|---------------------|----------------------------------|---|
| Walls               | Brick                            | Red colour facing brick work                        |
|                     | Render                           | White roughcast render                              |
| Windows             | UPVC                             | White   |
| Doors               | Composite external doors         | Includes glazed panels                              |
| Roof                | Single camber plain roof tiles   | Brown colour Marley ‘Acme’ tiles                    |
| Roads               | Permeable paviors                | Includes tactile paving and dropped kerb crossings  |
| Canopies            | Glass Reinforced Polyester (GRD) | White colour UPVC to bargeboard / soffits / fascias |
| Rainwater Goods     | UPVC                             | Black   |
| Chimneys            | GRD                              | Tan   |

**Figure 12: Perspective View 1**



Figure 13: Perspective View 2



Figure 14: Perspective View 3



## 7. Access

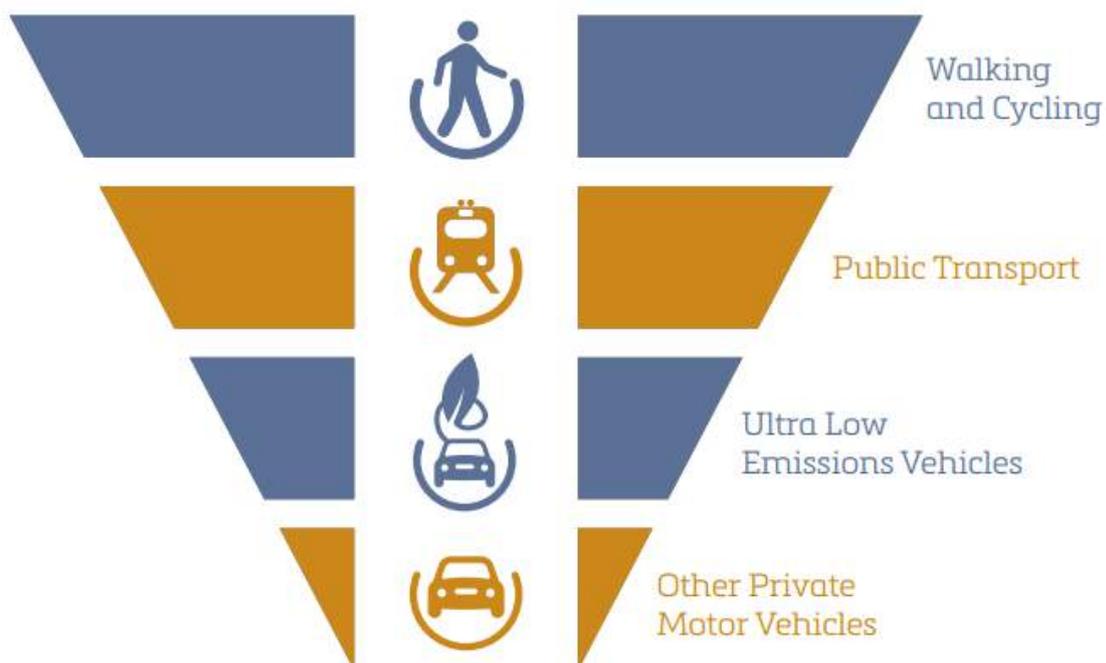
7.1.1. PPW advises that land use planning can “support the objectives of minimising the need to travel, reducing reliance on the private car and increasing walking, cycling and use of public transport.” (PPW, para.3.45, 2018).

7.1.2. Sustainable transport is key in reducing the need to travel and the planning system should facilitate developments which:

- “are sited in the right locations, where they can be easily accessed by sustainable modes of travel and
- without the need for a car;
- are designed in a way which integrates them with existing land uses and neighbourhoods; and
- make it possible for all short journeys within and beyond the development to be easily made by walking and cycling” (PPW, para.4.1.9, 2018)

7.1.3. Development proposals “must seek to maximise accessibility by walking, cycling and public transport, by prioritising the provision of appropriate on-site infrastructure and, where necessary, mitigating transport impacts through the provision of off-site measures, such as the development of active travel routes, bus priority infrastructure and financial support for public transport services.” (PPW, 4.1.10, 2018). Therefore, development proposals should follow the Sustainable Transport Hierarchy promoted in PPW:

Figure 15: Sustainable Transport Hierarchy for Planning (PPW, 2018)



7.1.4. These objectives are further reiterated within TAN 18: Transport and the Active Travel (Wales) Act (2013) which place increasing emphasis on the needs of pedestrians and cyclists to be considered in development schemes and the importance of public transport to sustainable communities.

## 7.2. Vehicular and Transport Links

### Highway Network

7.2.1. The site benefits from good access to the local and strategic highway network. Primary access to the site will be from Maes y Ffynnon which has approximately a 5m wide carriage way with a footpath along the eastern edge. The road has a residential speed limit of 30mph and has a number of street lighting columns along the entirety of the road. The road links directly to the A48 from a T-junction at the southern end of Maes y Ffynnon. The A48 is one of the main strategic roads which runs through the Vale and offers wider access to the Highway Network and a range of destinations such as Culverhouse Cross to the east, Barry to the south and the M4 to the north.

7.2.2. Currently the roadway serving the cul-de-sac along Maes y Ffynnon is not suitable for emergency vehicle access or refuse vehicles. Therefore, the proposal includes measures to increase the width of the road to 5.2m and widen the access to the cul-de-sac to ensure the road meets adopted highway standards.

### Public Transport

7.2.3. The proposed development is situated near a local bus stop approximately 270m from the proposed centre of the development site. The bus stop provides a regular half hour service from both stops on either side of the A48.

Table 2: Local Bus Services

| Service No.    | Route                    | Frequency        |
|----------------|--------------------------|------------------|
| X2 (Eastbound) | Cardiff, Westgate Street | Every 30 minutes |
| X2 (Westbound) | Porthcawl, John Street   | Every 30 minutes |

### Active Travel

7.2.4. Pedestrian access to the site is available via a footway along the eastern side of Maes y Ffynnon. The footway is of a reasonable quality and benefits from street lighting and is typical of a residential area. The proposed development includes plans to improve the pedestrian environment along Maes y Ffynnon and within the application site through the use of dropped kerbs with tactile paving and wide footpaths which help to create a more pedestrian focused development. Table 3

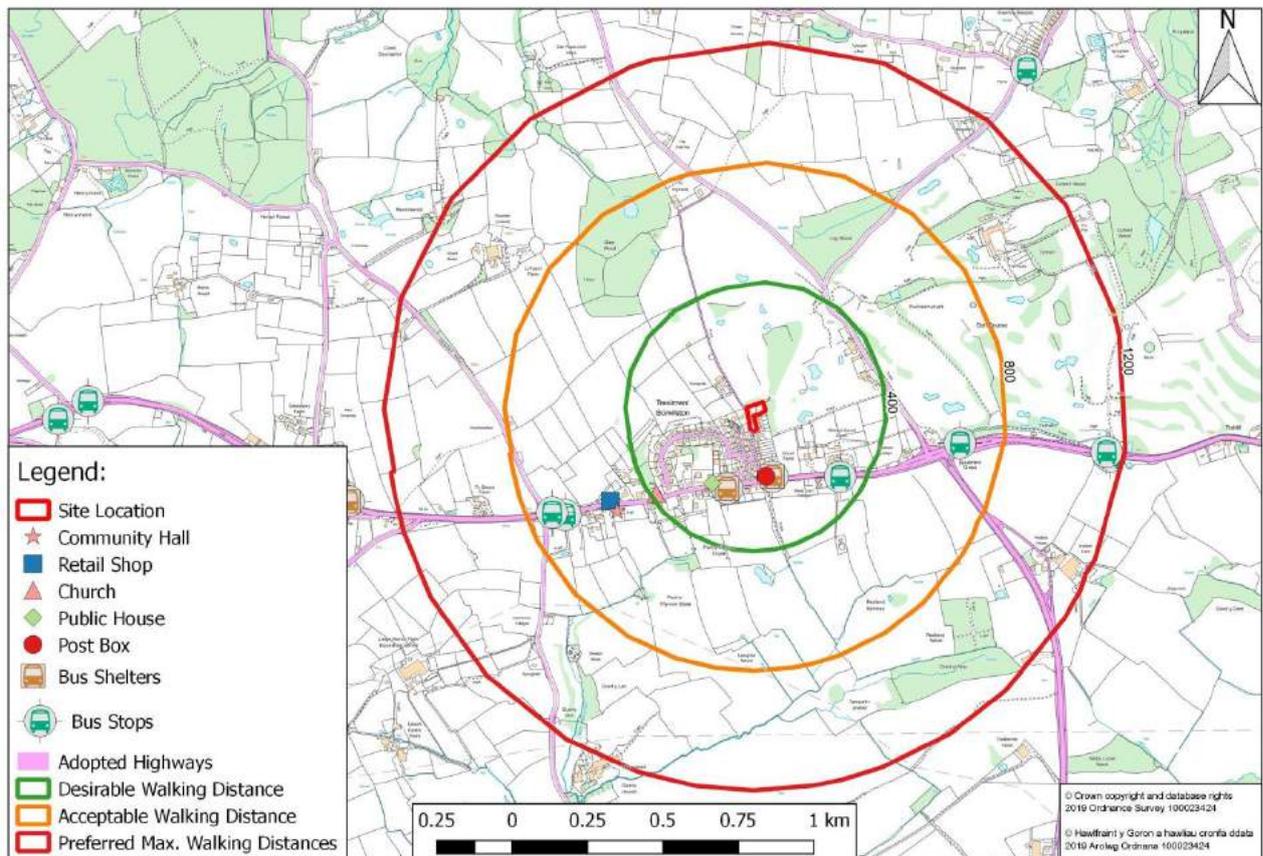
identifies appropriate walking distances based upon the Institution of Highways & Transport: Guidelines for Providing Journeys on Foot (p.49, 2000).

**Table 3: Suggested Acceptable Walking Distances**

|                   | Town Centres (m) | Commuting / School / Sight-seeing (m) | Elsewhere (m) |
|-------------------|------------------|---------------------------------------|---------------|
| Desirable         | 200              | 500                                   | 400           |
| Acceptable        | 400              | 1000                                  | 800           |
| Preferred maximum | 800              | 2000                                  | 1200          |

7.2.5. Based upon the character and function of Bonvilston as a minor rural settlement the walking distance for ‘Elsewhere’ are considered appropriate. Figure 16 shows the site in relation to the surrounding facilities and services using the identified walking distances.

**Figure 16: Walking Distances to Facilities and Services**



7.2.6. The location of the site is within easy access to most of the facilities and services available within Bonvilston. Access to bus stops, a post box and the local public house are within a desirable walking distance of the site with other facilities such as St Mary’s Church and the Old Village Shop situated within acceptable walking distances.

7.2.7. In terms of cycling there is currently no dedicated cycling infrastructure in the area, however, there is potential for future users of the development to cycle to and from the site.

### **Inclusive Access**

7.2.8. TAN 18: Transport recognises the need for inclusive access for disabled people, together with the needs of pedestrians and cyclists. It states “adopting an inclusive culture helps to ensure that access issues are taken into account at an early stage”<sup>3</sup>. To ensure the development is accessible for all particularly those with disability and pedestrians the walkways within the site will be a minimum of 2m in width which meets the guidelines for footways<sup>4</sup>.

7.2.9. Overall the site is situated in an accessible location for pedestrians, and public transport users. The site is located within walking distance of a range of facilities and public transport options. This helps to increase the likelihood that journeys generated by the development will be short and can be made by sustainable modes of travel, particularly active travel modes. The site is also served by adopted highways and has convenient links to the wider highway network.

7.2.10. The proposed layout of the site includes tactile paving at crossing points and the pathways to dwellings and footways within the site meet the requirements of Inclusive Mobility (2005) and Use of Tactile Paving Surfaces (2007).

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<sup>3</sup> Technical Advice Note (TAN) 18: Transport (2007) - p.19; paragraph 5.1

<sup>4</sup> Manual for Streets (2007) - p.68

## **8. Community Safety**

- 8.1.1. Community safety is a primary concern for any development. To ensure the development addresses potential issues the proposal may cause in the future, the proposed development has been influenced by the Secured by Design guidance.

### **8.2. Design Solution**

- 8.2.1. To ensure the proposed development responds appropriately to community safety concerns, the layout of the site seeks to enhance community surveillance of public spaces, ensuring fronts of properties look out on to public open space. Therefore, it is considered the layout of the development positively contributes towards the creation of a safe and secure environment by providing natural surveillance from habitable room windows of dwellings which look out towards the street.
- 8.2.2. The public areas of the development site are maintained to the front of the properties in line with guidance contained within Secured by Design (SBD) Homes (2016) which states “the designer must ensure that the security of the development is not compromised by excessive permeability, for instance by allowing the criminal legitimate access to the rear or side boundaries of dwellings, or by providing too many or unnecessary segregated footpaths.” (SBD, para.8.2, 2016).

### **8.3. Access Solution**

- 8.3.1. Access to and within the site has been inclusively designed to standards outlined under Manual for Streets and Secured by Design. The road and footway design includes the necessary widths to ensure a high safety standard for cars, cyclists, pedestrians and disabled users of the space. The proposed development would create a short cul-de-sac at the end of Maes y Ffynnon which has limited access from outside of the site due to its location at the edge of the settlement “Cul-de-sacs that are short in length and not linked by footpaths can be very safe environments in which residents benefit from lower crime.” (SBD, para.8.4, 2016).

## 9. Environmental Sustainability

- 9.1. The proposed development is situated within the settlement boundary of Bonvilston. According to the Council's Sustainable Settlement Appraisal (2016), the settlement scored 9 and was ranked 17 out of 57 settlements assessed. While this was a strategic assessment it demonstrated the wider sustainability of the area due to the range of facilities and services accessible within the settlement, resulting in Bonvilston being included as a minor rural settlement within the LDP Settlement Hierarchy. The scale of the proposed development in relation to the settlement is considered to be appropriate and ensure the services and facilities available in Bonvilston are able to accommodate additional development as proposed.
- 9.2. The proposed design of the development aims to:
- Reduce the environmental impact associated with buildings and minimise energy demand through high building standards
  - Enhance biodiversity through retaining existing vegetation and replanting trees removed at a 2 for 1 ratio. Where this is not feasible further mitigation methods such as planting off site or financial contributions will be pursued.
  - Flexible development which can respond to social, technological, economic and environmental conditions/changes
- 9.3. The proposed dwellings in the eastern corner of the site have been positioned to ensure the roof pitch faces south east / west. This creates a viable location for solar panels to be integrated into the development if desired at a later date.

## 10. Flooding and Drainage

- 10.1. Natural Resources Wales Development Advice Maps indicate that the application site is not at risk of tidal or fluvial flooding. The site is located within Flooding Zone A which is identified within Technical Advice Note (TAN) 15: Development and Flood Risk as an area “Considered to be at little or no risk of fluvial or tidal/coastal flooding” (TAN15, p.5, 2005) consequently it is considered no justification test or further assessment of flood risk is required in accordance with guidance contained within TAN 15.
- 10.2. A drainage strategy was carried out by Lodestone Consulting Structural and Civil Engineers in January 2019 which confirmed that the use of infiltration for discharge of all surface water is feasible. Areas of porous paving have been included to achieve this within the scheme.
- 10.3. DCWW have confirmed that there is currently no capacity for the waste from the proposed development to be accepted at their Waste Water Treatment Works currently serving the area known as Bonvilston East Waste Water Treatment Works. However, there are plans to upgrade the existing sewage treatment works for the area following the development of 30 units relating to the allocated site known as land to the east of Bonvilston (MG2 (40)) which has been approved under application 2015/00960/FUL. It is considered that a condition could be used on the application to ensure the proposed development is not occupied until DCWW have upgraded the capacity of the sewage treatment works.

## 11. Conclusions

- 11.1. In conclusion the proposed scheme has been considered to be an appropriate form of development which complies with national and local planning policies. The design of the proposal will enable the creation of a high quality living environment for the future residents of the development which focuses on integrating the new scheme within the existing built form of Bonvilston to ensure a strong sense of community.
- 11.2. The site has been inclusively designed to ensure accessibility for persons with differing needs including specifically designed level accesses to each dwelling, different types of ground covering. The location of the site is considered to be consistent with the principles of placemaking ensuring the proposal has a variety of different travel modes to and from the site.
- 11.3. Although the proposal will result in the partial loss of a number of trees on the site the proposal will retain those trees of good amenity value and replace removed trees with appropriate new mature planting in accordance with the requirements of the councils Trees, Hedgerows, Woodlands and Development SPG.
- 11.4. Based upon the above assessment of the site and proposed development, it is believed that the proposed scheme is well suited to the locality and neighbouring buildings, and that the scale of the proposed construction fits well into the existing street scenes accounting for the surrounding context. It is considered that the development respects the privacy and amenity of the neighbouring housing and that it would provide a very high standard of accommodation in keeping with the area and helping to meet the identified need for affordable housing in the area.

1 A.C.

Roylance v. G.M.C. (No. 2) (P.C.)

A particular case of the doctor they expressly noted the evidence of his contributions to the Health Service over a long period. The decision on disposal is very much a matter for the judgment of the committee, working through the alternatives presented in rule 31 of the General Medical Council Preliminary Proceedings Committee and Professional Conduct Committee (Procedure) Rules 1988. It has long been recognised that the Board should be very slow to interfere with the discretionary power to impose a sentence of erasure: *McCoan v. General Medical Council* [1964] 1 W.L.R. 1107. Their Lordships would not interfere with the disposal unless they were satisfied that the decision was clearly unjust. They have not been persuaded that there was anything improper in the order that the name of the doctor be erased from the register.

C For the foregoing reasons their Lordships will humbly advise Her Majesty that the appeal should be dismissed. The doctor should pay the costs of the appeal.

*Solicitors: Hempsons; Field Fisher Waterhouse.*

S.S.

D

E

[HOUSE OF LORDS]

REGINA v. OXFORDSHIRE COUNTY COUNCIL AND ANOTHER,  
*Ex parte* SUNNINGWELL PARISH COUNCIL

1999 April 19, 20, 21, 22;  
June 24

Lord Browne-Wilkinson, Lord Steyn,  
Lord Hoffmann, Lord Hobhouse of Woodborough  
and Lord Millet

F

*Commons—Town or village green—Customary right—Land used predominantly by villagers for informal recreation—Whether belief in existence of right exclusive to villagers necessary—Whether use for “sports and pastimes”—Whether landowner’s toleration barring claim—Commons Registration Act 1965 (c. 64), ss. 13(b), 22(1)*

G

A parish council applied to the county council pursuant to section 13 of the Commons Registration Act 1965<sup>1</sup> for registration of 8 glebe land as a village green. They relied, under section 22(1), on 20 years’ user ending on 1 January 1994. The landowner objected, and the county council decided to hold a non-statutory public inquiry with a barrister acting as inspector. The inspector found that there had been abundant use of the glebe for informal recreation, which he held to be a pastime for the purposes of the Act, that the informal recreation had been predominantly, though not exclusively, by inhabitants of the village and that successive

H

<sup>1</sup> Commons Registration Act 1965, s. 13(b): see post, p. 348D.  
S. 22(1): see post, p. 347D.

landowners had been tolerant of that use. He recommended that the application be refused on the ground that the use had not been shown to be "as of right" in the sense of a right exercised in the belief that it was enjoyed by the villagers to the exclusion of all other people. The county council resolved that the application be rejected. The parish council applied for leave to apply for judicial review of the resolution. Buxton J. refused the application. The Court of Appeal, on a renewed application, granted leave to apply but refused the substantive application.

On appeal by the parish council:—

*Held*, allowing the appeal and declaring the glebe to be a village green, that "as of right" in section 22(1) of the Act of 1965, reflecting the common law concept of *nec vi, nec clam, nec precario*, did not require subjective belief in the existence of the right; that "sports and pastimes" was a composite phrase and proof of an activity that could properly be regarded as a sport or a pastime in modern times, including the informal recreation found by the inspector, was sufficient; that it was sufficient that the land was used predominantly, rather than exclusively, by inhabitants of the village; and that toleration by the landowner was not fatal to a finding that user had been as of right (post, pp. 346F-G, 355G-356A, H-357D, 358B, F, 359A-B, H-360A).

*Hue v. Whiteley* [1929] 1 Ch. 440 considered.

*Reg. v. Suffolk County Council, Ex parte Steed* (1996) 75 P. & C.R. 102, C.A. overruled.

Decision of the Court of Appeal reversed.

The following cases are referred to in the opinion of Lord Hoffmann:

*Abercromby v. Town Commissioners of Fermoy* [1900] 1 I.R. 302, C.A.

*Attorney-General v. Antrobus* [1905] 2 Ch. 188

*Attorney-General v. Dyer* [1947] Ch. 67; [1946] 2 All E.R. 252

*Beckett (Alfred F.) Ltd. v. Lyons* [1967] Ch. 449; [1967] 2 W.L.R. 421; [1967] 1 All E.R. 833, C.A.

*Blount v. Layard* [1891] 2 Ch. 681n., C.A.

*Bright v. Walker* (1834) 1 C.M. & R. 211

*Bryant v. Foot* (1867) L.R. 2 Q.B. 161, D.C.

*Dalton v. Angus & Co.* (1881) 6 App.Cas. 740, H.L.(E.)

*De la Warr (Earl) v. Miles* (1881) 17 Ch.D. 535, C.A.

*Fitch v. Rawling* (1795) 2 H.Bl. 393

*Folkestone Corporation v. Brockman* [1914] A.C. 338, H.L.(E.)

*Gardner v. Hodgson's Kingston Brewery Co. Ltd.* [1903] A.C. 229, H.L.(E.)

*Hammerton v. Honey* (1876) 24 W.R. 603

*Hue v. Whiteley* [1929] 1 Ch. 440

*Jones v. Bates* [1938] 2 All E.R. 237, C.A.

*Mann v. Brodie* (1885) 10 App.Cas. 378, H.L.(Sc.)

*Mercer v. Denne* [1904] 2 Ch. 534

*Mills v. Colchester Corporation* (1867) L.R. 2 C.P. 476

*Mills v. Silver* [1991] Ch. 271; [1991] 2 W.L.R. 324; [1991] 1 All E.R. 449, C.A.

*O'Keefe v. Secretary of State for the Environment* [1996] J.P.L. 42; [1998] J.P.L. 468, C.A.

*Reg. v. Suffolk County Council, Ex parte Steed* (1995) 70 P. & C.R. 487; (1996) 75 P. & C.R. 102, C.A.

The following additional cases were cited in argument:

*Attorney-General ex rel. Yorkshire Derwent Trust Ltd. v. Brotherton* [1991] Ch. 185; [1991] 2 W.L.R. 1; [1992] 1 All E.R. 230, C.A.; [1992] 1 A.C. 425; [1991] 3 W.L.R. 1126; [1992] 1 All E.R. 230, H.L.(E.)

A and received the rent. On a reorganisation of church properties in 1978 it was transferred to the Oxford Diocesan Board of Finance ("the board"). The land slopes upwards to the south and is crossed by a largely unfenced public footpath running south from the village towards Abingdon. Local people use the glebe for such outdoor pursuits as walking their dogs, playing family and children's games, flying kites, picking blackberries, fishing in the stream and tobogganing down the slope when snow falls.

B In 1994 the board obtained planning permission to build two houses on the northern boundary of the glebe. The villagers were very much opposed. They wanted it preserved as an open space. The parish council applied to the county council to register the glebe as a town or village green under the Commons Registration Act 1965. It is unclear what rights, if any, registration would confer upon the villagers. The Act is silent on the point. But registration would prevent the proposed development because by section 29 of the Commons Act 1876 (39 & 40 Vict. c. 56) encroachment on or inclosure of a town or village green is deemed to be a public nuisance.

C Section 22(1) of the Act of 1965 contains a three-part definition of a "town or village green." They are usually called classes a, b and c. I shall use the same terminology.

D "[a] land which has been allotted by or under any Act for the exercise or recreation of the inhabitants of any locality or [b] on which the inhabitants of any locality have a customary right to indulge in lawful sports and pastimes or [c] on which the inhabitants of any locality have indulged in such sports and pastimes as of right for not less than 20 years."

E Class a includes land which was allotted for exercise and recreation by Act of Parliament or the Inclosure Commissioners when making an order for the inclosure of a common under the Inclosure Act 1845 (8 & 9 Vict. c. 118). Before 1845, when commons were inclosed under private Acts of Parliament, it was common for the Act itself to set aside some land for this purpose. There is no suggestion that the glebe was so allotted and the parish council do not rely upon class a. Class b refers to land which by immemorial custom the local inhabitants are entitled to use for sports and pastimes. This is the traditional village green with its memories of maypole dancing, cricket and warm beer. Immemorial custom means in theory a custom which predates the accession of Richard I in 1189. Although, as I shall in due course explain, the law may presume a custom of such antiquity on evidence which a historian might regard as somewhat slender, the parish council do not rely upon class b. They take their stand on class c, which was first introduced by the Act of 1965 itself. It is no longer necessary to resort to fictions or presumptions about what was happening in 1189. It is sufficient that the inhabitants of the locality have in fact used the land as of right for lawful sports and pastimes for more than 20 years.

H The main purpose of the Act of 1965 was to preserve and improve common land and town and village greens. It gave effect to the Report of the Royal Commission on Common Land 1955-1958 (1958) (Cmnd. 462) which emphasised the public importance of such open spaces. Some commons and greens were in danger of being encroached upon by

A village to the exclusion of all other people. In the present case, the witnesses all said that they thought they had the right to use the glebe. But they did not say that they thought that the right was confined to inhabitants of the village. Some thought it was a general public right and others had no views on the matter. This was held to be fatal to the application.

B The parish council applied for judicial review of the county council's decision. Buxton J. refused leave and the application was renewed before the Court of Appeal (Lord Woolf M.R., Waller and Robert Walker L.J.). They decided that they were bound by *Reg. v. Suffolk County Council, Ex parte Steed* to dismiss the application. But they also expressed the view that your Lordships might think that that case was wrongly decided. The Court of Appeal therefore granted leave to move for judicial review, dismissed the substantive application and gave leave to appeal to your Lordships' House.

C The principal issue before your Lordships thus turns on the meaning of the words "as of right" in the definition of a green in section 22(1) of the Act of 1965. The language is plainly derived from judicial pronouncements and earlier legislation on the acquisition of rights by prescription. To put the words in their context, it is therefore necessary to say something about the historical background.

D Any legal system must have rules of prescription which prevent the disturbance of long-established de facto enjoyment. But the principles upon which they achieve this result may be very different. In systems based on Roman law, prescription is regarded as one of the methods by which ownership can be acquired. The ancient *Twelve Tables* called it *usucapio*, meaning literally a taking by use. A logical consequence was that, in laying down the conditions for a valid *usucapio*, the law concerned itself with the nature of the property and the method by which the acquirer had obtained possession. Thus *usucapio* of a *res sacra* or *res furtiva* was not allowed and the acquirer had to have taken possession in good faith. The law was not concerned with the acts or state of mind of the previous owner, who was assumed to have played no part in the transaction. The periods of prescription were originally one year for moveables and two years for immoveables, but even when the periods were substantially lengthened by Justinian and some of the conditions changed, it remained in principle a method of acquiring ownership. This remains the position in civilian systems today.

E English law, on the other hand, has never had a consistent theory of prescription. It did not treat long enjoyment as being a method of acquiring title. Instead, it approached the question from the other end by treating the lapse of time as either barring the remedy of the former owner or giving rise to a presumption that he had done some act which conferred a lawful title upon the person in de facto possession or enjoyment. Thus the medieval real actions for the recovery of seisin were subject to limitation by reference to various past events. In the time of Bracton the writ of right was limited by reference to the accession of Henry I (1100). The Statute of Merton 1235 (20 Hen. 3, c. 4) brought this date up to the accession of Henry II (1154) and the Statute of Westminster I 1275 (3 Edw. 1, c. 39) extended it to the accession of Richard I in 1189.

The judges used this date by analogy to fix the period of prescription for immemorial custom and the enjoyment of incorporeal hereditaments such as rights of way and other easements. In such cases, however, the period was being used for a different purpose. It was not to bar the remedy but to presume that enjoyment was pursuant to a right having a lawful origin. In the case of easements, this meant a presumption that there had been a grant before 1189 by the freehold owner.

As time went on, however, proof of lawful origin in this way became for practical purposes impossible. The evidence was not available. The judges filled the gap with another presumption. They instructed juries that if there was evidence of enjoyment for the period of living memory, they could presume that the right had existed since 1189. After the Limitation Act 1623 (21 Jac. 1, c. 16), which fixed a 20-year period of limitation for the possessory actions such as ejectment, the judges treated 20 years' enjoyment as by analogy giving rise to the presumption of enjoyment since 1189. But these presumptions arising from enjoyment for the period of living memory or for 20 years, though strong, were not conclusive. They could be rebutted by evidence that the right could not have existed in 1189; for example, because it was appurtenant to a building which had been erected since that date. In the case of easements, the resourcefulness of the judges overcame this obstacle by another presumption, this time of a lost modern grant. As Cockburn C.J. said in the course of an acerbic account of the history of the English law of prescription in *Bryant v. Foot* (1867) L.R. 2 Q.B. 161, 181:

“Juries were first told that from user, during living memory, or even during 20 years, they might presume a lost grant or deed; next they were recommended to make such presumption; and lastly, as the final consummation of judicial legislation, it was held that a jury should be told, not only that they might, but also that they were bound to presume the existence of such a lost grant, although neither judge nor jury, nor any one else, had the shadow of a belief that any such instrument had ever really existed.”

The result of these developments was that, leaving aside the cases in which (a) it was possible to show that the right could not have existed in 1189 and (b) the doctrine of lost modern grant could not be invoked, the period of 20 years' user was in practice sufficient to establish a prescriptive or customary right. It was not an answer simply to rely upon the improbability of immemorial user or lost modern grant. As Cockburn C.J. observed, the jury were instructed that if there was no evidence absolutely inconsistent with there having been immemorial user or a lost modern grant, they not merely could but should find the prescriptive right established. The emphasis was therefore shifted from the brute fact of the right or custom having existed in 1189 or there having been a lost grant (both of which were acknowledged to be fictions) to the quality of the 20-year user which would justify recognition of a prescriptive right or customary right. It became established that such user had to be, in the Latin phrase, *nec vi, nec clam, nec precario*: not by force, nor stealth, nor the licence of the owner. (For this requirement in the case of custom, see *Mills v. Colchester Corporation* (1867) L.R. 2 C.P. 476, 486.) The unifying

A element in these 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 first case, because rights should not be acquired by the use of force, in the second, because the owner would not have known of the user and in the third, because he had consented to the user, but for a limited period. So in *Dalton v. Angus & Co.* (1881) 6 App.Cas. 740, 773, Fry J. (advising the House of Lords) was able to rationalise the law of prescription as follows:

B “the whole-law of prescription and the whole law which governs the presumption or inference of a grant or covenant rest upon acquiescence. The courts and the judges have had recourse to various expedients for quieting the possession of persons in the exercise of rights which have not been resisted by the persons against whom they are exercised, but in all cases it appears to me that acquiescence and nothing else is the principle upon which these expedients rest.”

C In the case of easements, the legislature intervened to save the consciences of judges and juries by the Prescription Act 1832 (2 & 3 Will 4, c. 71), of which the short title was “An Act for shortening the Time of Prescription in certain cases.” Section 2 (as amended by the Statute Law Revision (No. 2) Act 1888 (51 & 52 Vict. c. 57), section 1, Schedule and the Statute Law Revision Act 1890 (53 & 54 Vict. c. 33), section 1, Schedule 1) provided:

D “No claim which may be lawfully made at the common law, by custom, prescription, or grant, to any way or other easement . . . when such way or other matter . . . shall have been actually enjoyed by any person claiming right thereto without interruption for the full period of 20 years, shall be defeated or destroyed by showing only that such way or other matter was first enjoyed at any time prior to such period of 20 years, but nevertheless such claim may be defeated in any other way by which the same is now liable to be defeated . . .”

E Thus in a claim under the Act, what mattered was the quality of enjoyment during the 20-year period. It had to be by a person “claiming right thereto” or, in the language of section 5 of the same Act (as amended by the Act of 1888), which dealt with the forms of pleadings, “as of right.” In *Bright v. Walker* (1834) 1 C.M. & R. 211, 219, two years after the passing of the Act, Parke B. explained what these words meant. He said that the right must have been enjoyed “openly and in the manner that a person rightfully entitled would have used it” and not by stealth or by licence. In *Gardner v. Hodgson’s Kingston Brewery Co. Ltd.* [1903] A.C. 229, 239, Lord Lindley said that the words “as of right” were intended “to have the same meaning as the older expression *nec vi, nec clam, nec precario*.” (See also *per Cotton L.J.* in *Earl De la Warr v. Miles* (1881) 17 Ch.D. 535, 596.)

F My Lords, I pass now from the law concerning the acquisition of private rights of way and other easements to the law of public rights of way. Just as the theory was that a lawful origin of private rights of way could be found only in a grant by the freehold owner, so the theory was that a lawful origin of public rights of way could be found only in a

House of Lords

A

## Oxfordshire County Council v Oxford City Council and another

[2006] UKHL 25

2006 March 27, 28, 29, 30  
April 3;  
May 24

Lord Hoffmann, Lord Scott of Foscote,  
Lord Rodger of Earlsferry, Lord Walker of  
Gestingthorpe and Baroness Hale of Richmond

B

*Commons — Town or village green — Registration — Land used by local inhabitants for sport and recreation for more than 20 years — Whether requirement for use to continue until date of registration — Whether registration conferring rights of user on inhabitants — Whether bringing land within scope of pre-existing legislation applicable to greens — Whether permissible for registration authority to amend application for registration — Commons Registration Act 1965 (c 64), ss 13, 22 (as amended by Countryside and Rights of Way Act 2000 (c 37), s 98)*

C

In 2002 the applicant, a resident of an area where the city council owned land, sought registration of the land under section 13 of the Commons Registration Act 1965<sup>1</sup> as a “town or village green” within the meaning of section 22 of the Act (as amended by section 98 of the Countryside and Rights of Way Act 2000), which allowed registration as a “class c” green of land on which the inhabitants of the locality had indulged in lawful sports and pastimes as of right for not less than 20 years and, by the section 98 amendment which came into force on 30 January 2001 by the substitution of the original definition by a new section 22(1A), “continue to do so”. The application, which stated that the land had become a town or village green by 1 August 1990, was opposed by the city council, which wished to build houses on the site. The applicant later sought to amend the application by excluding certain areas.

D

The county council, as registration authority, sought rulings on a number of issues on which it considered it required the assistance of the court before it determined the application. On questions as to what, if any, rights or statutory obligations would take effect over the land on registration so as to limit the landowner’s ability to use the land, the judge ruled (i) that where land was registered as a class c green the local inhabitants enjoyed the rights ordinarily incident to such land and (ii) that land so registered fell within the scope of pre-existing legislation applicable to town or village greens. On questions as to when the 20-year period ran to, the judge ruled (iii) that the words “continue to do so” in section 22(1A) meant continuance to the date of application, (iv) that where, however, land had become registrable as a green before 30 January 2001 the requirement for the use to be continuing did not apply, so that (v) the applicant could seek to prove a 20-year user other than one immediately preceding the application. As regards the procedure of the registration process, he ruled (vi) that the applicant was not entitled to amend her application so as to exclude certain areas, but (vii) the registration authority had power to treat the application as relating to 20 years ending at a different date to that specified on the form and (viii) could register only a part of the land included in the application. The judge also gave guidance as to whether (ix) land could be registered as a green if only partly accessible and (x) use of public rights of way over the land might count as qualifying user.

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<sup>1</sup> Commons Registration Act 1965, s 13; see post, para 22.

S 22(1); see post, para 20.

S 22(1A), as amended: see post, para 26.

A On appeals by all parties the Court of Appeal varied the judge's order by holding on issue (i) that registration of a class c green did not imply any formal legal right to its use, whether by the public in general or by any particular group and, on issues (iii) to (v), that "continue to do so" in section 22(1A) required user to continue to the date of registration rather than the application and that section 22(1A) governed all applications for registration made after the commencement date of the 2000 Act. The Court of Appeal also held on issue (vi) that in appropriate cases the registration authority had power to amend an application for registration but otherwise affirmed the judge's order.

B On appeals by all parties—

*Held* (1) allowing the applicant's appeal on issue (i), that (per Lord Hoffmann, Lord Scott of Foscote, Lord Rodger of Earlsferry and Lord Walker of Gestingthorpe) registration gave rise to rights for the relevant inhabitants to indulge in lawful sports and pastimes, such rights extending (Lord Scott of Foscote dissenting) to sports and pastimes generally and not merely that use which had been the basis for registration, the landowner retaining the right to use the land in any way which did not interfere with those rights (post, paras 50–51, 69, 104, 114, 124).

C (2) Dismissing the city council's appeal on issue (ii), that (per Lord Hoffmann, Lord Rodger of Earlsferry and Lord Walker of Gestingthorpe) registration had the effect of bringing the land within the scope of the 19th century legislation applicable to town or village greens (post, paras 56, 69, 114, 124).

D (3) Allowing the applicant's appeal on issue (iii), that section 22(1A) required the use necessary for registration as a town or village green to continue only to the date of application, save that (per Lord Scott of Foscote) if the application was made reasonably promptly and in response to action taken by the landowner or others to obstruct continued use by the relevant inhabitants, the use was to be taken to have continued to the date of application; but, dismissing her appeals on issues (iv) and (v) (Baroness Hale of Richmond dissenting), that section 22(1A) governed all applications for registration made after the commencement date of the 2000 Act and, since the register was conclusive and prevented the coming into existence of greens after the enactment of the 1965 Act without registration, the applicant could not claim that the land had acquired village green status before the coming into force of section 22(1A) (post, paras 42–44, 69, 109–110, 113, 114, 116, 124, 143, 147).

E (4) Dismissing the county council's appeals on issues (vi) to (viii), that the procedure for registration was intended to be relatively simple and informal and the registration authority was to be guided by the general principle of being fair to those whose interests might be affected by its decision; that it followed that if no prejudice would be caused or any prejudice could be prevented by an adjournment, the authority had power to allow amendments to an application and could also, without any amendment to the application, register only that part of the land which had been proved to have been used for the necessary period (post, paras 61–62, 69, 111, 114, 124, 144, 147).

F (5) That since the question whether a certain type of user would satisfy the statutory definition in section 22(1A) would depend on the facts of the individual case, it would be inappropriate for the appellate committee to make any rulings on issues (ix) and (x) (post, paras 68–69, 102–103, 114, 124, 147).

Decision of the Court of Appeal [2005] EWCA 175; [2006] Ch 43; [2005] 3 WLR 1043; [2005] 3 All ER 961 varied.

The following cases are referred to in their Lordships' opinions:

- H *Abbot v Weekly* (1666) 1 Lev 176  
*Abbott v Minister for Lands* [1895] AC 425, PC  
*Bell v Wardell* (1740) Willes 202  
*British Amusement Catering Trades Association v Westminster City Council* [1989] AC 147; [1988] 2 WLR 485; [1988] 1 All ER 740, HL(E)  
*Brocklebank v Thompson* [1903] 2 Ch 344

A Miss Robinson and Mr Laurence, who appeared for the registration authority, said that as the definition did not specify any terminal date, it meant any period of 20 years. On the expiry of a 20-year period of user, the land became a village green. If it had become a green before 1970 and had not been registered, it would be deemed by section 1(2)(a) not to have been a village green on the appointed day. But any 20-year period expiring after the appointed day would do.

B 42 The amended section 22, with the addition of the words “and . . . continue to do so”, plainly cannot be satisfied by any period of 20 years. It must be a period continuing until a given date, although, as I shall explain, the precise date is controversial. So one might have thought that the question of whether one could have taken any 20 years under the old law was now academic. But Mr Edwards says that if the land became a green under the old law, it would have remained a green thereafter. Once a village green, always a village green. It could not be retrospectively deprived of that status by the amendment of the definition in 2000. Lightman J agreed [2004] Ch 253, 283, paras 66–67.

C 43 In my opinion it is unnecessary to decide when the 20-year period under the old law would have expired because the argument that it would have “become a village green” is a misreading of sections 13 and 22 of the 1965 Act. Section 22 defines a village green for the purposes of the Act. When section 13 speaks of amendment of the register when land “becomes” a village green, it means that by reason of events which have happened after 1970, the land now satisfies the definition. That makes it registrable. But, because the register is conclusive, it does not become a village green until it has been registered. The Act was a Commons *Registration* Act, not an act to change the substantive law of commons and village greens, although, as Carnwath LJ pointed out, the effect of the conclusive presumption in section 10, read with section 22, may be to create rights in respect of land to which they would not have attached without registration. But one purpose of the Act was to enable buyers of land and other members of the public to ascertain from the register whether land was common land or a village green. It would defeat that purpose if unregistered greens could come into existence after the appointed day. I agree with Carnwath LJ’s analysis [2006] Ch 43, 72–73, para 100:

G “The 1965 Act created no new legal status, and no new rights or liabilities other than those resulting from the proper interpretation of section 10. Since that section only takes effect in relation to any particular land on registration, there is no legal basis for treating that land as having acquired village green status by virtue of an earlier period of qualifying use. The mere fact that it would at some earlier time have come within the statutory definition is irrelevant if it was not registered as such.”

*Continue until when?*

H 44 Since 2001, then, the land must satisfy the definition as amended by the 2000 Act. The inhabitants must “continue” to use the land for sports and pastimes. Continue until when? Carnwath LJ said that user had to continue until the date of registration. But that would mean that any well-advised landowner, on receipt of an application to register, would erect

trampled the grass which the owner had mowed, thrown the hay about and mixed some of it with gravel. Heath J said, at p 544: A

“The inhabitants have a right to take their amusement in a lawful way. It is supposed, because they have such a right, the plaintiff should not allow the grass to grow; there is no foundation in law for such a position. The rights of both parties are distinct, and may exist together. If the inhabitants come in an unlawful way, or not fairly, to exercise the right they claim of amusing themselves, or to use it in an improper way, they are not justified under the custom pleaded . . .” B

52 The judge, at p 545, asked the jury to decide “whether the defendant had entered the close in the fair exercise of a right, or in an improper way” and the jury found for the plaintiff.

53 Mr George, who appeared for the city council, submitted that there was a general presumption against interference with property rights without clear words. (He also relied upon the Human Rights Act 1998, to which I shall return later). But the primary purpose of the 1965 Act, as applied to town and village greens, was not to create new rights which override those of the owner. It was to create a register of town and village greens which would include all land over which statutory or customary rights of recreation existed or probably existed. That would protect both the interests of the local inhabitants (so that public open spaces were not lost with the fading of memory) and also the interests of owners and buyers of land, who could clear their titles and rely upon the register, without being surprised by claims of public right of which they had been unaware. For this purpose, it was in my view a necessary implication that land conclusively presumed to be a village green should be subject to the rights which the statute treated as creating a village green, namely the right to indulge in sports and pastimes. This was the opinion of Pill LJ in *R v Suffolk County Council, Ex p Steed* 75 P & CR 102, 114–115, Dyson J in *R v Norfolk County Council, Ex p Perry* 74 P & CR 1, 7 and Lightman J in this case. I agree. C  
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#### *The Victorian statutes* F

54 Section 12 of the Inclosure Act 1857 recited that it was expedient to provide “summary means of preventing nuisances” on town and village greens and land allotted for recreation. Therefore:

“If any person wilfully cause any injury or damage to any fence of any such town or village green or land, or wilfully and without lawful authority lead or drive any cattle or animal thereon, or wilfully lay any manure, soil, ashes, or rubbish, or other matter or thing thereon, or do any other act whatsoever to the injury of such town or village green or land, or to the interruption of the use or enjoyment thereof as a place for exercise and recreation, such person shall for every such offence, upon a summary conviction thereof [pay a fine].” G

55 Further provision for the protection of town and village greens was made by section 29 of the Commons Act 1876: H

“an encroachment on or inclosure of a town or village green, also any erection thereon or disturbance or interference with or occupation of the soil thereof which is made otherwise than with a view to the better

A enjoyment of such town or village green or recreation ground, shall be deemed to be a public nuisance, and if any person does any act in respect of which he is liable to pay damages or a penalty under section 12 of the Inclosure Act 1857, he may be summarily convicted thereof upon the information of any inhabitant of the parish in which such town or village green or recreation ground is situate, as well as upon the information of  
B such persons as in the said section mentioned.”

56 The first question is whether the effect of section 10 of the 1965 Act is to apply these statutes to land registered as a town or village green. I agree with Lightman J and the Court of Appeal that it does. There is no special definition of a town and village green in the 1857 or 1876 Acts which might suggest that when section 10 of the 1965 Act said that registration was to be  
C conclusive evidence of the matters registered, and the matter registered was that the land was a village green, Parliament did not intend that it should be a village green for the purposes of the 1857 and 1876 Acts.

57 There is virtually no authority on the effect of the Victorian legislation. The 1857 Act seems to have been aimed at nuisances (bringing on animals or dumping rubbish) and the 1876 Act at encroachments by  
D fencing off or building on the green. But I do not think that either Act was intended to prevent the owner from using the land consistently with the rights of the inhabitants under the principle discussed in *Fitch v Fitch* 2 Esp 543. This was accepted by Sullivan J in *R (Laing Homes Ltd) v Buckinghamshire County Council* [2004] 1 P & CR 573, 588. In that case the land was used for “low-level agricultural activities” such as taking a hay crop at the same time as it was being used by the inhabitants for sports and  
E pastimes. No doubt the use of the land by the owner may be relevant to the question of whether he would have regarded persons using it for sports and pastimes as doing so “as of right”. But, with respect to the judge, I do not agree that the low-level agricultural activities must be regarded as having been inconsistent with use for sports and pastimes for the purposes of section 22 if in practice they were not. Nor do I follow how the fact that,  
F upon registration, the land would become subject to the 1857 and 1876 Acts can be relevant to the question of whether there has been the requisite user by local inhabitants for upwards of 20 years before the date of the application. I have a similar difficulty with para 141 of the judgment of Judge Howarth in *Humphreys v Rochdale Metropolitan Borough Council* (unreported) 18 June 2004, in which he decided that acts of grazing and  
G fertilising by the owner which, in his opinion, would have contravened the 1857 and 1876 Acts if the land had been a village green at the time, prevented the land from satisfying the section 22 definition.

### *Human rights*

58 Mr George submitted that a system of prescription by which land could after 20 years user become subject to recreational rights and the  
H Victorian statutes was inconsistent with the human right of an owner of land not to be “deprived of his possessions” except on the restricted grounds allowed by article 1 of the First Protocol to the Convention on Human Rights. Section 3 of the Human Rights Act 1998 therefore required the 1965 Act to be construed in a way which did not produce such an inconsistency.

Supreme Court

**Regina (Lewis) v Redcar and Cleveland  
Borough Council (No 2)**

[2010] UKSC 11

2010 Jan 18, 19, 20;  
March 3

Lord Hope of Craighead DPSC, Lord Rodger of  
Earlsferry, Lord Walker of Gestingthorpe, Lord Brown of  
Eaton-under Heywood, Lord Kerr of Tonaghmore JJSC

*Commons — Town or village green — Registration — Land used by local inhabitants for sport and recreation for more than 20 years — Conflicting uses of land by inhabitants and landowner — Whether inhabitants' user sufficient assertion of right so to use land — Whether claim to user "as of right" defeated by inhabitants deferring to landowner's use — Whether registration enlarging inhabitants' rights to detriment of landowner — Commons Act 2006 (c 26), s 15*

The claimant, a resident of an area where the local authority owned land, sought registration of part of that land as a town green within the meaning of section 15 of the Commons Act 2006<sup>1</sup>, on the ground that the inhabitants of the locality had indulged as of right in lawful sports and pastimes on the land for at least 20 years. Until 2002 the disputed land had formed part of a golf course which was regularly used by members of a private golf club. However, the local inhabitants had continued to use the land for informal recreation without interfering with or interrupting play by the golfers, and would wait until the play had passed or until they were waved across by golfers, so that there had generally been a cordial relationship between the golfers and the local inhabitants. The local authority appointed an inspector to hold a non-statutory public inquiry and provide a report and recommendation as to whether the application for registration should succeed. The inspector found that local inhabitants' use of the land was "not as of right" because, first, the fact that certain signs had been erected on the land had that effect, and, secondly, the local inhabitants had "overwhelmingly deferred" to the extensive use of the land by the golfers. He accordingly recommended that the land should not be registered as a town or village green, and the local authority accepted that recommendation. The claimant sought judicial review of the local authority's decision. The judge upheld the challenge to the first of the inspector's reasons but rejected the challenge to the second, and accordingly dismissed the claim for judicial review. The Court of Appeal dismissed the claimant's appeal on the ground that in order for user to be as of right, it had to be not merely nec vi, nec clam, nec precario, but had also such as to lead a reasonable landowner to conclude that a right to use the land was being asserted by the local inhabitants, and that the judge had been right to hold that the inspector's finding that the local inhabitants had "overwhelmingly deferred" to the golfers undermined the local inhabitants' assertion of a right, so that the claim for registration was not established.

On the claimant's appeal—

*Held*, allowing the appeal, that, although "sports and pastimes" in section 15 of the 2006 Act denoted a single composite class and land registered as a town or village green could be used generally for sports and pastimes, registration neither enlarged the inhabitants' rights nor diminished those of the landowner, who retained the right to use the land as he had done before, and in practice it was possible for the respective rights of the owner and of the local inhabitants to coexist with give and take on both sides; that, although the English theory of prescription was concerned with how matters would have appeared to the landowner, the tripartite test of nec vi, nec clam,

<sup>1</sup> Commons Act 2006, s 15: see post, para 1.

- A nec precario, was sufficient to establish whether local inhabitants' use of land for lawful sports and pastimes was "as of right" for the purposes of section 15, and it was unnecessary to superimpose a further test as to whether it would appear to a reasonable landowner that they were asserting a right so to use the land or deferring to his rights; that, if the user by the local inhabitants for at least 20 years were of such amount and in such manner as would reasonably be regarded as the assertion of a public right so that it was reasonable to expect the landowner to resist or restrict
- B the use if he wished to avoid the possibility of registration, the landowner would be taken to have acquiesced in it unless he could show that one of the three vitiating circumstances applied; that, in any event, a reasonably alert landowner could not have failed to recognise in the present case that the user by the local inhabitants, who had regularly and in large numbers continued to cross the area covered by the golf course in order to pursue their lawful sports and pastimes, was the assertion of a right to use the land which would mature into an established right unless he took action to
- C stop it, and he would not have concluded that they were not doing so merely because they showed civility or deference towards members of the golf club when play was in progress; that, therefore, the inspector's assessment constituted an error of law in that he had misdirected himself as to the significance of perfectly natural behaviour by the local inhabitants; and that, accordingly, the local authority was required to register the disputed land as a town green (post, paras 20, 36-38, 47-49, 67-78, 79, 85, 93, 95-97, 100-102, 105, 108, 109, 113-116).
- D *Gardner v Hodgson's Kingston Brewery Co Ltd* [1903] AC 229, HL(E) applied.  
*Fitch v Fitch* (1797) 2 Esp 543, *R v Oxfordshire County Council, Ex p Summingwell Parish Council* [2000] 1 AC 335, HL(E), *R (Beresford) v Sunderland City Council* [2004] 1 AC 889, HL(E) and *Oxfordshire County Council v Oxford City Council* [2006] 2 AC 674, HL(E) considered.  
*R (Laing Homes Ltd) v Buckinghamshire County Council* [2004] 1 P & CR 573 not followed.
- E *Per* Lord Hope of Craighead DPSC. In the proposed consultation as to whether changes are needed to the existing framework for the registration of new town and village greens, the opportunity should be taken by the Government to look at the consequences of registration as revealed by the developing case law as well as how the registration system itself is working (post, para 56).  
 Decision of the Court of Appeal [2009] EWCA Civ 3; [2009] 1 WLR 1461; [2009] 4 All ER 1232 reversed.
- F The following cases are referred to in the judgments:  
*Bridle v Ruby* [1989] QB 169; [1988] 3 WLR 191; [1988] 3 All ER 64, CA  
*Bright v Walker* (1834) 1 Cr M & R 211  
*Costagliola v English* (1969) 210 EG 1425  
*Cumbernauld and Kilsyth District Council v Dollar Land (Cumbernauld) Ltd* 1992 SC 357; 1992 SLT 1035, Ct of Sess; 1993 SC (HL) 44, HL(Sc)
- G *Dalton v Henry Angus & Co* (1881) 6 App Cas 740, HL(E)  
*Fitch v Fitch* (1797) 2 Esp 543  
*Gardner v Hodgson's Kingston Brewery Co Ltd* [1903] AC 229, HL(E)  
*Henderson v Volk* (1982) 35 OR (2d) 379  
*Hollins v Verney* (1883) 11 QBD 715, DC; (1884) 13 QBD 304, CA  
*Humphreys v Rochdale Metropolitan Borough Council* (unreported) 18 June 2004, Judge Howarth
- H *Mercer v Woodgate* (1869) LR 5 QB 26  
*New Windsor Corp'n v Mellor* [1975] Ch 380; [1975] 3 WLR 25; [1975] 3 All ER 44, CA  
*Oxfordshire County Council v Oxford City Council* [2004] EWHC 12 (Ch); [2004] Ch 253; [2004] 2 WLR 1291; [2006] UKHL 25; [2006] 2 AC 674; [2006] 2 WLR 1235; [2006] 4 All ER 817, HL(E)

The inspector treated them as material to the outcome of both applications, but on judicial review of the second application Sullivan J [2008] EWHC 1813 (Admin) at [11]–[23] held that the wording was too ambiguous to alter the character of the residents’ use of the land, and that conclusion has not been challenged by the respondents. The permissive signs erected in 2003 were fatal to the first application but not to the second application, because of the change in the law made by section 15 of the Commons Act 2006.

*The course of the second application*

14 Mr Chapman advised the borough council in an opinion dated 12 June 2007 that the application made on 6 June 2007 was bound to fail on two of the same grounds on which the first application failed, that is the deference issue and the 1998 warning notices. He recommended that the application should be summarily dismissed, subject to any new points raised by the applicants. Various points were raised but in three further opinions dated 29 July, 13 October and 18 October 2007 Mr Chapman maintained his advice that the application should be rejected. On 19 October 2007 the borough council, by its General Purposes and Village Greens Committee, accepted Mr Chapman’s advice and resolved to reject the application for registration.

15 On 18 July 2008 Sullivan J, at a “rolled up” hearing, granted the applicants permission to apply for judicial review of the borough council’s decision, but dismissed the substantive application. He did so on the ground that the local residents’ deference to the golfers had prevented their user being “as of right” before 2002. He relied on para 82 of his own judgment in *Laing Homes* [2004] 1 P & CR 573, and on para 57 of Lord Hoffmann’s opinion in *Oxfordshire* [2006] 2 AC 674. He granted leave to appeal, commenting, at p 62, “deference is judge-made law, judge-made by me”.

16 The Court of Appeal (Laws, Rix and Dyson LJ) [2009] 1 WLR 1461 unanimously dismissed the appeal in reserved judgments handed down on 15 January 2009. Dyson LJ gave the principal judgment, and Rix LJ added a concurring judgment. Both judgments put the decision squarely on the ground of deference excluding user as of right (although Dyson LJ denied that there was any “principle of deference”). The provisions of two Victorian statutes relating to greens (section 12 of the Inclosure Act 1857 (20 & 21 Vict c 31) and section 29 of the Commons Act 1876 (39 & 40 Vict c 56)) which had formed part of the grounds of decision in *Laing Homes*, were not relied on in the Court of Appeal. In short, all the subsidiary issues have disappeared and this court is faced with the single issue of deference. It is not however a simple issue.

*As of right*

17 The concept of user “as of right” is found (either in precisely those words or in similar terms) in various statutory provisions dealing with the acquisition by prescription of public or private rights. Section 5 of the Prescription Act 1832 (2 & 3 Will 4, c 71) makes it sufficient to plead enjoyment “as of right” (while section 2 refers to a way “actually enjoyed by any person claiming right thereto without interruption for the full period of 20 years”). Section 31(1) of the Highways Act 1980 refers to use of a way

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A being “actually enjoyed by the public as of right and without interruption for the full period of 20 years”. Section 22(1A) of the Commons Registration Act 1965, as inserted by section 98(3) of the Countryside and Rights of Way Act 2000, refers simply to inhabitants indulging in lawful sports and pastimes “as of right” for at least 20 years.

B 18 Both *Sunningwell* [2000] 1 AC 335 and *Beresford* [2004] 1 AC 889 were concerned with the meaning of “as of right” in the Commons Registration Act 1965. In *Sunningwell* Lord Hoffmann discussed the rather unprincipled development of the English law of prescription. He explained, at pp 350–351, that by the middle of the 19th century the emphasis shifted from fictions:

C “to the quality of the 20-year user which would justify recognition of a prescriptive right or customary right. It became established that such user had to be, in the Latin phrase, *nec vi, nec clam, nec precario*: not by force, nor stealth, nor the licence of the owner. (For this requirement in the case of custom, see *Mills v Colchester Corpn* (1867) LR 2 CP 476, 486.) The unifying element in these 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 first case, because rights  
D should not be acquired by the use of force, in the second, because the owner would not have known of the user and in the third, because he had consented to the user, but for a limited period.”

Lord Hoffmann pointed out that for the creation of a highway, there was an additional requirement that an intention to dedicate it must be evinced or inferred (as to that aspect see *R (Godmanchester Town Council) v Secretary of State for the Environment, Food and Rural Affairs* [2008] AC 221).

E 19 In *Sunningwell* [2000] 1 AC 335 the villagers had used about ten acres of glebe land for dog-walking, children’s games, and similar activities. This use seems to have coincided with the land being let for grazing by horses, but the report gives little detail about this. The inspector (as it happens, Mr Chapman) advised against acceptance of the registration  
F because although the witnesses had said that they thought they had the right to use the glebe, they did not say that they thought the right was confined to villagers (as opposed to the general public). Lord Hoffmann held (and the rest of the Appellate Committee agreed) that this was an error. The decision of the Court of Appeal in *R v Suffolk County Council, Ex p Steed* (1996) 75 P & CR 102 was overruled. That was the context in which Lord Hoffmann stated in a passage, at pp 352–353, relied on by the respondents:

G “My Lords, I pause to observe that Lord Blackburn [in *Mann v Brodie* (1885) 10 App Cas 378, 386, as to dedication of a highway] does not say that there must have been evidence that individual members of the public using the way believed there had been a dedication. He is concerning himself, as the English theory required, with how the matter would have appeared to the owner of the land. The user by the public must have been,  
H as Parke B said in relation to private rights of way in *Bright v Walker* 1 Cr M & R 211, 219, ‘openly and in the manner that a person rightfully entitled would have used it’. The presumption arises, as Fry J said of prescription generally in *Dalton v Angus & Co* 6 App Cas 740, 773, from acquiescence.”

20 The proposition that “as of right” is sufficiently described by the tripartite test *nec vi, nec clam, nec precario* (not by force, nor stealth, nor the licence of the owner) is established by high authority. The decision of the House of Lords in *Gardner v Hodgson’s Kingston Brewery Co Ltd* [1903] AC 229 is one of the clearest: see Lord Davey, at p 238, and Lord Lindley, at p 239. Other citations are collected in *Gale on Easements*, 18th ed (2008), paras 4-80 and 4-81. The proposition was described as “clear law” by Lord Bingham of Cornhill in *Beresford* [2004] 1 AC 889, para 3. The opinion of Lord Rodger of Earlsferry, at para 55, is to the same effect. So is that of Lord Scott of Foscote, at para 34, though with a cautionary note as to the difference between the acquisition of public and private rights.

### *Laing Homes*

21 The respondents’ case is that although Sullivan J, in his judgment in *Laing Homes* [2004] 1 P & CR 573, was indeed the first judge to speak in terms of “deference” shown by local residents, he was not striding into entirely unknown and uncharted territory. Earlier authorities (including those mentioned in the passage of Lord Hoffmann’s opinion in *Sunningwell* [2000] 1 AC 335, 350–351 quoted in para 19 above) suggest that although the local residents’ private beliefs as to their rights are irrelevant, the same is not true of their outward behaviour on the land in question, as it would appear to a reasonable owner of the land. It is relevant, on this argument, to look at what might today be called the residents’ attitude or body language (this thought is elaborated in an imaginary example given by J G Riddall, “Miss Tomkins and the Law of Village Greens” [2009] *Conveyancer and Property Lawyer* 326). I propose to look next at *Laing Homes* [2004] 1 P & CR 573 itself, and then to consider how far the respondents can claim much more long-established roots for the doctrine of deference which *Laing Homes* articulates.

22 *Laing Homes* was concerned with three adjoining fields (“the application area”), extending in all to 38 acres, on the edge of Widmer End in Buckinghamshire. This land, together with three smaller fields not affected by the application for registration, had been acquired by Laing Homes, a house-builder, and held in its “land bank” since 1963. The land was subject to a grazing licence from 1973 to 1979, when the farmer stopped using it for grazing because of repeated troubles with trespassers. In the course of time footpaths were established round the three fields in the application area (cutting some corners) and these were officially recognised as public footpaths in June 2000. An application for registration of the application area was made in August 2000. The registration authority’s decision to register the land as a village green was challenged by way of judicial review on various grounds (including human rights grounds on which Sullivan J did not find it necessary to rule).

23 In his judgment Sullivan J listed, in para 50, the four main grounds on which Laing Homes was attacking the inspector’s report (and the registration based on it). The first ground was that there was insufficient evidence of the use of the whole of the application area for lawful sports and games over the 20-year period. The second was the inspector’s conclusion that the use of the fields for an annual hay crop (from about 1980 until the early 1990s) was not incompatible with the establishment of village green rights. Sullivan J considered the second ground first. He discussed it at some

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A length and differed from the inspector. He did so primarily on the view he took of the perception of a reasonable landowner, although he was also influenced by the point (no longer relied on) as to the Victorian statutes, at para 86:

B “Like the inspector, I have not found this an easy question. Section 12 [of the Inclosure Act 1857] acknowledges that animals may be grazed on a village green. Rough grazing is not necessarily incompatible with the use of land for recreational purposes: see *Sunningwell*. If the statutory framework within which section 22(1) [of the Commons Registration Act 1965] was enacted had made provision for low-level agricultural activities to coexist with village green type uses, rather than effectively preventing them once such a use has become established, it would have been easier to adopt the inspector’s approach, but it did not. I do not consider that using the three fields for recreation in such a manner as not to interfere with [the farmer’s] taking of an annual hay crop for over half of the 20-year period, should have suggested to Laings that those using the fields believed that they were exercising a public right, which it would have been reasonable to expect Laings to resist.”

D 24 I have to say that I am rather puzzled by Sullivan J’s summary of the evidence about hay-making, and the discussion of it (both by the inspector at paras 56 and 57, and by the judge himself at paras 59–63). There is a detailed description of the local residents keeping off the fields for a few days in spring when they were harrowed, rolled and fertilized, and again for a few days during hay-making. But there are only the most passing references by the judge (in paras 59 and 111) to the further need for people to keep off the fields for many weeks while the crop was growing, if it was to be worth the farmer’s while to get it in. The length of this period would vary with the quality of the land and the seasonal weather, but would usually, I imagine, be of the order of three months. The evidence was that the farmer generally got well over 2,000 bales of hay from the application area. So it seems that the local residents must, in general, have respected the hay crop.

F 25 The puzzle is partly explained by Sullivan J’s consideration of the first ground (evidence of use of the whole application area) which follows at paras 88–111. In para 111 the judge commented that there was an overlap between the two grounds, because the existence of public footpaths round the three fields (cutting some corners) provided an alternative explanation of the local residents’ use of the fields. It seems likely that they used the perimeter paths and kept off the hay while it was growing, although their dogs may not have done, as the judge discussed at some length, at paras 103–110.

G 26 There are some dicta about *Laing Homes* in Lord Hoffmann’s opinion in *Oxfordshire* [2006] 2 AC 674. Lord Rodger and I expressed general agreement with Lord Hoffmann, but did not comment on this point. H Lord Hoffmann observed, at para 57:

“No doubt the use of the land by the owner may be relevant to the question of whether he would have regarded persons using it for sports and pastimes as doing so ‘as of right’. But, with respect to the judge, I do not agree that the low-level agricultural activities must be regarded as

having been inconsistent with use for sports and pastimes for the purposes of section 22 if in practice they were not.”

27 There was some discussion in the course of argument of what Lord Hoffmann meant by the first sentence of this passage. In the Court of Appeal [2009] 1 WLR 1461, para 45, Dyson LJ took it to mean inconsistency between competing uses manifested “where the recreational users adjust their behaviour to accommodate the competing activities of the owner (or his lessees or licensees)”. I am rather doubtful about that. I think it just as likely that Lord Hoffmann had in mind, not concurrent competing uses of a piece of land, but successive periods during which recreational users are first excluded and then tolerated as the owner decides. An example would be a fenced field used for intensive grazing for nine months of the year, but left open for three months when the animals were indoors for the worst of the winter.

28 Whether that is correct or not, I see great force in the second sentence of the passage quoted. Taking a single hay crop from a meadow is a low-level agricultural activity compatible with recreational use for the late summer and from then until next spring. *Fitch v Fitch* (1797) 2 Esp 543 is venerable authority for that. That is not to say that *Laing Homes* [2004] 1 P & CR 573 was wrongly decided, although I see it as finely-balanced. The residents of Widmer End had gone to battle on two fronts, with the village green inquiry in 2001 following a footpaths inquiry two or three years earlier, and some of the evidence about their intensive use of the footpaths seems to have weakened their case as to sufficient use of the rest of the application area.

#### *The earlier authorities*

29 I have already referred to *Fitch v Fitch* 2 Esp 543, the case about cricket and hay-making at Steeple Bumpstead in Essex. The report is brief, but what Heath J is reported as having said, at pp 544–545, is a forthright declaration of the need for coexistence between concurrent rights:

“The inhabitants have a right to take their amusement in a lawful way. It is supposed that because they have such a right, the plaintiff should not allow the grass to grow; there is no foundation in law for such a position. The rights of both parties are distinct, and may exist together. If the inhabitants come in an unlawful way, or not fairly, to exercise the right they claim of amusing themselves, or to use it in an improper way, they are not justified under the custom pleaded, which is a right to come into the close to use it in the exercise of any lawful games or pastimes, and are thereby trespassers.”

30 Against that Mr Laurence QC relied on the general proposition that if the public (or a section of the public) is to acquire a right by prescription, they must by their conduct bring home to the landowner that a right is being asserted against him, so that the landowner has to choose between warning the trespassers off, or eventually finding that they have established the asserted right against him. That was in line with what Lord Hoffmann (in *Sunningwell* [2000] 1 AC 335, 350–351, quoted at para 18 above) called “the unifying element” in the tripartite test: why it would not have been reasonable to expect the owner to resist the exercise of the right.

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A 31 The first of the old authorities relied on by Mr Laurence was *Bright v Walker* (1834) 1 Cr M & R 211, 219, a case on a private right of way, in which Parke B spoke of use of a way “openly and in the manner that a person rightfully entitled would have used it”. I read that reference to the manner of use as emphasising the importance of open use, rather than as prescribing an additional requirement. On its facts the case raised as much of an issue as to  
 B vi as to *clam* since gates had been erected and broken down during the relevant period. The point of law in the case turned on the peculiarity that the freehold owner of the servient tenement was a corporation sole.

32 The next case relied on (another case about a claim to a private way) was *Hollins v Verney* (1884) 13 QBD 304 (there is a fuller statement of the facts in the first instance report (1883) 11 QBD 715). Lindley LJ (giving the judgment of the Court of Appeal) observed 13 QBD 304, 315:

C “No user can be sufficient which does not raise a reasonable inference of such a continuous enjoyment. Moreover, as the enjoyment which is pointed out by the statute is an enjoyment which is open as well as of right, it seems to follow that no actual user can be sufficient to satisfy the statute, unless during the whole of the statutory term (whether acts of user be proved in each year or not) the user is enough at any rate to carry  
 D to the mind of a reasonable person who is in possession of the servient tenement, the fact that a continuous right to enjoyment is being asserted, and ought to be resisted if such right is not recognised, and if resistance to it is intended. Can a user which is confined to the rare occasions on which the alleged right is supposed in this instance to have been exercised, satisfy even this test? It seems to us that it cannot: that it is not, and could  
 E not reasonably be treated as the assertion of a continuous right to enjoy; and when there is no assertion by conduct of a continuous right to enjoy, it appears to us that there cannot be an actual enjoyment within the meaning of the statute.”

33 The second sentence of this passage begins with “Moreover”, suggesting that Lindley LJ was adding to the requirement that the use should  
 F be continuous. But the passage as a whole seems to be emphasising that the use must be openly (or obviously) continuous (the latter word being used three more times in the passage). The emphasis on continuity is understandable since the weight of the evidence was that the way was not used between 1853 and 1866, or between 1868 and 1881. It was used exclusively, or almost exclusively, for carting timber and underwood which was cut on a 15-year rotational system. The use relied on was too sparse for  
 G any jury to find section 2 of the Prescription Act 1832 satisfied.

34 In *Bridle v Ruby* [1989] QB 169 the plaintiff established a right of way by prescription despite his personal belief that he had such a right by grant. Ralph Gibson LJ said, at p 178:

H “The requirement that user be ‘as of right’ means that the owner of the land, over which the right is exercised, is given sufficient opportunity of knowing that the claimant by his conduct is asserting the right to do what he is doing without the owner’s permission. If the owner is not going to submit to the claim, he has the opportunity to take advice and to decide whether to question the asserted right. The fact that the claimant mistakenly thinks that he derived the right, which he is openly asserting,

from a particular source, such as the conveyance to him of his property, does not by itself show that the nature of the user was materially different or would be seen by the owner of the land as other than user as of right.”

That the claimant’s private beliefs are generally irrelevant, in the prescription of either private or public rights, was finally confirmed by the House of Lords in *Sunningwell* [2000] 1 AC 335: see paras 18 and 19 above.

35 The last authority calling for mention on this point is *Cumbernauld and Kilsyth District Council v Dollar Land (Cumbernauld) Ltd* 1992 SLT 1035 (Court of Session); 1993 SC (HL) 44 (House of Lords). In the Court of Session the Lord President (Lord Hope), after considering several authorities, observed, at p 1041:

“The significance of these passages for present purposes is that, where the user is of such amount and in such manner as would reasonably be regarded as being the assertion of a public right, the owner cannot stand by and ask that his inaction be ascribed to his good nature or to tolerance.”

Lord Hope’s reference to the manner of use must, I think, be related to the unusual facts of the case (set out in detail at pp 1037–1038). The issue was whether there was a public right of way over an extensive walkway in a new town, designed to separate pedestrian from vehicular traffic. It gave access to the town centre where there were numerous shops (whose tenants no doubt had private rights of way for themselves and their customers). But the walk was also used for access to public places such as the railway station, the church, a health centre and a swimming pool. It was held that the use of the way “had the character of general public use of a town centre pedestrian thoroughfare”, at p 1042. The House of Lords upheld this decision. It is worth noting that Lord Jauncey of Tullichettle stated, at p 47, “There is no principle of law which requires that there be conflict between the interest of users and those of a proprietor”.

#### *Deference or civility?*

36 In the light of these and other authorities relied on by Mr Laurence I have no difficulty in accepting that Lord Hoffmann was absolutely right, in *Sunningwell* [2000] 1 AC 335, to say that the English theory of prescription is concerned with “how the matter would have appeared to the owner of the land” (or if there was an absentee owner, to a reasonable owner who was on the spot). But I have great difficulty in seeing how a reasonable owner would have concluded that the residents were not asserting a right to take recreation on the disputed land, simply because they normally showed civility (or, in the inspector’s word, deference) towards members of the golf club who were out playing golf. It is not as if the residents took to their heels and vacated the land whenever they saw a golfer. They simply acted (as all the members of the court agree, in much the same terms) with courtesy and common sense. But courteous and sensible though they were (with occasional exceptions) the fact remains that they were regularly, in large numbers, crossing the fairways as well as walking on the rough, and often (it seems) failing to clear up after their dogs when they defecated. A reasonably alert owner of the land could not have failed to recognise that this user was the assertion of a right and would mature into an established right unless the

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A half the 20-year period, should have suggested to Laings that those using the fields believed that they were exercising a public right, which it would have been reasonable to expect Laings to resist.”

63 This passage suggests that Sullivan J was approaching the case on the assumption that registration was inconsistent with the continued use of the land by Mr Pennington for taking the annual hay crop. In other words, registration would bring non-interference to an end. The public right to use the fields for recreational purposes would make it impossible for them to be used for growing hay. His approach has also been taken as indicating that in cases where the land has been used by a significant number of inhabitants for 20 years for recreational purposes *nec vi, nec clam, nec precario*, there is an additional question that must be addressed: would it have appeared to a reasonable landowner that the inhabitants were asserting a right to use the land for the recreational activities in which they were indulging? I am not sure that Sullivan J was really saying that there was an additional question that had to be addressed. But if he was, I would respectfully disagree with him on both points.

*The section 15 questions*

D 64 The application in this case was made under section 15(4) of the 2006 Act, which provides that a person may apply for registration of land as a town or village green where “a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years” if they ceased to do so before the commencement of that subsection, so long as the application is made within a period of five years beginning with the date of the cessation. The words that I have set out in quotation marks appear in each of subsections (2), (3) and (4) of section 15. The definition of the phrase “town or village green” in section 22(1) of the 1965 Act, as amended by section 98 of the Countryside and Rights of Way Act 2000, has been repeated throughout this section, with the addition of the words “a significant number”.

F 65 The theory on which these provisions are based is known to the common law as prescription: see Lord Hoffmann’s explanation in the *Sunningwell* case [2000] 1 AC 335, 350–351, of the background to the definition of “town or village green” in section 22(1) of the 1965 Act. As the law developed in relation to private rights, the emphasis was on the quality of the user for the 20-year period which would justify recognition of a prescriptive right:

G “It became established that such user had to be, in the Latin phrase, *nec vi, nec clam, nec precario*: not by force, nor stealth, nor the licence of the owner . . . The unifying element in these 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 first case, because rights should not be acquired by the use of force, in the second, because the owner would not have known of the user and in the third, because he had consented to the user, but for a limited period. So in *Dalton v Henry Angus & Co* (1881) 6 App Cas 740, 773 Fry J (advising the House of Lords) was able to rationalise the law of prescription as follows: ‘the whole law of prescription and the whole law which

governs the presumption or inference of a grant or covenant rest upon acquiescence’.”

Section 2 of the Prescription Act 1832 (2 & 3 Will 4, c 71) made it clear that what mattered was the quality of the user during the 20-year period. It had to be by a person “claiming right thereto”. It must have been enjoyed openly and in the manner that a person rightfully entitled would have used it, and not by stealth or by licence: *Bright v Walker* (1834) 1 Cr M & R 211, 219 per Parke B. In *Gardner v Hodgson’s Kingston Brewery Co Ltd* [1903] AC 229, 239 Lord Lindley said that the words “as of right” were intended to have the same meaning as the older expression *nec vi, nec clam, nec precario*.

66 Referring then to section 1(1) of the Rights of Way Act 1932, Lord Hoffmann said in the *Sunningwell* case [2000] 1 AC 335, 353:

“The words ‘actually enjoyed by the public as of right and without interruption for a full period of 20 years’ are clearly an echo of the words ‘actually enjoyed by any person claiming right thereto without interruption for the full period of 20 years’ in section 2 of the 1832 Act. Introducing the Bill into the House of Lords (HL Debates), 7 June 1932, col 637, Lord Buckmaster said that the purpose was to assimilate the law of public rights of way to that of private rights of way. It therefore seems safe to assume that ‘as of right’ in the 1932 Act was intended to have the same meaning as those words in section 5 of the 1832 Act and the words ‘claiming right thereto’ in section 2 of that Act.”

He concluded, at p 354, that there was no reason to believe that “as of right” in section 22(1) of the 1965 Act was intended to mean anything different from what those words meant in the 1832 and 1932 Acts. The same can be said of the meaning of those words in section 15 of the 2006 Act.

67 In the light of that description it is, I think, possible to analyse the structure of section 15(4) in this way. The first question to be addressed is the quality of the user during the 20-year period. It must have been by a significant number of the inhabitants. They 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. And they must have been doing so “as of right”: that is to say, openly and in the manner that a person rightfully entitled would have used it. If 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 (see *R (Beresford) v Sunderland City Council* [2004] 1 AC 889, paras 6, 77), the owner will be taken to have acquiesced in it—unless he can claim that one of the three vitiating circumstances applied in his case. If he does, the second question is whether that claim can be made out. Once the second question is out of the way—either because it has not been asked, or because it has been answered against the owner—that is an end of the matter. There is no third question. The answer to the first issue (see para 4, above) is: No.

68 Mr Charles George QC for the claimant said that there was only one simple test: was the use caught by any of the three vitiating circumstances? Mr George Laurence QC confirmed that it was common ground that the use of the land for recreation in this case was *nec vi, nec clam, nec precario*, but he said that this did not exhaust the issue. The unifying principle was one of

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A reasonably. He said that, if it was not reasonable to expect the owner to resist what the users were doing, no harm could come to the owner from his omission to resist or complain. In this case, as the Inspector held, the local inhabitants overwhelmingly deferred to the golfers. As Dyson LJ said in the Court of Appeal [2009] 1 WLR 1461, paras 48–49, the user of the local inhabitants was extensive and frequent, but so too was the use by the golfers: the greater the degree of deference, the less likely it was that it would appear to the reasonable owner that the locals were asserting any right to use the land.

B 69 I agree with Mr George that all the authorities show that there are only three vitiating circumstances: *Gardner v Hodgson's Kingston Brewery Co Ltd* [1903] AC 229, 238, per Lord Davey, p 239, per Lord Lindley; the *Sunningwell* case [2000] 1 AC 335, p 350, per Lord Hoffmann; the *Beresford* case [2004] 1 AC 889, para 3, per Lord Bingham of Cornhill, para 16, per Lord Scott of Foscote, para 55, per Lord Rodger of Earlsferry; *Riddall & Trevelyan, Rights of Way*, 4th ed (2007), pp 41, 47. There is no support there for the proposition that there is an additional requirement. But that does not answer Mr Laurence's point, which was really and quite properly directed to the first question as to the quality of the user that is relied on. That, as has been said, is the critical question in this case.

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#### Deference

70 In para 175 of his report the inspector said that he found that the relationship between the golfers and the local recreational users was generally cordial. This was because local people (with the exception of Squadron Leader Kime) did not materially interfere with the use of the land for playing golf. They would wait until the play had passed or until they had been waved on by the golfers. When local people did inadvertently impede play, the golfers' shout of "fore" was enough to warn them to clear the course. The Inspector asked himself whether this indicated deference to the golfers. Following what Sullivan J said in the *Laing* case [2004] 1 P & CR 573, para 85, he understood that the use would not be "as of right" if the local inhabitants would have appeared to the owner to be deferring to his right to use his land for his own purposes. That approach is based on the judge's assumption, which the Court of Appeal endorsed, that the effect of registration would be to enlarge the right of the local inhabitants in a way that would effectively prevent the golfers from using the land for their own purposes.

F 71 I do not find anything in the words used in section 15(4) of the 2006 Act that supports that approach. On the contrary, the theme that runs right through all of the law on private and public rights of way and other similar rights is that of an equivalence between the user that is relied on to establish the right on the one hand and the way the right may be exercised once it has been established on the other. In *Dalton v Henry Angus & Co* (1881) 6 App Cas 740, 774 Fry J, having stated at p 773 that the whole law of prescription rests upon acquiescence, said that it involved among other things the abstinence by the owner from any interference with the act relied on "for such a length of time as renders it reasonable for the courts to say that he shall not afterwards interfere to stop *the act* being done" (my emphasis). In other words, one looks to the acts that have been acquiesced in. It is those acts, and not their enlargement in a way that makes them more

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Supreme Court

**Regina (Barkas) v North Yorkshire County Council**

[2014] UKSC 31

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2014 April 2;  
May 21Lord Neuberger of Abbotsbury PSC,  
Baroness Hale of Richmond DPSC, Lord Reed,  
Lord Carnwath, Lord Hughes JJSC

C

*Commons — Town or village green — Registration — Local authority laying out and maintaining land as recreation ground pursuant to statutory powers — Local inhabitants using land for recreational purposes for more than 20 years — Whether use of land “as of right” — Whether statutory condition for registration as town or village green met — Housing Act 1936 (26 Geo 5 & 1 Edw 8, c 51), s 80(1) — Housing Act 1985 (c 68), s 12(1) — Commons Act 2006 (c 26), s 15(2)*

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A local authority acquired land under the Housing Act 1936<sup>1</sup> as a site for the erection of houses. It laid out and maintained a field lying within that land as a recreation ground for the benefit of those living in the houses, pursuant to its power under section 80(1) of the 1936 Act and thereafter its successor, section 12(1) of the Housing Act 1985<sup>2</sup>. A local resident applied to register the field as a town or village green under section 15 of the Commons Act 2006<sup>3</sup> on the ground that local inhabitants had used it for recreational purposes “as of right”, within section 15(2) of the 2006 Act, for more than 20 years. The commons registration authority refused the application, finding that although the local inhabitants’ use of the field met all the other requirements of section 15(2), it had been by right and so not “as of right”, within section 15(2). The judge dismissed the claimant’s claim for judicial review of the registration authority’s decision and the Court of Appeal dismissed her appeal.

E

On the claimant’s appeal—

*Held*, dismissing the appeal, that where land was held under section 80(1) of the Housing Act 1936 or section 12(1) of the Housing Act 1985 the public had a statutory right to use the land for recreational purposes; that, therefore, when the public so used the land they did so “by right” and not as trespassers, so that no question of user “as of right” within section 15(2) of the Commons Act 2006 could arise; and that, accordingly, the use of the field by local inhabitants did not satisfy the requirements of section 15(2) of the 2006 Act (post, paras 20–23, 30, 49–50, 51, 86).

F

*R v Oxfordshire County Council, Ex p Sunningwell Parish Council* [2000] 1 AC 335, HL(E) applied.

*R (Beresford) v Sunderland City Council* [2004] 1 AC 889, HL(E) departed from.

*Per curiam*. (i) Whether user was “as of right” should be judged by how the matter would have appeared to the owner of the land, a question which must be assessed objectively (post, paras 21, 51).

G

(ii) Where the owner of the land is a local, or other public, authority which has lawfully allocated the land for public use (whether for a limited period or an indefinite period), it is impossible to see how, at least in the absence of unusual additional facts, it could be appropriate to infer that members of the public have been using the land “as of right”, simply because the authority has not objected to their

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<sup>1</sup> Housing Act 1936, s 80(1): “The powers of a local authority under this Part of this Act to provide housing accommodation, shall include a power to provide and maintain with the consent of the minister . . . in connection with any such housing accommodation . . . any recreation grounds . . . which in the opinion of the minister will serve a beneficial purpose in connection with the requirements of the persons for whom the housing accommodation is provided.”

<sup>2</sup> Housing Act 1985, s 12(1): see post, para 5.

<sup>3</sup> Commons Act 2006, s 15: see post, para 9.

using the land. It would not merely be understandable why the local authority had not objected to the public use: it would be positively inconsistent with its allocation decision if it had done so (post, paras 24, 65).

Decision of the Court of Appeal [2012] EWCA Civ 1373; [2013] 1 WLR 1521 affirmed.

The following cases are referred to in the judgments:

*Cumbernauld and Kilsyth District Council v Dollar Land (Cumbernauld) Ltd* 1992

SC 357; 1992 SLT 1035, Ct of Sess; 1993 SC (HL) 44, HL(Sc)

*Dalton v Henry Angus & Co* (1881) 6 App Cas 740, HL(E)

*Gardner v Hodgson's Kingston Brewery Co Ltd* [1903] AC 229, HL(E)

*Green (HE) & Sons v Minister of Health (No 2)* [1948] 1 KB 34; [1947] 2 All ER 469

*Hall v Beckenham Corpn* [1949] 1 KB 716; [1949] 1 All ER 423

*Lambeth Overseers v London County Council* [1897] AC 625, HL(E)

*Lawrence v Fen Tigers Ltd* [2014] UKSC 13; [2014] AC 822; [2014] 2 WLR 433;

[2014] PTSR 384; [2014] 2 All ER 622, SC(E)

*Mills v Silver* [1991] Ch 271; [1991] 2 WLR 324; [1991] 1 All ER 449, CA

*Oxfordshire County Council v Oxford City Council* [2006] UKHL 25; [2006] 2 AC 674; [2006] 2 WLR 1235; [2006] 4 All ER 817, HL(E)

*R v Oxfordshire County Council, Ex p Sunningwell Parish Council* [2000] 1 AC 335; [1999] 3 WLR 160; [1999] 3 All ER 385, HL(E)

*R (Beresford) v Sunderland City Council* [2001] 1 WLR 1327; [2001] EWCA Civ 1218; [2002] QB 874; [2002] 2 WLR 693; [2001] 4 All ER 565, CA; [2003] UKHL 60; [2004] 1 AC 889; [2003] 3 WLR 1306; [2004] 1 All ER 160, HL(E)

*R (Lewis) v Redcar and Cleveland Borough Council (No 2)* [2010] UKSC 11; [2010] 2 AC 70; [2010] 2 WLR 653; [2010] 2 All ER 613, SC(E)

*Sturges v Bridgman* (1879) 11 Ch D 852, CA

The following additional case was cited in argument:

*R (Newhaven Port & Properties Ltd) v East Sussex County Council* [2013] EWCA Civ 276; [2014] QB 186; [2013] 3 WLR 1389; [2013] 3 All ER 677, CA

## APPEAL from the Court of Appeal

By a claim form the claimant, Christine Barkas, sought judicial review of the decision of the defendant registration authority, North Yorkshire County Council, on 8 October 2010 to refuse her application dated 12 October 2007, made on her own behalf and that of Helredale Neighbourhood Council, an unincorporated association, to register the Helredale playing field at Helredale Road, Whitby, North Yorkshire, which was owned by the interested party, Scarborough Borough Council, as a town or village green under section 15(2) of the Commons Act 2006. On 20 December 2011 Langstaff J [2011] EWHC 3653 (Admin) dismissed the claim and upheld as lawful the defendant's decision not to register the land as a town or village green.

By an amended appellant's notice filed on 23 July 2012 and pursuant to permission granted by the Court of Appeal (Maurice Kay LJ) on 18 June 2012 the claimant appealed. On 23 October 2012, the Court of Appeal (Richards, Sullivan and McFarlane LJJ) [2013] 1 WLR 1521 dismissed the appeal and refused permission to appeal.

On 3 May 2013 the Supreme Court (Lord Neuberger of Abbotsbury PSC, Lord Reed and Lord Carnwath JJSC) granted the claimant permission to appeal, pursuant to which she appealed. The issues for the consideration of the Supreme Court, as set out in the parties' agreed statement of facts and

A issues, were whether (1) local inhabitants were vested with a “right” to use recreation grounds provided by a local authority on land held for recreational purposes pursuant to an express statutory power and, if so, use of the land pursuant to such a “right” was sufficient to defeat an application to register such land as a town or village green; (2) a recreation ground laid out and maintained pursuant to an express statutory power on land acquired and held under the Housing Act 1985 and its predecessor provisions within the Housing Acts 1936 and 1957, was used for recreational purposes “by right” or “as of right”; and (3) trespass, tolerated or otherwise, was a necessary requirement for use “as of right”.

The facts are stated in the judgment of Lord Neuberger of Abbotsbury PSC.

C *Douglas Edwards QC and Philip Petchey* (instructed by *Richard Buxton Solicitors, Cambridge*) for the claimant.

In order for land to be registered as a town or village green under section 15 of the Commons Act 2006 it is necessary for the applicant to show that a significant number of the inhabitants of a locality, or a neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years and that they continue to do so at the time of the application. This requirement is identical to that in the predecessor provision, section 22 of the Commons Registration Act 1965. *R v Oxfordshire County Council, Ex p Sunningwell Parish Council* [2000] 1 AC 335, *R (Beresford) v Sunderland City Council* [2004] 1 AC 889 and *R (Lewis) v Redcar and Cleveland Borough Council (No 2)* [2010] 2 AC 70, which consider the meaning of “as of right” in the context of section 22 of the 1965 Act, are therefore directly relevant to the meaning of section 15 of the 2006 Act. Housing land is not held in trust for recreational purposes by the public and accordingly use of it is as of right. The field was acquired under section 73 of the Housing Act 1936 and is held for housing purposes. The inhabitants of the locality had no right under the 1936 Act or any other statute to go on to it for recreational purposes. Its local authority owner could have built houses on it without the need for any further appropriation. Further, because such development would not involve any appropriation of the land, section 122(2A) of the Local Government Act 1972, as inserted by section 118 of and paragraph 12 of Schedule 23 to the Local Government, Planning and Land Act 1980, which provides special protection where land is appropriated from use for open space to another use, would have no application. This contrasts with the position as regards land held under section 10 of the Open Spaces Act 1906 or section 164 of the Public Health Act 1875 (38 & 39 Vict c 55) which would need to be appropriated to housing purposes before it could be used and developed for housing, with a requirement of prior advertisement under section 122(2A) of the 1972 Act. The *Beresford* case [2004] 1 AC 889 held correctly that (i) a local authority (which, as a creature of statute, holds all the land that it owns under one statutory power or another) enjoys no general exemption from the registration of its land as a town or village green (see para 88); (ii) use which has been encouraged by the owner, is not by virtue of trespass, and which is not adverse to the interest of the owner of the land may be as of right (see paras 7, 48–49, 60, 90); and (iii) use of land held, laid out and maintained by a local authority under powers contained in the New Towns Act 1965 is not

use which is pursuant to a statutory right and thus not as of right: see paras 9, 62, 90. The present case is not distinguishable as regards (i) and (ii). Accordingly, the issue is whether there is any difference between use of land held under the New Towns Act 1965 and land held under the Housing Acts, so that use of the first is as of right but use of the second is not. The issue of use of land held under section 10 of the 1906 Act or section 164 of the 1875 Act does not need to be determined. In any event, land held under the 1906 Act plainly falls into a special category being land held under an express statutory trust. As regards land held under section 164 of the 1875 Act, there are strong reasons for holding that use of such land will be as of right, so that it may be registrable as a town or village green. However, even if such use is not as of right, the position as regards land held under the Housing Acts would still properly be distinguishable.

The requirement that use be as of right as applied by section 15 of the 2006 Act to town and village greens has the same meaning as the requirement that use be as of right in the law of prescription and in the law of highways, namely *nec vi, nec clam, nec precario*—without force, stealth nor the licence of the owner: see the *Sunningwell* case [2000] 1 AC 335, 349–351, the *Beresford* case [2004] 1 AC 889, para 55 and the *Lewis* case [2010] 2 AC 70, para 66. There is no requirement for consideration of the subjective understanding of the users: see the *Sunningwell* case, pp 355–356. Positive action is required by a landowner to communicate the grant of permission and thereby to terminate use which would otherwise amount to use as of right; passive inactivity is insufficient. Use which is acquiesced in or tolerated is as of right: see the *Beresford* case, paras 6–7, 49, 67–68, 77–79. Use which is permitted subject to revocable licence will be *precario* and not as of right; conversely use which is permitted but not subject to a revocable licence will be as of right: see the *Beresford* case, paras 45–50, 57–59. Use pursuant to the encouragement of a landowner to use his land for recreational purposes is not inconsistent with use as of right and there is no requirement for use to be adverse to the interest of the landowner: see *Cumbernauld and Kilsyth District Council v Dollar Land (Cumbernauld) Ltd* 1992 SC 357, 368; 1993 SC (HL) 44; the *Beresford* case, paras 7, 47, 60, 67, 85, 90 and the *Lewis* case [2010] 2 AC 70, paras 35, 92. Trespass is not a necessary ingredient for use to be as of right: see the *Beresford* case, para 48. Use which is permitted without that permission being made revocable and use which is encouraged cannot be trespass. It is possible to imply a revocable permission to use land from the conduct of a landowner but the conduct must be unequivocal and distinct from conduct consistent with acquiescence, toleration, entitlement or encouragement: see the *Beresford* case, paras 7, 49–50, 60, 75, 85. The fact that land is held by a local authority and expressly laid out, made available and maintained for public recreational purposes does not of itself give rise to permission nor is it inconsistent with use of that land being as of right: see the *Beresford* case, para 7. Use that is as of right requires no more than use which conforms with the tripartite test, namely use without force, stealth or permission. There is no requirement that use by local inhabitants must not defer to a landowner's use or that their conduct must not be capable of being construed as deferential by the landowner. The subjective understanding of a landowner is not relevant: see the *Lewis* case [2010] 2 AC 70, para 69. Accordingly, there is no room for the introduction of an additional

A requirement concerning whether use is “by right” as opposed to as of right. The as of right test must be determined by reference only to the tripartite test.

The status of the field and its use by local inhabitants is indistinguishable from the status and use of the land in the *Beresford* case [2004] 1 AC 889. Accordingly, the recreational use of that land has been as of right and all the requirements for registration as a town or village green are fulfilled. It is not necessary to consider whether land which has been acquired or appropriated under section 164 of the 1875 Act is subsequently enjoyed by the public by virtue of a statutory entitlement. In any event, people walk their dogs or play with their children on land because they have been accustomed to see others doing so without objection—the great majority know nothing about the legal character of their right to do so and never address their minds to the matter: see the *Lewis* case [2010] 2 AC 70, para 95. Thus since it is the case that a local authority enjoys no general immunity from registration of its land as town or village green, there is no necessary or obvious basis to be inferred from what may be considered to be the policy of the 1875 Act for excluding its land from registration in circumstances where, on the ground, the circumstances are no different from those where the land of a private landowner would be registrable. Further, in the case of land held by a local authority under section 164, there may well be circumstances on the ground which will lead to a conclusion that use has not been as of right. Thus if a park is locked at night or occasionally at other times it will be clear that use during the day is subject to a revocable permission; and if byelaws had been made and are prominently displayed at its entrances this may similarly indicate a revocable permission. The difference between the situation where land is held subject to a trust under section 10 of the 1906 Act and that held subject to section 164 of the 1875 Act is that whereas in the former case a statutory interest in the land arises through the trust created over that land to hold and administer the open space in trust to allow, and with a view to, the enjoyment thereof by the public as an open space, in the latter case members of the public are given no such entitlement by statute or (absent express action by the local authority owner) by any other means. At its highest, they have no right other than a bare licence to go upon the land. In the context of recreation grounds held under section 164, the fact that the public have a bare licence does not make use by virtue of a statutory entitlement. *Hall v Beckenham Corpn* [1949] 1 KB 716 should not be treated as good authority for the proposition that members of the public use a park held under section 164 by virtue of a statutory right. In any event, the *Hall* case is only authority for the proposition that if land be appropriated to use under section 164 it falls to be considered in the same way as land held under section 10 of the 1906 Act, namely land in respect of which there is a statutory entitlement in the public to use. This does not mean that there is a statutory entitlement in the public to use land which has been laid out as a recreation ground under powers contained in section 73 of the Housing Act 1936 where exclusion of the public would be entirely lawful and no appropriation is required to devote it to a housing use which would prevent continuing recreational use. It may be that the draftsman of section 122 of the Local Government Act 1972 envisaged that land held subject to section 164 of the 1875 Act was subject to some kind of trust and inserted a reference to it in section 122(2B) out of an abundance of caution. In any

event, these words cannot reasonably be taken as declaratory of a trust in favour of the public under section 164 of the 1875 Act in the absence of any clear words of declaration within section 164 or elsewhere. However if they were so taken, they would make a clear distinction between the appropriation of land under section 164 and under section 73 of the 1936 Act. On a practical level, the fact that recreation grounds held and provided under the Housing Acts are used as of right does not preclude the public authority responsible for the land taking steps to protect that land from town green registration. [Reference was made to *R (Newhaven Port & Properties Ltd) v East Sussex County Council* [2014] QB 186.]

*Nathalie Lieven QC and Ruth Stockley* (instructed by *Head of Legal and Democratic Services, North Yorkshire County Council, Northallerton*) for the defendant registration authority.

Where land is laid out and made available by a local authority, pursuant to its statutory powers as recreational land available for the public, the public have a statutory right to use that land and the land falls outside the terms of section 15 of the Commons Act 2006. The local authority provided the field for recreational use pursuant to section 80 of the Housing Act 1936, which expressly provided for such use where it was considered by the minister the use would serve a beneficial purpose in connection with the housing accommodation. Ministerial consent was needed to give the local authority power to provide the land for recreation and that in turn gave the public the statutory right to use that land. For the period when the land is provided as recreational land the public have a right to use it. That right sounds most obviously in public law, and as such is an enforceable right by those who wish to exercise it. There is an important distinction between land owned by the local authority for recreational use and private land or land owned by the local authority for some other use. In the former case, the local authority does not and cannot give permission in the sense of granting a licence, because the public already have the right to use the land pursuant to the statutory powers. The local authority could change the use to use for housing without going through an appropriation process under section 122(2A) of the Local Government Act 1972, because the recreational use is ancillary or incidental to the housing use under section 80 of the 1936 Act. However, if it had wished to change the use it would still have had to go through a formal local authority decision-making process. That decision would then be amenable to judicial review on normal principles and the authority would have to consider factors such as the level of public use and the benefits of the proposed housing use. Accordingly, the local authority is in an entirely different position from a private landowner who could simply decide to revoke a bare licence for any reason. That analysis accords with a commonsense analysis of how the local inhabitants would have viewed the situation and with previous case law: see *Hall v Beckenham Corpn* [1949] 1 KB 716.

Any legal system must have rules of prescription which prevent the disturbance of long-established de facto enjoyment: see *R v Oxfordshire County Council, Ex p Sunningwell Parish Council* [2000] 1 AC 335, 350–351. In circumstances where the local authority has provided and maintained land pursuant to a statutory power it cannot possibly be reasonable to expect the local authority to resist the exercise of the right or

A to be able to produce evidence of doing so. Lord Bingham of Cornhill in *R (Beresford) v Sunderland City Council* [2004] 1 AC 889, para 9 drew a clear distinction between use “as of right” and use pursuant to a statutory right, which would be inconsistent with use as of right. All their Lordships proceeded on the basis that a statutory right to use the land would be sufficient to defeat section 15 of the 2006 Act, and all also seem to have thought that such a right could be created outside section 10 of the Open Spaces Act 1906. In *Hall v Beckenham Corpn* [1949] 1 KB 716, which followed *Lambeth Overseers v London County Council* [1897] AC 625, the land had been acquired under section 164 of the Public Health Act 1875 and the judge clearly found that the local authority was in beneficial occupation of the land and that the public had a statutory right to enter it. The words of section 164 do not create an express statutory trust, as is the case with section 10 of the 1906 Act. Although the power to lay out public walks or pleasure grounds in section 164 is for the primary use of the land, in terms of the creation of the recreational space, the power is no different from that in section 80 of the 1936 Act. There is nothing in the words of the statute which would suggest that the public rights over the land are any different between the two statutory powers. It is not possible to distinguish rights under section 10 of the 1906 Act from rights under section 164 of the 1875 Act on the basis that the former creates rights under a statutory trust. Parliament in section 122(2B) of the 1972 Act, as inserted, treated both statutory provisions as creating a trust over the land which needed to be discharged. This indicates that there is no material difference in the nature of the public right created by the two provisions.

Lord Walker of Gestingthorpe, in referring in the *Beresford* case [2004] 1 AC 889, para 88 to “any appropriation of the land as recreational open space”, was plainly not referring to legal appropriation under section 122 of the 1972 Act but to a broader meaning of the term. It cannot be the case that the land has to be appropriated from one use to another as that would create a wholly illogical distinction between land first acquired and that changed between uses. As long as the land is provided as recreational land by the local authority pursuant to a power to provide land for such use, that is sufficient to meet the form of appropriation contemplated by Lord Walker. The field has been provided for recreation under the powers in section 80 of the 1936 Act and therefore there is an express power to provide that recreational land. In order to exercise that power the local authority had to obtain ministerial consent. Further, the field has been physically provided and maintained by the local authority for recreation throughout the relevant period. This combination of law and fact is sufficient to show that the field is appropriated for recreational use. The *Beresford* case should be distinguished both on the legal basis of the public use of the land and on the factual matrix. In *Beresford* the land was provided under section 3 of the New Towns Act 1965, which gave a power to hold land and generally to do anything necessary or expedient for the purposes of the new town or the purposes incidental thereto. There was therefore no express reference to holding land for recreational purposes. Under section 6 the minister gave planning permission by a special development order for proposals as submitted by the corporation. The corporation’s new town plan identified the land as parkland/open space/playing field. It seems to have been assumed that the minister would have approved the plan, although there was

no express evidence on this. The evidence of the laying out and maintenance of the land for open space was also very much less clear cut than is the evidence in the present case. This combination of a lack of express statutory power and lack of factual clarity appears to be what persuaded the House of Lords that on the particular facts there was no statutory entitlement. This is in clear contrast to the present case where there is an express statutory power to provide recreational land; there was ministerial consent for that use; and there is clear evidence of continued maintenance for public recreation. The House of Lords did not give detailed reasons as to why they rejected the statutory entitlement argument in *Beresford*, but the above factors are clear grounds to distinguish that case. Alternatively the *Beresford* case was wrongly decided. The corporation had exercised the power under section 3 of the 1965 Act and were providing the land as some form of recreational land, which necessarily created a statutory right for the public to use the land provided and unless and until the local authority decided to change the use of the land by whatever process the public had the right to be on the land for recreation. They cannot have been trespassers who could have been removed by court order unless the local authority made a decision changing the use of the land. It follows that the public were on the land by right and section 15 of the 2006 Act should not have applied.

*George Laurence QC and William Hanbury* (instructed by *Head of Legal and Support Services, Scarborough Borough Council, Scarborough*) for the interested party.

Where local authority land is being used for recreation as a result of the authority or its predecessor having exercised the relevant power under section 80 of the Housing Act 1936, the authority was, in exercising that power, carrying out its duty to decide how it was going to cause its housing land to be used by laying some of it out as a recreation ground. It would be absurd in such circumstances if those who thereupon used the land for the very recreational purpose for which the authority had validly decided it would cause the land to be used nevertheless fell to be treated in law as trespassers. When the borough council's predecessor authority exercised the power conferred on it by section 80, and obtained the minister's consent, it thereby placed itself under an obligation to submit to the use of the land for the purpose of recreation. It was not entitled without more to purport to grant a licence to the public to use the land because (i) it was already subject to a legal duty, in consequence of the exercise of the power, to submit to use of the land by those for whose benefit it had exercised the power; and (ii) the public's recreational use was accordingly pursuant to a corresponding legal right. An authority which is under a legal duty to submit to the use of its land by others for recreation has put it out of its power to prevent such use. A court, asked by the authority to grant an injunction restraining recreational use, would refuse it for that reason. It logically follows that the beneficiaries of the exercise by the authority of that power, who cannot be asked to go, must have a species of entitlement, however described, which amounts to a right to use the land. Accordingly, the appeal should be dismissed. [Reference was made to *R v Oxfordshire County Council, Ex p Sunningwell Parish Council* [2000] 1 AC 335 and *Cumbernauld and Kilsyth District Council v Dollar Land (Cumbernauld) Ltd* 1992 SC 357; 1993 SC (HL) 44.]

A Alternatively, the appeal should be dismissed on the basis that it is clear from the inspector's report that he would correctly have advised that, if recreational use of the land was not pursuant to a statutory entitlement, such use of the land was permissive. In any event, even if the public's use was neither pursuant to a right derived from statute, nor permissive, and so as of right, the application to register the land as a green had to fail because the landowner could not reasonably have been expected to resist the public's recreational use: see *R (Lewis) v Redcar and Cleveland Borough Council (No 2)* [2010] 2 AC 70, paras 30, 36, 67, 114.

*Edwards QC* in reply.

Use pursuant to the encouragement of a landowner to use his land for recreational purposes is not inconsistent with use as of right and there is no requirement for use to be adverse to the interest of the landowner: see *R (Beresford) v Sunderland City Council* [2004] 1 AC 889, paras 7, 47, 60, 67.

The court took time for consideration.

21 May 2014. The following judgments were handed down.

D LORD NEUBERGER OF ABBOTSBURY PSC (with whom BARONESS HALE OF RICHMOND DPSC, LORD REED and LORD HUGHES JJSC agreed)

#### *Introductory*

1 Helredale playing field ("the field") is situated in Whitby, North Yorkshire, and it is owned by Scarborough Borough Council. The specific issue raised on this appeal is whether it should be registered as "a town or village green" under section 15 of the Commons Act 2006. The point of principle which this issue raises concerns the meaning of the expression "as of right" in section 15(2), and, more precisely, whether use is as of right when it is contemplated by the statutory provision under which a public body acquired and holds the land in question. This point, in turn, requires this court to consider the reasoning of the House of Lords in *R (Beresford) v Sunderland City Council* [2004] 1 AC 889.

#### *The factual and legal background*

2 The factual background to the appeal is set out very fully in an excellent report prepared by Vivian Chapman QC, dated 28 July 2010, whose findings are accepted as accurate by the parties to these proceedings. For the purpose of this appeal, it is only necessary to set out his conclusions in very summary terms.

3 The field is some two hectares in extent, and it was acquired as part of a larger parcel of land, amounting to some 14 hectares, under a conveyance dated 20 June 1951, by the statutory predecessor of Scarborough Borough Council, Whitby Urban District Council (and I shall refer to the two councils simply as "the council"), acting pursuant to their powers under section 73(a) of the Housing Act 1936, which permitted a local authority "to acquire any land . . . as a site for the erection of houses".

4 The council then developed most of the 14 hectares for housing, and laid out and maintained the field as "recreation grounds" pursuant to

section 80(1) of the 1936 Act, with the consent of the minister as required by that section. Sections 73 and 80 of the 1936 Act were repealed and substantially re-enacted in the Housing Act 1957, whose provisions were in turn repealed and substantially re-enacted (albeit with more amendments) in the Housing Act 1985. A

5 Section 12(1) of the 1985 Act (which is in Part II, concerned with “provision of housing accommodation”) is in virtually identical terms to section 80(1) of the 1936 Act (save that “the minister” has been replaced by “the Secretary of State”), and it provides as follows: B

“A local housing authority may, with the consent of the Secretary of State, provide and maintain in connection with housing accommodation provided by them under this Part— (a) buildings adapted for use as shops, (b) recreation grounds, and (c) other buildings or land which, in the opinion of the Secretary of State, will serve a beneficial purpose in connection with the requirements of the persons for whom the housing accommodation is provided.” C

(Denning J explained in a case on the effectively identically worded section 80(1) of the 1936 Act, *HE Green & Sons v Minister of Health (No 2)* [1948] 1 KB 34, 41, that the section did not require the use of “buildings”, “recreation grounds” or “other buildings or land” to be restricted to “the persons for whom the housing accommodation is provided”, and that the use could also validly extend to other members of the public.) D

6 Subsequent to the acquisition of the 14 hectares, the council acquired other land adjoining or close to the field, which it then developed for housing.

7 For at least the last 50 years, the relevant facts relating to the field are as follows. It is surrounded by land consisting of three residential estates which were developed as local authority housing. It has four entrances, which are open at all times, and which have notices requiring dogs to be kept on leads and dog owners to clear up after their dogs. It has the appearance of a municipal recreation ground, mostly laid to grass, including a football pitch, and it is crossed by a hard-surface path. The council maintains the field, in the sense of arranging for the regular mowing of the grass in summer and the marking out of the football pitch (currently once a year, but previously more frequently). The field is used extensively and openly by local inhabitants for informal recreation, largely, but not exclusively, for children playing and walking dogs. Until 2005, the football pitch was used for local league football matches with the council’s licence. E

### *The procedural history*

8 On 12 October 2007, Vivienne Wright, acting on behalf of the Helredale Neighbourhood Council, of which she was secretary, applied to the North Yorkshire County Council (“NYCC”) to register the field as a town or village green under section 15 of the 2006 Act. F

9 Section 15 of the 2006 Act provides, so far as relevant to this appeal, as follows: G

“(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). . . applies. H

A “(2) This subsection applies where— (a) a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years; and (b) they continue to do so at the time of the application.”

B 10 In order to determine the application, NYCC decided to appoint Mr Chapman to conduct an inquiry, which he duly held over two days in April 2010. Following that, he produced a report in July 2010, as mentioned above. (It was followed by a supplementary report in September 2010, but nothing hangs on that for present purposes). Apart from making detailed findings, including those summarised above, Mr Chapman concluded in his report that, although “a significant number of the inhabitants of [the] locality . . . [had] indulged . . . in lawful sports and pastimes on the land for a period of at least 20 years” their use had not been “as of right”. In other words, as Sullivan LJ put it in the Court of Appeal, the inspector concluded that “although the use of the field met all of the other requirements of section 15(2), the local inhabitants’ use of the field for recreational purposes had been ‘by right’ and not ‘as of right’ ” [2013] 1 WLR 1521, para 3.

C 11 Accordingly, Mr Chapman recommended that the application to register the field as a town or village green be rejected. This recommendation was considered and accepted by NYCC on 8 October 2010. Christine Barkas, a member of the neighbourhood council applied for judicial review of this decision. Her application failed before Langstaff J [2011] EWHC 3653 (Admin), and her appeal to the Court of Appeal was dismissed for reasons given by Sullivan LJ in a judgment with which Richards and McFarlane LJJ agreed. She now appeals to this court.

#### *The issue raised by this appeal*

F 12 The basic issue which the appeal raises is a short one: where land is provided and maintained by a local authority pursuant to section 12(1) of the Housing Act 1985 or its statutory predecessors, is the use of that land by the public for recreational purposes “as of right” within the meaning of section 15(2)(a) of the Commons Act 2006?

G 13 NYCC, with the support of the council, contend that the answer is “no”, whereas Ms Barkas, on behalf of the neighbourhood council, argues that the answer is “yes”. In the course of her argument, Ms Lieven QC, who appears for NYCC, and is supported by Mr Laurence QC, who appears for the council, made it clear that she challenged part of the reasoning, and the ultimate decision, of the House of Lords in *Beresford* [2004] 1 AC 889, although her primary contention is that it is distinguishable. As explained below the decision is on any view not without its difficulties. Accordingly, I propose first to consider the issue by reference to principle and one or two earlier decisions of the House of Lords, and only then to turn to *Beresford*.

#### *The meaning of “as of right”*

H 14 The origin of the expression “as of right” in the definition of “town or village green” in section 22(1) of the Commons Registration Act 1965, which is effectively for present purposes the statutory predecessor of section 15(2) of the 2006 Act, was authoritatively discussed by Lord Hoffmann in *R v Oxfordshire County Council, Ex p Sunningwell Parish*

*Council* [2000] 1 AC 335, 349D–351H. As he said, it originates from the law relating to the acquisition of easements by prescription. Before examining what Lord Hoffmann said, it is, I think, helpful to explain that the legal meaning of the expression “as of right” is, somewhat counterintuitively, almost the converse of “of right” or “by right”. Thus, if a person uses privately owned land “of right” or “by right”, the use will have been permitted by the landowner—hence the use is rightful. However, if the use of such land is “as of right”, it is without the permission of the landowner, and therefore is not “of right” or “by right”, but is actually carried on as if it were by right—hence “as of right”. The significance of the little word “as” is therefore crucial, and renders the expression “as of right” effectively the antithesis of “of right” or “by right”.

15 In his discussion on the point in *Ex p Sunningwell*, Lord Hoffmann began by explaining that “Any legal system must have rules of prescription which prevent the disturbance of long-established de facto enjoyment” (p 349), and went on to explain that a combination of statutory and common law had resulted in such enjoyment having to be 20 years “nec vi, nec clam, nec precario: not by force, nor stealth, nor the licence of the owner”: p 350. He went on to explain that each of “these three vitiating circumstances” would amount to “a reason why it would not have been reasonable to expect the owner to resist the exercise of the right”, namely, “in the first case, because rights should not be acquired by the use of force, in the second, because the owner would not have known of the user and in the third, because he had consented to the user, but for a limited period”: p 351. For the avoidance of doubt, I should interpose that the reference to “a limited period” clearly includes an indefinite period (as would arise under an unlimited but revocable permission), and that the word “limited” was meant to be contrasted with “permanent”. Lord Hoffmann ended his discussion by citing with approval Lord Lindley’s statement in *Gardner v Hodgson’s Kingston Brewery Co Ltd* [1903] AC 229, 239 that “the words ‘as of right’ were intended ‘to have the same meaning as the older expression nec vi, nec clam, nec precario’”, a view also expressed by Lord Davey at p 238.

16 In the subsequent case *R (Lewis) v Redcar and Cleveland Borough Council (No 2)* [2010] 2 AC 70, which was concerned with the 2006 Act, Lord Walker of Gestingthorpe JSC confirmed at para 20 that “‘as of right’ is sufficiently described by the tripartite test nec vi, nec clam, nec precario [as] established by high authority”. (I would be prepared to accept that it is possible that, as Lord Carnwath JSC suggests, there may be exceptional cases involving claims to village greens where this does not apply, but I am doubtful about that). And at para 30, Lord Walker JSC accepted as a “general proposition” that, if a right is to be obtained by prescription, the persons claiming that right “must by their conduct bring home to the landowner that a right is being asserted against him, so that the landowner has to choose between warning the trespassers off, or eventually finding that they have established the asserted right against him.”

17 In relation to the acquisition of easements by prescription, the law is correctly stated in *Gale on Easements*, 19th ed (2012), para 4-115:

“The law draws a distinction between acquiescence by the owner on the one hand and licence or permission from the owner on the other hand.

A In some circumstances, the distinction may not matter but in the law of prescription, the distinction is fundamental. This is because user which is acquiesced in by the owner is ‘as of right’; acquiescence is the foundation of prescription. However, user which is with the licence or permission of the owner is not ‘as of right.’ Permission involves some positive act or acts on the part of the owner, whereas passive toleration is all that is required for acquiescence.”

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18 The concept of acquiescence in this context was explained in the opinion delivered by Fry J (with which Lord Penzance expressed himself as being “in entire accord” at p 803), in *Dalton v Henry Angus & Co* (1881) 6 App Cas 740, 774, where he said:

C “I cannot imagine any case of acquiescence in which there is not shown to be in the servient owner: 1, a knowledge of the acts done; 2, a power in him to stop the acts or to sue in respect of them; and 3, an abstinence on his part from the exercise of such power. That such is the nature of acquiescence and that such is the ground upon which presumptions or inferences of grant or covenant may be made appears to me to be plain . . .”

D 19 Further in the recent case *Lawrence v Fen Tigers Ltd* [2014] AC 822, para 43, I expressed the view that, as the Court of Appeal held in *Sturges v Bridgman* (1879) 11 Ch D 852, it appeared to accord with principle that:

E “time does not run for the purposes of prescription unless the activities of the owner (or occupier) of the putative dominant land can be objected to by the owner of the putative servient land. The notion that an easement can only be acquired by prescription if the activity concerned is carried on ‘as of right’ for 20 years, i.e. nec vi, nec clam, nec precario, would seem to carry with it the assumption that it would not assist the putative dominant owner if the activity was carried on ‘of right’ for 20 years, as no question of force, stealth or permission could apply.”

*Was the public use in this case “as of right”?*

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20 In the present case, the council’s argument is that it acquired and has always held the field pursuant to section 12(1) of the 1985 Act and its statutory predecessors, so the field has been held for public recreational purposes; consequently, members of the public have always had the statutory right to use the field for recreational purposes, and, accordingly, there can be no question of any “inhabitants of the locality” having indulged in “lawful sports and pastimes” “as of right”, as they have done so “of right” or “by right”. In other words, the argument is that members of the public have been using the field for recreational purposes lawfully or precario, and the 20-year period referred to in section 15(2) of the 2006 Act has not even started to run—and indeed it could not do so unless and until the council lawfully ceased to hold the field under section 12(1) of the 1985 Act.

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21 In my judgment, this argument is as compelling as it is simple. So long as land is held under a provision such as section 12(1) of the 1985 Act, it appears to me that members of the public have a statutory right to use the land for recreational purposes, and therefore they use the land “by right” and not as trespassers, so that no question of user “as of right” can arise. In *Sunningwell* [2000] 1 AC 335, 352H–353A, Lord Hoffmann indicated that

whether user was “as of right” should be judged by “how the matter would have appeared to the owner of the land”, a question which must, I should add, be assessed objectively. In the present case, it is, I think, plain that a reasonable local authority in the position of the council would have regarded the presence of members of the public on the field, walking with or without dogs, taking part in sports, or letting their children play, as being pursuant to their statutory right to be on the land and to use it for these activities, given that the field was being held and maintained by the council for public recreation pursuant to section 12(1) of the 1985 Act and its statutory predecessors.

22 It is true that this case does not involve the grant of a right in private law, which is the normal issue where the question whether a use is precarious arises. Indeed, the fact that the right alleged in this case is not a conventional private law right, but a public law right, was rightly acknowledged by Ms Lieven. Thus, it is a right principally enforceable by public rather than by private law proceedings. It is also a right which is clearly conditional on the council continuing to devote the field to the purpose identified in section 12(1) of the 1985 Act (and it is unnecessary for present purposes to go into the question of what steps the council would have to take to remove the field from the ambit of the section). Accordingly, the right alleged by the council to be enjoyed by members of the public over the field is not precisely analogous to a public or private right of way. However, I do not see any reason in terms of legal principle or public policy why that should make a difference. The basic point is that members of the public are entitled to go onto and use the land—provided they use it for the stipulated purpose in section 12(1), namely for recreation, and that they do so in a lawful manner.

23 It is worth expanding on this. Section 12(1) of the 1985 Act and its statutory predecessors bestow a power on a local (housing) authority to devote land such as the field for public recreational use (albeit subject to the consent of the minister or Secretary of State), at any rate until the land is removed from the ambit of that section. Where land is held for that purpose, and members of the public then use the land for that purpose, the obvious and natural conclusion is that they enjoy a public right, or a publicly based licence, to do so. If that were not so, members of the public using for recreation land held by the local authority for the statutory purpose of public recreation would be trespassing on the land, which cannot be correct. Of course, a local authority would be entitled to place conditions on such use—such as on the times of day the land could be accessed or used, the type of sports which could be played and when and where, and the terms on which children or dogs could come onto the land. Similarly, the local authority would clearly be entitled to withdraw the licence permanently or temporarily. Thus, if and when it lawfully is able, and decides, to devote the land to some other statutorily permitted use, the local authority may permanently withdraw the licence; and if, for instance, when the land is still held under section 12(1), the local authority wants to hold a midsummer fair to which the public will be charged an entrance fee, it could temporarily withdraw the licence.

24 I agree with Lord Carnwath JSC that, where the owner of the land is a local, or other public, authority which has lawfully allocated the land for public use (whether for a limited period or an indefinite period), it is impossible to see how, at least in the absence of unusual additional facts, it

A could be appropriate to infer that members of the public have been using the land “as of right”, simply because the authority has not objected to their using the land. It seems very unlikely that, in such a case, the legislature could have intended that such land would become a village green after the public had used it for 20 years. It would not merely be understandable why the local authority had not objected to the public use: it would be positively inconsistent with their allocation decision if they had done so. The position is very different from that of a private owner, with no legal duty and no statutory power to allocate land for public use, with no ability to allocate land as a village green, and who would be expected to protect his or her legal rights.

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E 25 I draw support from observations in *Hall v Beckenham Corpn* [1949] 1 KB 716, a case which concerned the liability for nuisance of a local authority in respect of activities by members of the public on land held by the local authority under section 164 of the Public Health Act 1875 (38 & 39 Vict c 55). That section (as amended by section 180 of and paragraph 27 of Schedule 14 to the Local Government Act 1972) permits a “local authority” to acquire and maintain “lands for the purpose of being used as public walks or pleasure grounds” and to make byelaws as to their use, which can include the power to remove those who disobey the byelaws. Finnemore J said, at p 727, that the local authority had “no general right to turn people out because they do not like them”, and could “only act against people in the park who offend against their byelaws, or who commit some offence”. At p 728, he observed that “So long as a member of the public behaves himself in the ordinary way, committing no criminal offence and observing the byelaws, the [local authority] cannot stop his doing what he likes in this recreation ground.”

F 26 This conclusion followed from a pithy opinion given by Lord Halsbury LC in *Lambeth Overseers v London County Council* [1897] AC 625, which concerned the question whether the county council, which owned and maintained a park under a power accorded by a local Act of Parliament, were in rateable occupation of it. At pp 630–631, Lord Halsbury said that: “there is no possibility of beneficial occupation to the county council; they are incapable by law of using it for any profitable purpose; they must allow the public the free and unrestricted use of it.” In other words, members of the public had the statutory right to use the land for recreational purposes.

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H 27 It was suggested by Mr Edwards QC in his argument for Ms Barkas that, even if members of the public were not trespassers, they were none the less not licensees or otherwise lawfully present when they were on the field. I have considerable difficulty with that submission. As against the owner (or more accurately, the person entitled to possession) of land, third parties on the land either have the right to be there and to do what they are doing, or they do not. If they have a right in some shape or form (whether in private or public law), then they are permitted to be there, and if they have no right to be there, then they are trespassers. I cannot see how someone could have the right to be on the land and yet be a trespasser (save, I suppose, where a person comes on the land for a lawful purpose and then carries out some unlawful use). In other words a “tolerated trespasser” is still a trespasser.

28 Furthermore, the fact that the landowner knows that a trespasser is on the land and does nothing about it does not alter the legal status of the

trespasser. As Fry J explained, acquiescence in the trespass, which in this area of law simply means passive toleration as is explained in *Gale on Easements* (or, in the language of land covenants, suffering), does not stop it being trespass. This point was well made by Dillon LJ in *Mills v Silver* [1991] Ch 271, 279–280, where he pointed out that “there cannot be [a] principle of law” that “no prescriptive right can be acquired if the user . . . has been tolerated without objection by the servient owner” as it would be “fundamentally inconsistent with the whole notion of acquisition of rights by prescription.” Accordingly, as he added at p 281, “mere acquiescence in or tolerance of the user . . . cannot prevent the user being user as of right for purposes of prescription.”

29 Thus, if a trespass has continued for a number of years, then the fact that it has been acquiesced in (or passively tolerated or suffered) by the landowner will not prevent the landowner claiming that it has been and is unlawful, and seeking damages in respect of it (subject to the constraints of the Limitation Act 1980). For the same reason, if such a trespass has continued for 20 years and was otherwise as of right, it will be capable of giving rise to a prescriptive right. On the other hand, if the landowner has in some way actually communicated agreement to what would otherwise be a trespass, whether or not gratuitously, then he cannot claim it has been or is unlawful—at least until he lawfully withdraws his agreement to it. For the same reason, even if such an agreed arrangement had continued for 20 years, there can be no question of it giving rise to a prescriptive right because it would clearly have been precario, and therefore “by right”.

30 For these reasons, I would hold that this appeal should fail, but before reaching a final decision, it is necessary to address the decision in *Beresford* [2004] 1 AC 889, which forms the lynch-pin of the case advanced for Ms Barkas.

#### *The proceedings in Beresford*

31 The relevant factual basis on which *Beresford* was decided (as opposed to the fuller facts as explained by Lord Carnwath JSC in his judgment below) are contained in paras 17–19 and 24 of Lord Scott of Foscote’s judgment and paras 89–90 of Lord Walker of Gestingthorpe’s judgment. The land in question had been acquired under what Lord Walker called “very wide powers” contained in the New Towns Act 1965 by Washington Development Corpn, for no “specific purpose”, although they gave active consideration to the possibility of developing the land as a sports centre, for which an entry fee would be charged. In 1973, the land was identified as “parkland/open space/playing field” for planning purposes in the local “New Town Plan”. In 1974, it was grassed over, following which it was continuously used by the public for recreational use. In 1977, the development corporation had placed some benches on the land, and arranged for the mowing of the grass in the summer (which was continued by their successors). The possibility of a sports centre had not been abandoned in 1989, when the land was transferred to the Commission for the New Towns, who considered that it also had commercial development potential. Seven years later the land was acquired by the city council under a transfer which restricted its use to that of courts, health facilities, leisure or recreation, or “other similar community related uses”.

A 32 Section 3 of the 1965 Act empowered a development corporation “to acquire, hold, manage and dispose of land and other property”, “to carry on any business or undertaking”, and “generally to do anything necessary or expedient” for the purposes or incidental purposes of the new town. Section 21(1) of the 1965 Act provided that

B “Any land being, or forming part of, a common, open space or fuel or field garden allotment, which has been acquired for the purposes of this Act by a development corporation . . . may . . . be used by them, or by any other person, in any manner in accordance with planning permission”.

C “Open space” is defined in section 54 of the 1965 Act as “any land laid out as a public garden, or used for purposes of public recreation, or land being a disused burial ground”. The 1965 Act was repealed and replaced by the New Towns Act 1981, and sections 4 and 21(1) of the later Act are effectively in identical terms to their statutory predecessors, and section 80 of the 1981 Act has a similar definition of “open space” to section 54 of the 1965 Act.

D 33 At first instance and in the Court of Appeal, although the city council raised no argument based on the 1981 Act, they successfully argued that the land had been used by the public with the licence of the city council and their predecessors, on the basis that such a licence should be implied from their providing seating and mowing the grass. That was the only issue when the appeal was first argued before the House in May 2003. After argument had concluded, the House asked to be addressed on the point that members of the public had a statutory right to use the land for recreation.

E 34 Having heard further argument, the House of Lords allowed the appeal, rejecting the city council’s case both on the implied licence found below and in so far as it was based on statute. In other words, the House of Lords rejected the city council’s case on the first and original point, namely that mowing the grass or erecting benches could justify the judge’s finding that there was an implied licence, and they also rejected the city council’s case on the second point, raised by the House itself, and based on statute.

F *The first point in Beresford: the meaning of “as of right”*

G 35 The observations of three of the four Law Lords who gave reasoned opinions on the first of those two issues are supportive of the reasoning set out in paras 14–28 above. Lord Bingham of Cornhill accepted, at paras 5–6, that a licence could be implied if the facts warranted it, but said in the following paragraph that such an implication could not be justified “from mere inaction of a landowner” and quoted with approval the observation of Dillon LJ in *Mills v Silver* [1991] Ch 271. Lord Rodger of Earlsferry explained [2004] 1 AC 889, para 58 that “English law distinguishes between an owner who grants . . . a temporary licence . . . and an owner who merely acquiesces”, citing the passage quoted in para 17 above from an earlier edition of *Gale on Easements*. Lord Walker said, at para 79, that H “Acquiescence . . . denotes passive inactivity” and added that “it would be quite wrong . . . to treat a landowner’s silent passive acquiescence . . . as having the same effect as permission communicated”. At para 80, he quoted what, as he put it, Dillon LJ “very clearly, and to my mind very compellingly” said in *Mills v Silver*.

36 Mr Edwards contends, however, that Lord Scott’s analysis in paras 43–50 justifies the argument which I have described and rejected in paras 27 and 28 above, namely that there can be cases where a person uses land with the permission of the landowner, but is none the less using the land “as of right” rather than “by right”. In para 43, Lord Scott rightly accepted that “merely standing by, with knowledge of the use, and doing nothing about it”, which he described as “toleration or acquiescence”, “is consistent with the use being ‘as of right.’” But he then said that he was “unable to accept . . . that an implied permission is necessarily in the same state as mere acquiescence or toleration”: the word “necessarily” is rather odd, because, as was explained in the other three opinions, “implied permission” and “mere acquiescence or toleration” are clearly and fundamentally different in this area of law. Lord Scott then said that he was “unable to accept . . . that an implied permission [or “even an express permission”] is necessarily inconsistent with the use being as of right.” I must confess that I find it hard to understand the basis upon which this was said, but, if it was intended to have the effect argued for by Mr Edwards, it is wrong in principle and unsupported by, indeed I think inconsistent with, the other opinions.

37 I find paras 44–50 of Lord Scott’s opinion problematical. To subject them to a detailed exegesis in this judgment would result in an unnecessarily lengthy judgment, as, while they contain statements which are correct, they also contain some statements which are in my opinion wrong and a number of others which are questionable. For present purposes, it suffices to identify two points of disagreement. First, I do not agree with Lord Scott’s view in para 47 that public use of a site, on which the owner has erected a sign permitting use as a village green, would be “as of right”. It would amount to a temporary permissive use so long as the permission subsists, as the public use would be “by right”. Secondly, Lord Scott’s conclusion in para 48 that, when using the land for recreation, members of the public were “certainly not trespassers” should ineluctably have led him to decide that the public’s use of the land had been “by right” and not, as he did decide, “as of right”.

38 It is true that Lord Hutton (who gave no reasons of his own) agreed with the reasons of Lord Bingham of Cornhill, Lord Rodger and Lord Walker; Lord Rodger agreed with the reasons of Lord Bingham and Lord Walker; Lord Walker agreed with the reasons of Lord Rodger and Lord Bingham; and Lord Bingham agreed with the reasons of Lord Scott, Lord Rodger and Lord Walker. Accordingly, I suppose it could be argued that Lord Scott’s opinion represented the view of all five Law Lords. However, while Lord Bingham’s agreement with Lord Scott’s reasoning is admittedly somewhat mystifying, that argument cannot stand in the light of the reasoning in the other three reasoned opinions. Even if the argument has any substance, I would still hold that paras 43–50 in *Beresford* cannot be relied on, as they include passages which are simply wrong in principle and contrary to well established authority, as well as being inconsistent with the other reasoned opinions.

*The second point in Beresford: the effect of statute*

39 I turn, then, to the more difficult aspect of the decision in *Beresford*, namely the rejection of the city council’s case based on the 1981 Act. Lord Bingham dealt with the point very shortly in para 9, simply saying that none of the statutory provisions to which the House had been referred conferred a

A right on members of the public to use the land for recreation, adding that  
 counsel for the city council “who had not himself sought to raise this  
 contention earlier, found it hard to argue otherwise.” Lord Hutton, as  
 mentioned, simply agreed with Lord Bingham, Lord Rodger and Lord  
 Walker. At para 62, Lord Rodger agreed with Lord Walker’s reasons for  
 holding that “neither the designation of the land as ‘open space’ in the New  
 B Town Plan nor any of the statutes conferred [a] right [to use the land] in this  
 case.” The only two Law Lords who considered the issue in any detail were  
 Lord Scott and Lord Walker.

C 40 At paras 24–30, Lord Scott considered various arguments, based on  
 section 21(1) of the 1981 Act and section 10 of the Open Spaces Act 1906.  
 He plainly thought that there was force in the argument that either statutory  
 provision may have justified the conclusion that the public use of the land  
 was “by right”. However, he did not consider that it was open to the House  
 to consider either argument as it had been expressly disclaimed by counsel  
 for the city council: see paras 26, 30.

D 41 As for Lord Walker, at para 86, after referring to *Hall v Beckenham*  
*Corpn* [1949] 1 KB 716, and observing that “A local resident who takes a  
 walk in a park owned by a local authority might indignantly reject any  
 suggestion that he was a trespasser”, he said that “the notion of an implied  
 statutory licence has its attractions.” At para 87, he mentioned cases where  
 land is vested in local authorities under section 10 of the 1906 Act, which, he  
 explained, expressly provides that “inhabitants of the locality are  
 beneficiaries of a statutory trust of a public nature”; in such cases, he  
 thought, “it would be very difficult to regard those who use the park or other  
 open space as trespassers (even if that expression is toned down to tolerated  
 E trespassers)” (a view shared by Lord Scott: para 30). In para 88, he said that  
 such a case would “raise difficult issues”, but as the facts of the *Beresford*  
 case did not give rise to a trust, those issues did not arise.

F 42 After setting out the facts in para 89, Lord Walker said at para 90  
 that “In short there is no evidence of any formal appropriation of the land as  
 recreational open space”, and that there was no “material from which to  
 infer an appropriation”, adding that “appropriation as [an] open space  
 would have been inconsistent with the site’s perceived development  
 potential.” (And I agree with Sullivan LJ [2013] 1 WLR 1521, para 34 in the  
 Court of Appeal that Lord Walker was plainly not limiting the word  
 “appropriate” to a case covered by section 122 of the Local Government Act  
 1972.) He then went on to say in paras 90–91 that the fact that the  
 recreational use by the public of the land was not “inimical to the city  
 G council’s interests” did not prevent that use from being “as of right”. He  
 concluded at para 92 that he would allow the appeal for the reasons which  
 he had given as well as those of Lord Bingham and Lord Rodger, although he  
 added that the decision “may be thought to stretch the concept of a town or  
 village green close to, or even beyond, the limits which Parliament is likely to  
 have intended”.

H 43 As I see it, detailed consideration was given in none of the opinions  
 in *Beresford* to any argument which could have been raised by the city  
 council on specific statutory provisions. Lord Bingham and Lord Rodger  
 dismissed the relevance of any statutory provision out of hand, not least, no  
 doubt, because the city council did not rely on any of them. Lord Scott  
 mentioned two provisions, section 21 of the 1981 Act and section 10 of the

1906 Act, but decided that neither could be considered because the city council disclaimed reliance on them. And Lord Walker ultimately simply relied on the fact that the city council (and their predecessors) had acquired the land under very wide powers for no specific purpose, had never subsequently appropriated the land for any specific purpose, and had envisaged an ultimate use of the land which was not for free public recreation.

*Should Beresford be followed, distinguished or disapproved on the second point?*

44 In the light of the decision on this second point in *Beresford*, there are, in principle, three possible courses open to us. The first, urged by Mr Edwards, is to hold that the facts of this case are, in principle, indistinguishable from those in *Beresford*, and to follow the reasoning in *Beresford*, and allow this appeal. The second, which was the approach adopted by the Court of Appeal and is the primary case advanced by Ms Lieven, is that we should distinguish *Beresford*, and dismiss this appeal. The third possible course, which is the alternative case of Ms Lieven, and which was not open to the Court of Appeal, is that we should overrule this aspect of the decision in *Beresford*.

45 Even assuming *Beresford* was rightly decided on this point, I am wholly unpersuaded that it would undermine the conclusion I have provisionally reached at para 29 above. It is said that the views of Lord Walker at para 87 and Lord Scott at para 30, when they opined that land held as open space under section 10 of the 1906 Act is used by the public “by right”, do not support NYCC’s case because they were obiter and because such land is expressly stated by section 10 to be held “in trust to allow, and with a view to, the enjoyment thereof by the public as an open space”. No doubt, those observations were obiter, but they are still worthy of respect, and once land is statutorily held by a council for the purposes of public recreation, it is hard to see why members of the public only have the right to use the land for that purpose if there is a super-added trust to that effect.

46 Be that as it may, I consider that the significant point for present purposes is that Lord Walker plainly thought that it was an important, indeed, it would appear, a crucial, factor in his reasoning that the land in *Beresford* had been acquired for no particular purpose and had never been appropriated for public recreational use. Not only was there no evidence of any such appropriation, but, he said at para 90, such an appropriation would have been inconsistent with the desire to develop the land. The facts of the present case are very different. The field was, as I see it, “appropriated”, in the sense of allocated or designated, as public recreational space, in that it had been acquired, and was subsequently maintained, as recreation grounds with the consent of the relevant minister, in accordance with section 80(1) of the 1936 Act: public recreation was the intended use of the field from the inception.

47 I am clearly of the view, therefore, that *Beresford* can, and ought to, be distinguished. In the present case, the land concerned was acquired and maintained by the local authority as public recreation grounds under a specific statutory power namely section 80(1) of the 1936 Act, now section 12(1) of the 1985 Act, and accordingly members of the public have used the land for recreation “by right”. By contrast, in *Beresford*, at least as

A the House of Lords concluded, the land concerned was neither acquired nor appropriated for any specific use, and, in so far as there was an intended use it was not for free public access; therefore there was no basis for justifying the view that the use of the land by the public was “by right”.

B 48 The more difficult question, to my mind, is whether we should go further and hold that *Beresford* was wrongly decided on this point. I was considerably attracted by the notion that, as it was unnecessary to do so in order to dispose of this appeal, we should not positively say that the reasoning in *Beresford* should no longer be relied on, but should merely express considerable concerns about the decision, and emphasise its very limited scope in the light of the unsatisfactory nature of the arguments which were and were not taken. However, having considered the matter further, and in particular having considered the points made in argument by C Baroness Hale of Richmond DPSC and the points made by Lord Carnwath JSC in paras 70–86 of his judgment, I am satisfied that this would be unnecessarily cautious. I am quite satisfied that we should grasp the nettle and say that the decision and reasoning in *Beresford* should no longer be relied on, rather than leaving the law in a state of uncertainty, and requiring money and time to be expended on yet further proceedings.

D 49 I consider that *Beresford* was wrongly decided for the reasons given by Lord Carnwath JSC, and, while it would be wrong to repeat those reasons, it is right to express my reasoning in summary form, especially in view of my hesitation in giving the decision its quietus. It seems to me clear on the facts, which are helpfully summarised by Lord Carnwath JSC in para 73, that the city council and its predecessors had lawfully allocated the land for the purpose of public recreation for an indefinite period, and that, in E those circumstances, there was no basis upon which it could be said that the public use of the land was “as of right”: it was “by right”. The point made in para 24 above applies. I should add that, quite apart from this, I also share the mystification expressed about the reasoning in *Beresford* by Sullivan LJ in the Court of Appeal in this case in the passage quoted by Lord Carnwath JSC in para 85 below.

F *Conclusion*

50 For these reasons, which are very similar to those of Sullivan LJ in the Court of Appeal, I would dismiss this appeal.

**LORD CARNWATH JSC** (with whom **BARONESS HALE OF RICHMOND DPSC**, **LORD REED** and **LORD HUGHES JJSC** agreed)

G 51 I agree that, on the arguments presented to us, the appeal should be dismissed for the reasons given by Lord Neuberger of Abbotsbury PSC. Those arguments have proceeded on the footing that in effect the sole issue is whether the use of the recreation ground by local inhabitants has been “as of right” or “by right”, the latter expression being treated as equivalent to “by licence” (or “precarious”) in the classic tripartite formulation (*nec vi, nec clam, nec precario*) as endorsed by Lord Hoffmann in the *R v Oxfordshire County Council, Ex p Sunningwell Parish Council* case [2000] 1 AC 335. On that H basis, I have no doubt that the use by the local inhabitants in this case was “by right” as Lord Neuberger PSC has explained: para 20–29.

52 That would be sufficient to dispose of this appeal. However, since the underlying issue is of some general importance and as we are being asked

to review the decision of the House in *R (Beresford) v Sunderland City Council* [2004] 1 AC 889, I think it desirable also to look at the matter in a wider context. Before turning to the speeches in that case in more detail I shall make two more general points about the context in which the rights are here asserted.

### *Local rights*

53 I start with an important, if obvious, point. The Commons Registration Act 1965 was concerned with town or village greens, not with public open space in general. Three categories were defined in section 22: “land [a] which has been allotted by or under any Act for the exercise or recreation of the inhabitants of any locality or [b] on which the inhabitants of any locality have a customary right to indulge in lawful sports and pastimes or [c] on which the inhabitants of any locality have indulged in such sports and pastimes as of right for not less than 20 years.” The common feature was the link in each case with the inhabitants of a particular “locality”. The mischief towards which the Act was principally directed was the uncertainty over the extent and nature of land subject to such rights. Category (c), as the only one which had continuing effect, is reproduced in amended form in the 2006 Act.

54 There was no suggestion in the Act itself, or any of the preceding reports or debates, of any intention to include within its ambit other forms of public open space, owned and managed by public authorities under statutes such as the Open Spaces Act 1906. (As explained by Lord Neuberger PSC, para 5, even the apparently restrictive wording of the statute in the present case did not prevent its use by the public generally.)

55 The link with a locality was material not only to proof of qualifying user, but also to the rights resulting from registration. The 1965 Act itself gave no indication on that issue. However in *Oxfordshire County Council v Oxford City Council* [2006] 2 AC 674 it was established that the rights so created were available to “the relevant inhabitants”: para 69, per Lord Hoffmann. I take that to mean that in principle they were available to the inhabitants of the relevant locality (“the local inhabitants”: per Lord Scott of Foscote, paras 104–106), rather than to the public at large.

56 That case was decided by reference to events before the amendments made by the Countryside and Rights of Way Act 2000. It was unnecessary for the House to decide whether it would make any difference if the registration was attributable to use by inhabitants of a “neighbourhood” under the amended definition, rather than of a locality. It may be that in practice, once land is registered under the Act, no attempt is (or can realistically be) made by owners or others to distinguish between different groups of users. However, it seems clear in principle that a local link of some kind remains an essential feature both of the use and of the resulting rights.

57 For present purposes, it is enough to emphasise that local recreational land, ancient or modern, within the scope of the 1965 Act was conceptually different from land held by public authorities for general recreational use. There was no indication then or since of any intention to include the latter within its ambit. That fact cannot itself govern the issue of statutory interpretation, but it justifies some caution before accepting an interpretation which significantly widens the scope of the legislation beyond what was intended.

A *The “as of right” test in context*

58 The “as of right”/“by right” dichotomy is attractively simple. In many cases no doubt it will be right to equate it with the *Sunningwell* tripartite test, as indicated by judicial statements cited by Lord Neuberger PSC: paras 15–16. However, in my view it is not always the whole story. Nor is the story necessarily the same story for all forms of

B prescriptive right.

59 This was a point made by Lord Scott in *Beresford* [2004] 1 AC 889, para 34:

“It is a natural inclination to assume that these expressions, ‘claiming right thereto’ (the 1832 Act), ‘as of right’ (the 1932 Act and the 1980 Act) and ‘as of right’ in the 1965 Act, all of which import the three characteristics, *nec vi, nec clam, nec precario*, ought to be given the same meaning and effect. The inclination should not, however, be taken too far. There are important differences between private easements over land and public rights over land and between the ways in which a public right of way can come into existence and the ways in which a town or village green can come into existence. To apply principles applicable to one type of right to another type of right without taking account of their differences is dangerous.”

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60 On the same theme he commented, at para 40, on the differences between public rights of way on the one hand and town or village greens on the other:

“Public rights of way are created by dedication, express or implied or deemed. Town or village greens on the other hand must owe their existence to one or other of the three origins specified in section 22(1) of the 1965 Act. . . . Dedication by the landowner is not a means by which a town or village green, as defined, can be created. So acts of an apparently dedicatory character are likely to have a quite different effect in relation to an alleged public right of way than in relation to an alleged town or village green.”

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While I share Lord Neuberger PSC’s reservations on other parts of Lord Scott’s speech, his observations on this point appear to me both valid and important.

61 Lord Scott’s analysis 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.

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62 This is not a live issue in most contexts in which the tripartite test has to be applied, whether under this legislation or otherwise, because there is no room for ambiguity. It was not an issue in *Sunningwell* [2000] 1 AC 335

itself, where the land was in private ownership, and there was no question of an alternative public use. Twenty years' use for recreation by residents, the majority of whom came from a single locality, was treated as an effective assertion of village green rights. A

63 Similar considerations apply in highway cases. Thus, for example, in *Cumbernauld and Kilsyth District Council v Dollar Land (Cumbernauld) Ltd* 1992 SC 357 (Inner House); 1993 SC (HL) 44: B

“it was common ground that there was here a clearly delineated route, that it had been used for at least 20 years since at least May 1967, that it connected two public places and that the public use was sufficient in quantity throughout that period to constitute a public right of way.” (Inner House p 362.)

This was sufficient to meet the requirements of the relevant section 3(3) of the Prescription and Limitation (Scotland) Act 1973, by which a public right of way was established if it has been “possessed by the public for a continuous period of 20 years openly, peaceably and without judicial interruption . . .” Where members of the public have travelled regularly between two points along a defined route for 20 years, the natural and only reasonable inference was the assertion of a highway right. C

64 The same cannot necessarily be said of recreational use of land in public ownership. Where land is owned by a public authority with power to dedicate it for public recreation, and is laid out as such, there may be no reason to attribute subsequent public use to the assertion of a distinct village green right. D

65 The point can also be tested by reference to the “general proposition” (cited by Lord Neuberger PSC, para 16) that, if a right is to be obtained by prescription, the persons claiming that right: E

“must by their conduct bring home to the landowner that a right is being asserted against him, so that the landowner has to choose between warning the trespassers off, or eventually finding that they have established the asserted right against him.”

It follows that, in cases of possible ambiguity, the conduct must bring home to the owner, not merely that “a right” is being asserted, but that it is a village green right. Where the owner is a public authority, no adverse inference can sensibly be drawn from its failure to “warn off” the users as trespassers, if it has validly and visibly committed the land for public recreation, under powers that have nothing to do with the acquisition of village green rights. F

66 This does not mean of course that land in public ownership can never be subject to acquisition of village green rights under the 2006 Act. That is demonstrated by the “Trap Grounds” case: *Oxfordshire County Council v Oxford City Council* [2006] 2 AC 674. Although the land was in public ownership, it had not been laid out or identified in any way for public recreational use, and indeed was largely inaccessible (“25% of the surface area of the scrubland is reasonably accessible to the hardy walker”: para 1, quoting the inspector’s report). It was held that the facts justified the inference that the rights asserted were rights under the 1965 Act. G

67 The differences between different forms of prescriptive right may also be relevant to the evaluation of the owner’s conduct. As Lord Scott H

A pointed out, most forms of prescription are based on the fiction of a notional grant, or (in the case of highways) dedication, at or before the commencement of the relevant period of use. (The implications of this “powerful and troubling idea” in the law of easements, are discussed in the Law Commission report: *Making Land Work: Easements, Covenants, and Profits à Prendre* (2011) (Law Com No 327), para 3.87.) That fiction starts from the assumption that the equivalent rights could have been created by voluntary act of the owner.

B 68 In the present context, by contrast, there is, as Lord Scott pointed out, no equivalent means at common law of creating a village green, whether by dedication or by other voluntary act of the owner. Nor was such a power created by the Commons Registration Act 1965. As noted above, village greens arising from statute or custom, the only two means of creation of such rights before the Act, were dealt with separately. The modern village green resulting from 20 years user was an entirely new statutory creation. The rights came into being only upon registration following the qualifying period of use. There was no notional grant at the beginning of the period. On the contrary the underlying assumption is that before registration there was no such right, real or notional. In this context the concept “as of right” is more than usually artificial: the asserted right not only did not exist but could not have existed. I will return to this point below when commenting on the approach of Lord Bingham and Lord Rodger in *Beresford* [2004] 1 AC 889 to the issue of “encouragement”.

#### *Beresford*

E 69 Against that background I turn to consider the judgments of the House in *Beresford* itself.

F 70 For the most part I am content to adopt the comments of Lord Neuberger PSC on the speeches in that case. However, I would go further. It is important to bear in mind that the proceedings were by way of judicial review of the decision of the county council, as registration authority, not to register the land as a village green. Subject to issues of law or of rationality, the factual issues were for the authority to resolve on the material before it. In my view, when the factual and legal background of the case is properly understood, it is apparent that there was no error of law in the authority’s approach to the case, nor that of Smith J at first instance [2001] 1 WLR 1327.

G 71 In that respect it is necessary to look beyond the speeches in the House, which do not give the full picture. Partial, but not wholly consistent, accounts appear in the speeches of Lord Scott of Foscote (paras 17–19), Lord Rodger of Earlsferry (para 53), and Lord Walker of Gestingthorpe: para 89. Lord Scott and Lord Rodger focussed principally on the identification of the land in the 1973 New Town Plan as “parkland/open space/playfield”, following which in about 1974 it was laid out and grassed over (using excavated soil from the development of the shopping centre), and public recreational use began. Lord Walker by contrast did not mention the New Town Plan as such, noting only that the land was not acquired for any particular purpose, and that the corporation was “not under an obligation to appropriate it for any specific purpose”: para 89(a). He attached more importance to the “ambitious” but unrealised plans for a sports complex,

pending which, as he put it, “recreational use of the area by local inhabitants was tolerated (but not . . . enjoyed by any overt licence)”: para 89(b).

72 The fullest account of the factors leading to the authority’s decision is in the judgment of Smith J at first instance [2001] 1 WLR 1327. Having summarised in general terms the history of what became known as the “sports arena” site, she referred in more detail to the material before the authority. This took the form principally of a report from its director of administration having taken legal advice. (The authority do not seem to have thought it necessary to organise any form of public local inquiry, such as has been seen in other cases, including the present.)

73 The main points in the director’s report and the authority’s reasoning based on it (paras 11–15) can be summarised as follows: (i) Over a number of years there had been discussion of a sports and recreation centre development, dating back to a “planning brief” of 1967. (ii) The arena site was identified as “parkland/open space/major playing field” in the 1973 New Town Plan. (iii) The “most informative document in the archive” had been a handwritten draft report to the corporation’s chief officer’s committee, dated 1982, which showed that “at that time, the upgrading of the arena was under consideration”. It had referred to a 1977 board paper indicating that—“until a sports complex could be provided, the arena was to be used for ‘recreational sporting use and other activities on a town scale such as jazz band parades, displays and sporting events’.” In 1980 the board had requested that the level of publicity for the arena should be increased, and “some minor works of improvement were carried out in anticipation of increased usage”. (iv) The 1982 draft report advised that complete reconstruction of the arena would be required if it were to be developed as an athletic field and football pitch, and that the alternative would be to leave the arena “in its current little-used condition until such time as a sports hall facility is built”. (v) In 1989 the site was transferred to the Commission for New Towns (“CNT”). It was retained by them, as having potential for commercial use, when Princess Anne Park was transferred to the Sunderland City Council in 1991. Documents compiled by that council in 1992 and 1994 described the land respectively as “an amenity open space”, and as “‘an unused track’ which belonged to the CNT and whose future use was uncertain.” (vi) In 1996, the land was transferred to the council subject to a covenant restricting any future development to a community-related purpose. In 1998, the council granted planning permission for the erection of a college of further education on a site including the arena, with a view to sale to the City of Sunderland College. The application to register the land as a village green, at the instance of a group of local residents including Mrs Beresford, followed shortly afterwards. (vii) The director advised the committee (in terms no doubt reflecting legal advice) that the determining issue, in accordance with *Ex p Sunningwell* [2000] 1 AC 335 was whether the user had been “as of right”, and that it was not enough to defeat the claim that the use had been tolerated by the landowner. He added:

“In ‘traditional’ parks which are fenced and have opening hours, enjoyment by the public (inhabitants of the locality) will be by virtue of a licence during the hours of daylight. However, not all parks conform to this ‘traditional model’—the Princess Anne Park for example—and it would be bizarre if these were all town and village greens. This would

A suggest that if it is apparent from the circumstances that the land in  
question has been made available to the public, and that their use has not  
simply been tolerated but in effect encouraged, a licence should be  
implied (sic) from the circumstances . . . [In this case] everyone using the  
site would have been aware of the perimeter seating and that the grass  
was kept cut. It is difficult to conceive that anyone could have imagined  
B that this was other than a recreational area provided for use by the public  
for recreation. Against this background, the ‘implied licence’ argument is  
strong and it is considered that on this basis the enjoyment has not been  
‘as of right’ . . .”

(viii) The committee agreed:

C “Members considered that there was evidence of an implied licence  
since the site is publicly owned land, specifically laid out as an arena with  
seating, which is adjacent to Princess Anne Park and which has been  
maintained by the council and the Washington Development Corpn  
before it. Members agreed with the comment in the report that ‘it is  
difficult to conceive that anyone could have imagined that this was other  
than a recreational area, provided for use by the public for recreation’.  
D The other information contained in section 2 of the report, whilst not in  
itself conclusive, supported the view that the sports arena was intended  
for public use.”

74 Smith J at first instance confirmed that decision. Like the authority  
she attached importance to the fact of public ownership [2001] 1 WLR  
1327, para 45:

E “In my judgment, the fact that land is in public ownership is plainly a  
relevant matter when one is considering what conclusion a reasonable  
person would draw from the circumstances of user. It is well known that  
local authorities do, as part of their normal functions, provide facilities  
for the use of the public and maintain them also at public expense. It is  
not part of the normal function of a private landowner to provide  
F facilities for the public on the land. Public ownership of the land is plainly  
a relevant consideration.”

I have set out this reasoning in some detail, because in my view the approach  
of the authority, and that of Smith J, were unimpeachable in common sense  
and in law.

75 Unfortunately, by the time the case had reached the House of Lords  
G this simple approach had become obscured. As appears from Lord Scott’s  
account [2004] 1 AC 889, paras 20–23, the presentation of the arguments  
before the House, seems to have led to an artificial separation of the “implied  
licence” issue, from the issues raised by the public ownership of the land. He  
notes that in the Court of Appeal [2002] QB 874 Dyson LJ, while upholding  
Smith J’s reasoning in general, had expressed the view that public ownership  
“on its own . . . was a factor of little weight”: para 30. Possibly in response  
H to that indication, the parties in the House of Lords concentrated their  
arguments on the implied licence issue, and “Neither counsel dealt with the  
implications of the public ownership of the sports arena”.

76 It was left to the House itself, after the conclusion of the hearing, to  
call for further argument on that aspect. Even at that stage counsel for the

authority preferred to maintain the original implied licence argument as a distinct issue, without reference to public ownership. This seems to have been based on a concern that reliance on public ownership would have the improbable implication that such public land could never not be subject to modern village green rights: see the arguments [2004] 1 AC 889, 892D–E. As I have shown (by reference to the “Trap Grounds” case [2006] 2 AC 674) that concern was misplaced. Further the public ownership issue seems to have been seen as one going, not so much to the quality of the user and the inferences to be drawn from it (as Smith J had held), but to the distinct question whether any of the relevant statutes had “conferred on the local residents and others a right to use the sports arena”: per Lord Rodger, at para 62.

77 Furthermore, none of the speeches looked in detail at the powers of the New Towns Act 1965 (or the replacement 1981 Act), under which the new towns authority was acting. I share Sullivan LJ’s surprise [2013] 1 WLR 1521, para 36 at the limited attention given to this aspect in the speeches in the House. I can only assume that this was because the very full material apparently provided to the House on this aspect concentrated on powers specifically dealing with open space (see [2004] 1 AC 889, paras 9, 24ff, 87), rather than other matters relevant to the authority’s use of its land. Lord Scott (para 24) referred to the provisions of the 1981 Act (sections 21, 80) relating to “open space” as defined, noting “the breadth of the freedom” given to new town corporations in dealing with such land. However, in my view, there was no reason for resort to those specific provisions to justify or explain the use which the corporation made of the land.

78 The statutory powers of new town corporations under the 1965 Act, as compared with many other forms of public authority at the time, were indeed set very wide. Their purposes under section 3 were to secure the laying out and development of the new town “in accordance with proposals approved in that behalf under the following provisions of this Act”, and their powers included “power . . . generally to do anything necessary or expedient for the purposes of the new town or for purposes incidental thereto”. Section 6 provided for the submission and approval by the minister of their proposals for the development of land within the area of the new town. By subsection 6(2) it was envisaged that planning permission for the development proposals so approved would be granted by special development order under the Town and Country Planning Act 1962.

79 This statutory framework in my view provides a complete answer to Lord Walker’s concern as to the lack of any “formal appropriation” of the land as recreational open space: para 90. As Lord Neuberger PSC has observed, he does not seem to have been using the word appropriation in any specific statutory sense. In any event, the general powers conferred by section 3 were amply sufficient to include making land such as this available for public recreation, pending any further development proposals. Assuming (in the absence of any indication to the contrary) that the 1973 plan was duly submitted to and approved by the minister under section 6, the proposal for recreational use of the arena area would have become a formal and approved part of its proposals for the use of the land in its area. Planning permission would have been required for the change of use for that purpose, but would normally have been granted as a matter of course by special development order pursuant to section 6(2).

A 80 It was immaterial that this use might have been seen as temporary pending implementation of the more ambitious proposals described in the 1982 draft report. It was a valid exercise of the corporation's powers to permit such temporary use, and the public's enjoyment was no less real and authorised. I can see no basis, with respect, for Lord Walker's observation that, as he put it, recreational use of the area by local inhabitants was merely "tolerated". It was contradicted by the director's conclusion, accepted by B by the authority, that the use by the public had "not simply been tolerated but in effect encouraged": para 73(vii) above.

C 81 Finally I come back to the relevance of the acts of "encouragement" by the authority, in the light of comments by Lord Bingham and Lord Rodger. In his concurring judgment, Lord Bingham rejected arguments that the encouragement of public use by mowing the land and laying out benches was inconsistent with the use "as of right". He noted that the 1965 Act had drawn heavily on principles relating to the acquisition of public or private rights of way, observing, at para 7:

D "in neither of these instances could acts of encouragement by the servient owner be relied on to contend that the user by the dominant owner had not been as of right. Such conduct would indeed strengthen the hand of the dominant owner."

Similarly, Lord Rodger noted that the authority "may . . . have encouraged these activities", but commented at para 60: "The mere fact that a landowner encourages an activity on his land does not indicate, however, that it takes place only by virtue of his revocable permission."

E 82 However, the parallel is not direct. If the inference is to be of a notional public right during the period of user, it is easy to see why acts of encouragement may be seen as lending weight to that inference. But the same thinking cannot readily be applied in the context of the creation of a modern village green. There is no basis for inferring a prior public right, real or notional, and therefore no reason for the owner's acts of encouragement to be treated as lending force to such an inference. On the contrary, where F they are acts of a public authority, they lend force to the alternative inference that they are done under other statutory powers.

83 For the same reason I cannot accept Lord Bingham's following comment. He continued at para 7:

G "Here the conduct is in any event equivocal: if the land were registered as a town or village green, so enabling the public to resort to it in exercise of a legal right and without the need for any licence, one would expect the council to mow the grass and provide some facilities for those so resorting, thus encouraging public use of this valuable local amenity. It is hard to see how the self-same conduct can be treated as indicating that the public had no legal right to use the land and did so only by virtue of the council's licence."

H 84 I find this hard to follow. If land in the ownership of a public authority had been validly registered as a village green, it might well be a reasonable inference that acts of maintenance were attributable to that status. But that has no relevance to the position during a period of public use before registration, when there were no village green rights, actual or notional. The explanation for acts of maintenance by the authority during

that period has to be found elsewhere. The reasonable inference was not that the public had no rights, but that the land had been committed to their use under other powers. A

85 In conclusion I note what Sullivan LJ said about the decision in *Beresford* in the present case [2013] 1 WLR 1521, para 36:

“I confess that I find it difficult to understand why the statutory approval of the corporation’s new town plan 1973 by the minister, which had the effect of granting planning permission for the development of the land as ‘parkland/open space/playing field’, when coupled with the subsequent laying out and grassing over of the land, was not sufficient to amount to an ‘appropriation’ of the land as recreational open space in the sense in which Lord Walker used that word.” B

I agree. If “appropriation” in that sense was required, then the new town plan provided it. However such legal analysis is not necessary to support the registration authority’s decision. As I have said, on the material before them they were clearly entitled to reach the conclusion that the use by the public was implicitly approved by the corporation; indeed there was no reason to infer anything else. C

86 For these reasons, I would not only dismiss the present appeal, but I would hold that the decision and reasoning of the House of Lords in *Beresford* should no longer be relied on. D

*Appeal dismissed.*

JILL SUTHERLAND, Barrister

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A Supreme Court

## Regina (Newhaven Port & Properties Ltd) v East Sussex County Council

[2015] UKSC 7

B 2014 Nov 3, 4; Lord Neuberger of Abbotsbury PSC,  
2015 Feb 25 Baroness Hale of Richmond DPSC, Lord Sumption,  
Lord Carnwath, Lord Hodge JJSC

C *Commons — Town or village green — Registration — Operational port land comprising tidal beach wholly submerged for part of day — Application to register as town or village green — Whether user of land regulated by or in breach of byelaws capable of being “as of right” — Whether land registrable as town or village green if registration inconsistent with statutory functions for which land held — Harbours, Docks and Piers Clauses Act 1847 (10 & 11 Vict c 27), ss 33, 83, 88 — Newhaven Harbour and Ouse Lower Navigation Act 1847 (10 & 11 Vict c ix), s 49 — Newhaven Harbour Improvement Act 1878 (41 & 42 Vict c lxxi), ss 2, 57 — Commons Act 2006 (c 26), s 15(4) — Sealink (Transfer of Newhaven Harbour) Harbour Revision Order 1991 (SI 1991/1257), arts 10, 11*

D The claimant company was the owner and operator of a port which included an area of land known as West Beach, which formed part of the foreshore. Pursuant to the powers conferred, in particular, by section 33 of the Harbours, Docks and Piers Clauses Act 1847 (“the 1847 Clauses Act”)<sup>1</sup>, section 49 of the Newhaven Harbour and Ouse Lower Navigation Act 1947 (“the 1847 Newhaven Act”)<sup>2</sup>, sections 2 and 57 of the Newhaven Harbour Improvement Act 1878<sup>3</sup> and articles 10 and 11 of the Sealink (Transfer of Newhaven Harbour) Harbour Revision Order 1991<sup>4</sup>, the claimant and its predecessors as port authority had maintained the port and, pursuant to sections 83 and 88 of the 1847 Clauses Act, made byelaws for its regulation, including West Beach. After the claimant had fenced off public access to it in April 2006, the town council applied to have West Beach registered as a town or village green pursuant to section 15 of the Commons Act 2006<sup>5</sup>. The claimant objected to the application and the defendant registration authority held a non-statutory public local inquiry. The inspector who conducted the inquiry recommended that the application for registration be accepted, finding that West

<sup>1</sup> Harbours, Docks and Piers Clauses Act 1847, s 33: see post, para 5.

S 83: “The undertakers may from time to time make such byelaws as they shall think fit for all or any of the following purposes; . . . For regulating the use of the harbour, dock, or pier: . . . And the undertakers may from time to time, as they shall think fit, repeal or alter any such byelaws: Provided always, that such byelaws shall not be repugnant to the laws of that part of the United Kingdom where the same are to have effect, or the provisions of this or the special Act; and such byelaws shall be reduced into writing, . . . and, if affecting other persons than the officers or servants of the undertakers shall be confirmed and published as herein provided.”

S 88: see post, para 13.

<sup>2</sup> Newhaven Harbour and Ouse Lower Navigation Act 1847, s 49: see post, para 3.

<sup>3</sup> Newhaven Harbour and Improvement Act 1878, s 2: “the Harbours, Docks and Piers Clauses Act 1847 . . . [is] incorporated with and forms part of this Act.”

S 57: see post, para 5.

<sup>4</sup> Sealink (Transfer of Newhaven Harbour) Harbour Revision Order 1991, arts 10(1), 11(1): see post, para 7.

H <sup>5</sup> Commons Act 2006, s 15: “(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 . . . (4) applies . . . (4) This subsection applies . . . where— (a) a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years; (b) they ceased to do so before the commencement of this section; and (c) the application is made within the period of five years beginning with the cessation referred to in paragraph (b).”

Beach had been used by a significant number of local inhabitants as of right for lawful sports and pastimes for at least 20 years expiring in April 2006, for the purposes of section 15(4) of the 2006 Act. The registration authority accepted the inspector's recommendation. The claimant sought judicial review of that decision. The judge allowed the claim on the sole ground that the land could not be registered as a town or village green under the 2006 Act because it was reasonably foreseeable that registration would conflict with the statutory functions for which the land was held. The registration authority and the town council appealed. By a majority the Court of Appeal allowed their appeal on the ground that, since the byelaws had not been communicated to the public, use of West Beach by local inhabitants for bathing and associated recreational activities was enjoyed, not "by right", that is, by licence, but "as of right", namely, without either express or implied permission, and that, accordingly, West Beach was capable of registration as a town or village green under section 15(4) of the 2006 Act.

On the claimant's appeal—

*Held*, (1) allowing the appeal, that, assuming without deciding that the majority of the Court of Appeal and the judge had been correct to hold that the general common law gave the public, and therefore the local inhabitants, no right to use West Beach for bathing and leisure activities, the wide words of section 83 of the 1847 Clauses Act and the provisions of the Newhaven Harbour Improvement Act 1878 empowered the owners and operators of the harbour to make and enforce byelaws which could properly grant rights over the land; that, although no byelaw expressly permitted members of the public to use West Beach for leisure activities, such user might be permitted by implication if such implication were necessary or obvious; that the prohibitions contained in the byelaws against bathing in a specified area of the harbour and of doing acts which might impede use of the harbour impliedly permitted bathing elsewhere in the harbour and associated activities which did not impede its use; that, although section 88 of the 1847 Clauses Act required notification of the byelaws by public display, they became effective when they were confirmed, and publication and display were intended to follow such confirmation; that Parliament had not intended that the byelaws would not apply if such notification were not or were no longer displayed and, while it might be necessary to show that the byelaws were displayed for the purposes of justifying prosecution for their infringement, they were nevertheless effective in the sense of representing the local laws applicable to the harbour even though they were not displayed as required by section 88 of the 1847 Clauses Act; that, in any event, a landowner did not necessarily have to draw to the public's attention that their use of the land was permitted in order for it to be "by right" rather than "as of right"; and that, accordingly, since the byelaws had conferred an implied revocable permission to go onto West Beach and use it for recreational activities, its use by the inhabitants of the locality had been "by right" and not "as of right" and therefore West Beach was incapable of registration under section 15 of the Commons Act 2006 (post, paras 56, 57, 60–63, 66, 69–74, 102, 105, 136, 140).

*R (Barkas) v North Yorkshire County Council* [2015] AC 195, SC(E) applied.

(2) Per Lord Neuberger of Abbotsbury PSC, Baroness Hale of Richmond DPSC, Lord Sumption and Lord Hodge JJSC, that section 15 of the Commons Act 2006 did not apply to land acquired by a statutory undertaker and held for statutory purposes which were inconsistent with its registration as a town or village green; that, since powers were conferred on the claimant to carry out its functions of operating and maintaining a working harbour under section 33 of the 1847 Clauses Act, section 49 of the 1847 Newhaven Act, section 57 of the 1878 Act and articles 10 and 11 of the Sealink (Transfer of Newhaven Harbour) Harbour Revision Order 1991, and since the effect of registration under the 2006 Act was to create criminal offences in respect of damage to the registered site or interruption to its use and enjoyment, there was a clear incompatibility between the 2006 Act and the statutory regime applying to the harbour; and that, accordingly, the 2006 Act did not enable the public to acquire user

A rights over West Beach which were incompatible with the continued use of the land for the statutory purposes on which it was held by the port authority (post, paras 93–97, 101, 102, 103–104).

Observations as to the long-established jurisprudence concerning, and the difficulties inherent in, the question whether the public had a right to use the foreshore for bathing and associated recreational activities as a matter of general common law or by presumed licence of the owner of the foreshore, or whether members of the public had no such right and were trespassers if they used the foreshore for such purposes (post, paras 26, 46, 50, 105–135).

B *Blundell v Catterall* (1821) 5 B & Ald 268 and *Brinckman v Matley* [1904] 2 Ch 313, Buckley J and CA considered.

Decision of the Court of Appeal [2013] EWCA Civ 276; [2014] QB 186; [2013] 3 WLR 1389; [2013] 3 All ER 677, CA reversed.

C The following cases are referred to in the judgments:

*Arnold v Mundy* (1821) 6 NJJL 1

*Attorney General v Antrobus* [1905] 2 Ch 188

*Ayr Harbour Trustees v Oswald* (1883) 8 App Cas 623, HL(Sc)

*Beckett (Alfred F) Ltd v Lyons* [1967] Ch 449; [1967] 2 WLR 421; [1967] 1 All ER 833, CA

*Behrens v Richards* [1905] 2 Ch 614

D *Blundell v Catterall* (1821) 5 B & Ald 268

*Brinckman v Matley* [1904] 2 Ch 313, Buckley J and CA

*British Transport Commission v Westmorland County Council* [1958] AC 126; [1957] 2 WLR 1032; [1957] 2 All ER 353, HL(E)

*Crawford v Lecren* (1868) 1 NZCAR 117

*Edinburgh (Magistrates of) v North British Railway Co* (1904) 6 F 620, Ct of Sess

E *Ellenborough Park, In re* [1956] Ch 131; [1955] 3 WLR 892; [1955] 3 All ER 667, CA

*Ellice's Trustees v Comrs of the Caledonian Canal* (1904) 6 F 325, Ct of Sess

*Hope v Bennewith* (1904) 6 F 1004, Ct of Sess

*Housden v Conservators of Wimbledon and Putney Commons* [2008] EWCA Civ 200; [2008] 1 WLR 1172; [2008] 3 All ER 1038, CA

*Jones v Bates* [1938] 2 All ER 237, CA

F *Kinross County Council v Archibald* (1899) 7 SLT 305, Ct of Sess

*Kruse v Johnson* [1898] 2 QB 91, DC

*Llandudno Urban District Council v Woods* [1899] 2 Ch 705

*Mace v Philcox* (1864) 15 CBNS 600

*M'Evoy v Great Northern Railway Co* [1900] 2 IR 325

*McGregor v Crieff Co-operative Society Ltd* 1915 SC (HL) 93, HL(Sc)

*Mann v Brodie* (1885) 10 App Cas 378; 12 R (HL) 52, HL(Sc)

G *Matthews v Bay Head Improvement Association* (1984) 95 NJ 306; 471 A 2d 355

*Mills v Silver* [1991] Ch 271; [1991] 2 WLR 324; [1991] 1 All ER 449, CA

*Neptune City (Borough of) v Borough of Avon-by-the-Sea* (1972) 61 NJ 296; 294 A (2d) 47

*New Windsor Corp'n v Mellor* [1976] Ch 380; [1975] 3 WLR 25; [1975] 3 All ER 44, CA

*Officers of State v Smith* (1846) 8 D 711, Ct of Sess

H *Oxfordshire County Council v Oxford City Council* [2005] EWCA Civ 175; [2006] Ch 43; [2005] 3 WLR 1043; [2005] 3 All ER 961, CA; [2006] UKHL 25; [2006] 2 AC 674; [2006] 2 WLR 1235; [2006] 4 All ER 817, HL(E)

*R v Doncaster Metropolitan Borough Council, Ex p Braim* (1986) 57 P & CR 1

*R v Oxfordshire County Council, Ex p Sunningwell Parish Council* [2000] 1 AC 335; [1999] 3 WLR 160; [1999] 3 All ER 385, HL(E)

*The application to register*

19 On 18 December 2008 Newhaven Town Council (“the Town Council”) applied to the County Council, as the statutory registration authority, to register the Beach as a town or village green. The application was supported by evidence that the Beach had been used by a significant number of local inhabitants as of right and for a period of at least 20 years down to April 2006. NPP objected to the proposal, and the County Council appointed an Inspector, Ruth Stockley, a barrister experienced in this area of the law, to hold a public inquiry. The inquiry was held between 6 and 8 July 2010, following which Ms Stockley produced a report dated 6 October 2010 and an addendum report dated 14 December 2010, recommending that the Beach be registered as a town or village green. Ms Stockley’s two reports were very full and clear. Importantly, she concluded that members of the public, and, crucially residents of the locality, had used the Beach for well over 80 years as a place to play, sunbathe, swim from, picnic and the like (save during much of the First and Second World War periods, when the port area, including the Beach, were inaccessible).

20 On 22 December 2010, the two reports and recommendation were put before the County Council’s Commons and Village Green Registration Panel (“the Panel”), together with an officer’s recommendation that the County Council accept the application and register the land as a town or village green. The Panel resolved to accept the application to register the Beach, but the actual registration awaits the outcome of these proceedings.

21 NPP then applied to the High Court for judicial review of the decision to register the Beach as a town or village green. The application came before Ouseley J who, in a comprehensive and carefully considered judgment [2014] QB 186, rejected a number of arguments raised by NPP, but granted their application on one ground, namely that it was reasonably foreseeable that the registration of the Beach would conflict with the statutory functions for which the Beach was held by NPP, namely as part of Newhaven Harbour.

22 The County Council and the Town Council appealed that decision to the Court of Appeal, who, in the course of their impressive judgments, unanimously disagreed with the judge’s reason for granting the application [2014] QB 186. Accordingly, the majority of the Court of Appeal (Richards and McFarlane LJ) allowed the appeal. Lewison LJ would have dismissed the appeal on the ground that the use of the Beach by members of the public, and therefore by inhabitants of the locality, up to 2006 had not been “as of right”, but by implied licence, for two different reasons, namely (i) because members of the public had enjoyed an implied licence to use coastal beaches in the UK for recreational and associated purposes, and/or (ii) by virtue of the provisions of the Byelaws governing the harbour area.

*The issues on this appeal*

23 The provisions of section 15 of the 2006 Act only enable land to be registered as a town or village green if it has been used for recreational and similar purposes by inhabitants of the locality for more than 20 years “as of right”. As was explained most recently by this court in *R (Barkas) v North Yorkshire County Council* [2015] AC 195, paras 14–19 and 58–68, that expression, perhaps somewhat confusingly, is to be contrasted with “by

A right”, and generally connotes user without any right, whether derived from custom and usage, statute, prescription or express or implied permission of the owner. Accordingly, where the inhabitants of the locality have indulged in sports and pastimes on the land in question with the licence of the owner for at least part of the relevant 20-year period, section 15 will not apply.

24 Three issues arise on this appeal. The first is whether the fact that the Beach is part of the foreshore defeats the contention that the user by local inhabitants for sports and pastimes can have been “as of right”, on the ground that the public had an implied licence to use the foreshore for such purposes and the implied right was never revoked in the case of the Beach. The second issue is whether, if that is not right, the public none the less had an implied licence to use the Beach, as part of the Harbour, in the light of the Byelaws. The third issue is whether, in any event, section 15 of the 2006 Act cannot be interpreted so as to enable registration of land as a town or village green if such registration was incompatible with some other statutory function to which the land was to be put.

25 We will take these three issues in turn.

*Public rights over the foreshore: the arguments*

26 The foreshore around England and Wales, by which is meant the area between the high water and low water mark, is owned by the Crown, although it is open to the Crown to alienate it, either permanently by conveying or transferring it, or temporarily by granting leases over it: see e.g. *Halsbury’s Laws of England*, 4th ed reissue, vol 12(1) (1998), para 242. During the course of argument, we were informed that the Crown retained ownership and possession of more than half the foreshore around England and Wales. Most of the foreshore which the Crown no longer owns was at some point conveyed or transferred away. But to describe the Beach in this case as having been alienated in this way may be slightly misleading, as the Beach only came into existence as a beach in 1883 in the circumstances described in para 9 above.

27 However, that does not impinge on NPP’s argument, which is that there is a rebuttable presumption that the public use of the foreshore is by permission of the owner of the Beach—that is, the Crown or its successors in title. This proposition was rejected by Ouseley J at first instance and by the majority of the Court of Appeal, Richards and McFarlane LJJ. However, it was accepted by Lewison LJ.

28 The state of the law relating to public rights over the foreshore of England and Wales is more controversial than one might have expected. It appears clear that there is, at least normally, “a public right of navigation and of fishing in the sea and rights ancillary to it”: *Halsbury*, para 243. However, the question in this case is the existence and nature of any further or greater rights, and in particular the right to use the foreshore for the purpose of bathing and the sort of familiar activities which people indulge in on a beach—at least in good weather.

29 At least where there is no express permission from the owner of the foreshore, there are in principle at least three possible conclusions in relation to the issue of the public’s right to use the foreshore for bathing, by which we mean using the foreshore as access to the sea at low tide, or bathing in the sea over the foreshore at high tide (or a combination of the two), plus associated

- A para 4.02. Professor Gordon, *Scottish Land Law*, 2nd ed (1999) (paras 24.54 and 24.130) also sees statutory incompatibility or incapacity to grant as a bar to acquisitive prescription. Professor Reid, *The Law of Property in Scotland*, (1996), at para 449, states: “When land has been acquired compulsorily for certain purposes, this precludes the creation of any servitude rights the exercise of which could be prejudicial to these purposes.”
- B But he does not repeat this assertion in his discussion of acquisition of such rights by prescription under the 1973 Act: paras 458–461.

*Statutory incompatibility: statutory construction*

- 91 As we have said, the rules of prescriptive acquisition apply only by analogy because Parliament in legislating for the registration of town and village greens has chosen similar wording (indulging “as of right” in lawful sports and pastimes) in the 1965 and 2006 Acts. It is, none the less, significant in our view that historically in both English law and Scots law, albeit for different reasons, the passage of time would not give rise to prescriptive acquisition against a public authority, which had acquired land for specified statutory purposes and continued to carry out those purposes, where the user founded on would be incompatible with those purposes.
- D That approach is also consistent with the Irish case, *M’Evoy v Great Northern Railway Co* [1900] 2 IR 325 (Palles CB at pp 334–336), which proceeded on the basis that the acquisition of an easement by prescription did not require a presumption of grant but that the incapacity of the owner of the servient tenement to grant excluded prescription.

- 92 In this case if the statutory incompatibility rested only on the incapacity of the statutory body to grant an easement or dedicate land as a public right of way, the Court of Appeal would have been correct to reject the argument based on incompatibility because the 2006 Act does not require a grant or dedication by the landowner. But in our view the matter does not rest solely on the vires of the statutory body but rather on the incompatibility of the statutory purpose for which Parliament has authorised the acquisition and use of the land with the operation of section 15 of the 2006 Act.
- E
- F

- 93 The question of incompatibility is one of statutory construction. It does not depend on the legal theory that underpins the rules of acquisitive prescription. The question is: “does section 15 of the 2006 Act apply to land which has been acquired by a statutory undertaker (whether by voluntary agreement or by powers of compulsory purchase) and which is held for statutory purposes that are inconsistent with its registration as a town or village green?” In our view it does not. Where Parliament has conferred on a statutory undertaker powers to acquire land compulsorily and to hold and use that land for defined statutory purposes, the 2006 Act does not enable the public to acquire by user rights which are incompatible with the continuing use of the land for those statutory purposes. Where there is a conflict between two statutory regimes, some assistance may be obtained from the rule that a general provision does not derogate from a special one (*generalia specialibus non derogant*), which is set out in section 88 of the code in *Bennion, Statutory Interpretation*, 6th ed (2013), p 281:
- H

“Where the literal meaning of a general enactment covers a situation for which specific provision is made by another enactment contained in

an earlier Act, it is presumed that the situation was intended to continue to be dealt with by the specific provision rather than the later general one. Accordingly the earlier specific provision is not treated as impliedly repealed.”

While there is no question of repeal in the current context, the existence of a *lex specialis* is relevant to the interpretation of a generally worded statute such as the 2006 Act.

94 There is an incompatibility between the 2006 Act and the statutory regime which confers harbour powers on NPP to operate a working harbour, which is to be open to the public for the shipping of goods etc on payment of rates: section 33 of the 1847 Clauses Act. NPP is obliged to maintain and support the Harbour and its connected works (section 49 of the 1847 Newhaven Act), and it has powers to that end to carry out works on the Harbour including the dredging of the sea bed and the foreshore: section 57 of the 1878 Newhaven Act, and articles 10 and 11 of the 1991 Newhaven Order.

95 The registration of the Beach as a town or village green would make it a criminal offence to damage the green or interrupt its use and enjoyment as a place for exercise and recreation—section 12 of the Inclosure Act 1857 (20 & 21 Vict c 31)—or to encroach on or interfere with the green—section 29 of the Commons Act 1876 (39 & 40 Vict c 56). See the *Oxfordshire* case [2006] 2 AC 674, per Lord Hoffmann, at para 56.

96 In this case, which concerns a working harbour, it is not necessary for the parties to lead evidence as to NPP’s plans for the future of the Harbour in order to ascertain whether there is an incompatibility between the registration of the Beach as a town or village green and the use of the Harbour for the statutory purposes to which we have referred. Such registration would clearly impede the use of the adjoining quay to moor vessels. It would prevent the Harbour authority from dredging the Harbour in a way which affected the enjoyment of the Beach. It might also restrict NPP’s ability to alter the existing breakwater. All this is apparent without the leading of further evidence.

97 NPP has also suggested that vessels en route to and from other parts of the port might have to reduce speed in circumstances where such reduction would not be desirable to maintain the stability of the vessels. It also led evidence of proposals to unload materials for an offshore windfarm on the Beach. But we do not need to consider such matters in order to determine that there is a clear incompatibility between NPP’s statutory functions in relation to the Harbour, which it continues to operate as a working harbour, and the registration of the Beach as a town or village green.

98 The County Council referred to several cases which supported the view that land held by public bodies could be registered as town or village greens. In our view they can readily be distinguished from this case. In *New Windsor Corpn v Mellor* [1976] Ch 380 the Court of Appeal was concerned with the registration of Bachelors’ Acre, a grassed area of land in New Windsor, as a customary town or village green under the Commons Registration Act 1965. The appeal centred on whether the evidence had established a relevant customary right. While the land had long been in the ownership of the local council and its predecessors, it was not acquired and

# The Weekly Law Reports

## Volume 2

*Containing those cases which are intended to be included in  
The Law Reports*

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Supreme Court

**Regina (Lancashire County Council) v Secretary of State for the  
Environment, Food and Rural Affairs**

**Regina (NHS Property Services Ltd) v Surrey County Council**

[2019] UKSC 58

2019 July 15, 16;  
Dec 11

Lord Wilson, Lord Carnwath, Lady Black,  
Lady Arden, Lord Sales JJSC

*Commons — Town or village green — Registration — Application to register land  
owned by public authority as town or village green — Whether registration  
incompatible with statutory purposes for which land held — Commons Act 2006  
(c 26), s 15*

In two separate cases applications were made to register land as a town or village green under section 15 of the Commons Act 2006<sup>1</sup> on the basis that local inhabitants had indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years. In the first case the land, which lay adjacent to a primary school, was owned by the claimant education authority. The Secretary of State’s inspector held that most of the land should be registered under section 15, rejecting the claimant’s contention that registration would be inconsistent with the statutory purposes for which it was held. The judge dismissed the claimant’s claim for judicial review of that decision. In the second case the land, which adjoined a hospital, was owned by the claimant company, which was owned by the Secretary of State for Health and provided facilities to bodies exercising functions under the National Health Service Act 2006. The registration authority registered the land under section 15, rejecting the claimant’s contention that registration would be inconsistent with the statutory purposes for which it was held. The judge allowed the claimant’s claim for judicial review of that decision. On appeal the Court of Appeal upheld the registration of the land in both cases, holding that in each case registration was permissible because it

<sup>1</sup> Commons Act 2006, s 15: “(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 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 . . .”

was not incompatible with any statutory purposes that specifically related to the land in question. A

On the claimants' appeals—

*Held*, allowing the appeals (Lord Wilson JSC dissenting and Lady Arden JSC dissenting in part), that section 15 of the Commons Act 2006 did not apply to land which had been acquired and was being held for statutory purposes which were incompatible with the land's registration as a town or village green; that in order for such an incompatibility to arise it was not necessary (i) that the land was actually being used, or was intended to be used in future, for such a statutory purpose, or (ii) that the land was specified in the statute whose purposes were incompatible with registration or (iii) that the land was held by a statutory undertaker, as opposed to a public authority; that, therefore, the issue of incompatibility was to be determined as a matter of principle, by comparing the statutory purpose for which the land was held with the rights claimed pursuant to the 2006 Act, rather than by carrying out a factual assessment of how the land was being used or was proposed to be used; that, in the first case, registration of the land would be incompatible with the educational statutory purposes for which the land was held, which included the construction of new school buildings or playing fields and (in relation to part of the land) the safeguarding of children on land used for education purposes; that, in the second case, registration of the land would be incompatible with the health-related statutory purposes for which the land was held, namely the provision of health facilities; and that, accordingly, neither the land in the first case nor the land in the second case was capable of being registered as a town or village green under section 15 of the 2006 Act (post, paras 55–60, 65–66, 68–69, 76). B C D

*R (Newhaven Port & Properties Ltd) v East Sussex County Council* [2015] AC 1547, SC(E) applied.

*New Windsor Corpn v Mellor* [1975] Ch 380, CA, *Oxfordshire County Council v Oxford City Council* [2006] Ch 43, CA and *R (Lewis) v Redcar and Cleveland Borough Council (No 2)* [2010] 2 AC 70, SC(E) considered. E

Decision of the Court of Appeal [2018] EWCA Civ 721; [2018] 2 P & CR 15 reversed.

The following cases are referred to in the judgments:

*Ashworth Frazer Ltd v Gloucester City Council* [2001] UKHL 59; [2001] 1 WLR 2180; [2002] 1 All ER 377, HL(E) F

*British Transport Commission v Westmorland County Council* [1958] AC 126; [1957] 2 WLR 1032; [1957] 2 All ER 353, HL(E)

*E v Secretary of State for Home Department* [2004] EWCA Civ 49; [2004] QB 1044; [2004] 2 WLR 1351; [2004] LGR 463, CA

*Edinburgh (Magistrates of) v North British Railway Co* (1904) 6 F 620, Ct of Sess  
*Edwards v Birstow* [1956] AC 14; [1955] 3 WLR 410; [1955] 3 All ER 48, HL(E) G

*Ellice's Trustees v Comrs of the Caledonian Canal* (1904) 6 F 325, Ct of Sess

*Jones v Bates* [1938] 2 All ER 237, CA

*New Windsor Corpn v Mellor* [1975] Ch 380; [1975] 3 WLR 25; [1975] 3 All ER 44; 73 LGR 337, CA

*Oxfordshire County Council v Oxford City Council* [2005] EWCA Civ 175; [2006] Ch 43; [2005] 3 WLR 1043; [2005] 3 All ER 961; [2005] LGR 664, CA; [2006] UKHL 25; [2006] 2 AC 674; [2006] 2 WLR 1235; [2006] 4 All ER 817; [2006] LGR 713, HL(E) H

*R v Inhabitants of Leake* (1833) 5 B & Ad 469

*R v Oxfordshire County Council, Ex p Sunningwell Parish Council* [2000] 1 AC 335; [1999] 3 WLR 160; [1999] 3 All ER 385; [1999] LGR 651, HL(E)

*R v Suffolk County Council, Ex p Steed* (1995) 71 P & CR 463

A statute (the Housing Act 1936 in *Barkas*; the 1847 Clauses Act and the 1878 Newhaven Act in this case).”

The law remains, as submitted by Mr Laurence in *Beresford*, that passive acquiescence, even by a statutory authority with power to permit recreational use, is not enough.

B 41 Accordingly we would refuse permission for this additional ground of appeal.

*Statutory incompatibility*

42 We turn next to the central issue in the case, based on the *Newhaven* case.

C *The majority judgment*

43 In the judgment of the majority (given by Lord Neuberger of Abbotsbury PSC and Lord Hodge JSC) the decision not to confirm the registration was supported by two separate lines of reasoning: implied permission and statutory incompatibility. Although the latter was unnecessary for the decision, it was clearly identified as a separate ground of decision: [2015] AC 1547, para 74. Lord Carnwath JSC was alone in basing his decision on the implied permission issue alone (para 137), seeing “considerable force” in the contrary reasoning on the latter issue of Richards LJ in the Court of Appeal [2014] QB 186. No one has argued that we should regard the majority’s reasoning on this issue as other than binding. Accordingly our decision in the present case depends to a large extent on the correct analysis of that reasoning, and its application to the facts of the two cases before us.

E 44 The operation of Newhaven Harbour had been subject to legislation since at least 1731. At the relevant time the governing statutes included (inter alia) the Newhaven Harbour and Ouse Lower Navigation Act 1847 (10 & 11 Vict c ix), section 49 of which required the trustees to—“maintain and support the said harbour of Newhaven, and the piers, groynes, sluices, wharfs, mooring berths, and other works connected therewith” and section 33 of the Harbours, Docks and Piers Clauses Act 1847 (10 & 11 Vict c 27), which provided that, subject to payment of rates—“the harbour, dock and pier shall be open to all persons for the shipping and unshipping of goods, and the embarking and landing of passengers.”

F 45 The land owned by the harbour company (“NPP”) included an area known as West Beach, described in the judgment as “part of the operational land of the Harbour” (para 8), although not currently used for any harbour purpose. As the judgment explained, at para 9:

H “The Beach owes its origin to the fact that, in 1883, pursuant to the powers granted by the 1863 Newhaven Act, the substantial breakwater was constructed to form the western boundary of the Harbour. The breakwater extends just over 700 metres out to sea. After the construction of the breakwater, accretion of sand occurred along the eastern side of the breakwater, and that accretion has resulted in the Beach.”

46 Following an application by the Newhaven Town Council to register the Beach as a town or village green, and the holding of a public inquiry, it was found by the inspector that the Beach had been used by residents of the

locality for well over 80 years (save during the war periods) for recreation. On that basis the registration authority resolved to register the land. That decision was subject to an application for judicial review, which succeeded before Ouseley J, but was dismissed by the Court of Appeal. Their decision was in turn reversed by the Supreme Court.

*The judgment of this court in Newhaven*

47 In the part of their judgment directed to the statutory incompatibility issue, Lord Neuberger PSC and Lord Hodge JSC referred to case law on public rights of way, easements and servitudes by way of analogy, adopting a cautious approach [2015] AC 1547, paras 76–90. None the less, they found it did provide guidance. In English law, public rights of way are created by dedication by the owner of the land, and the legal capacity of the landowner to dedicate land for that purpose is a relevant consideration (para 78, referring in particular to *British Transport Commission v Westmorland County Council* [1958] AC 126; see also para 87). Similarly, in the English law of private easements, the capacity of the owner of the potential servient tenement to grant an easement is relevant to prescriptive acquisition, which is based on the fiction of a grant by that owner: para 79. The law of Scotland with respect of creation of public rights of way and private servitudes had also developed on the footing that the statutory capacity of a public authority landowner to allow the creation of such rights was a relevant matter. In particular, in *Magistrates of Edinburgh v North British Railway Co* (1904) 6 F 620 it was held that it was not possible that a public right of way “which it would be ultra vires to grant can be lawfully acquired by user” [2015] AC 1547, paras 83–84; and in *Ellice’s Trustees v Comrs of the Caledonian Canal* (1904) 6 F 325 it was held that the commissioners of the canal did not have the power to grant a right of way which was not compatible with the exercise of their statutory duties, and that this also meant that no private right of way or servitude could arise by virtue of user of the land over many years by those claiming such a right of way (paras 85–86). Although the Scots law of prescription had been reformed by statute, Lord Neuberger PSC and Lord Hodge JSC still regarded the historic position as instructive. Their discussion of English law and Scots law in respect of dedication and prescription at paras 76–90 is significant for present purposes, because the reasoning in the cases in those areas regarding statutory incompatibility is general, and is not dependent on the narrower rule of statutory construction that a general provision does not derogate from a special one (*generalia specialibus non derogant*), to which they also later referred by way of analogy.

48 There follows the critical part of the majority judgment, under the heading “Statutory incompatibility: statutory construction”, the material parts of which we should quote in full [2015] AC 1547:

“91. As we have said, the rules of prescriptive acquisition apply only by analogy because Parliament in legislating for the registration of town and village greens has chosen similar wording (indulging ‘as of right’ in lawful sports and pastimes) in the 1965 and 2006 Acts. It is, none the less, significant in our view that historically in both English law and Scots law, albeit for different reasons, the passage of time would not give rise to prescriptive acquisition against a public authority, which had acquired

A land for specified statutory purposes and continued to carry out those  
 purposes, where the user founded on would be incompatible with those  
 purposes. That approach is also consistent with the Irish case, *McEvoy v*  
*Great Northern Railway Co* [1900] 2 IR 325, (Palles CB at pp 334–336),  
 which proceeded on the basis that the acquisition of an easement by  
 prescription did not require a presumption of grant but that the  
 B incapacity of the owner of the servient tenement to grant excluded  
 prescription.

“92. In this case if the statutory incompatibility rested only on the  
 incapacity of the statutory body to grant an easement or dedicate land as  
 a public right of way, the Court of Appeal would have been correct to  
 reject the argument based upon incompatibility because the 2006 Act  
 does not require a grant or dedication by the landowner. But in our view  
 C the matter does not rest solely on the vires of the statutory body but rather  
 on the incompatibility of the statutory purpose for which Parliament has  
 authorised the acquisition and use of the land with the operation of  
 section 15 of the 2006 Act.

“93. The question of incompatibility is one of statutory construction.  
 It does not depend on the legal theory that underpins the rules of  
 acquisitive prescription. The question is: ‘does section 15 of the 2006 Act  
 D apply to land which has been acquired by a statutory undertaker (whether  
 by voluntary agreement or by powers of compulsory purchase) and which  
 is held for statutory purposes that are inconsistent with its registration as  
 a town or village green?’ In our view it does not. Where Parliament has  
 conferred on a statutory undertaker powers to acquire land compulsorily  
 and to hold and use that land for defined statutory purposes, the 2006 Act  
 E does not enable the public to acquire by user rights which are  
 incompatible with the continuing use of the land for those statutory  
 purposes. Where there is a conflict between two statutory regimes, some  
 assistance may be obtained from the rule that a general provision does not  
 derogate from a special one (*generalia specialibus non derogant*), which is  
 set out in section 88 of the code in *Bennion, Statutory Interpretation*,  
 F 6th ed (2013), p 281: ‘Where the literal meaning of a general enactment  
 covers a situation for which specific provision is made by another  
 enactment contained in an earlier Act, it is presumed that the situation  
 was intended to continue to be dealt with by the specific provision rather  
 than the later general one. Accordingly the earlier specific provision is not  
 treated as impliedly repealed.’ While there is no question of repeal in  
 the current context, the existence of a *lex specialis* is relevant to the  
 G interpretation of a generally worded statute such as the 2006 Act.

“94. There is an incompatibility between the 2006 Act and the  
 statutory regime which confers harbour powers on NPP to operate a  
 working harbour, which is to be open to the public for the shipping of  
 goods etc on payment of rates: section 33 of the 1847 Clauses Act. NPP is  
 obliged to maintain and support the Harbour and its connected works  
 (section 49 of the 1847 Newhaven Act), and it has powers to that end to  
 H carry out works on the Harbour including the dredging of the sea bed and  
 the foreshore: section 57 of the 1878 Newhaven Act, and articles 10 and  
 11 of the 1991 Newhaven Order.

“95. The registration of the Beach as a town or village green would  
 make it a criminal offence to damage the green or interrupt its use and

enjoyment as a place for exercise and recreation—section 12 of the Inclosure Act 1857 . . . —or to encroach on or interfere with the green-section 29 of the Commons Act 1876 . . . See the *Oxfordshire* case [2006] 2 AC 674, per Lord Hoffmann, at para 56.

“96. In this case, which concerns a working harbour, it is not necessary for the parties to lead evidence as to NPP’s plans for the future of the Harbour in order to ascertain whether there is an incompatibility between the registration of the Beach as a town or village green and the use of the Harbour for the statutory purposes to which we have referred. Such registration would clearly impede the use of the adjoining quay to moor vessels. It would prevent the Harbour authority from dredging the Harbour in a way which affected the enjoyment of the Beach. It might also restrict NPP’s ability to alter the existing breakwater. All this is apparent without the leading of further evidence.”

We discuss this reasoning in detail below.

49 Finally in this part of the majority judgment reference is made to cases in which registration of land held by public bodies had been approved by the court: *New Windsor* [1975] Ch 380, the *Trap Grounds* case [2006] 2 AC 674 and *Lewis* [2010] 2 AC 70. The treatment of these cases by Lord Neuberger PSC and Lord Hodge JSC is also significant for present purposes. As regards *New Windsor*, they emphasised that the land was not “acquired and held for a specific statutory purpose”, so “No question of statutory incompatibility arose” (para 98). They observed that in the *Trap Grounds* case, though the land was wanted for use as an access road and housing development “there was no suggestion that [the city council] had acquired and held the land for specific statutory purposes that might give rise to a statutory incompatibility” (para 99). With respect to the *Lewis* case they pointed out that “[it] was not asserted that the council had acquired and held the land for a specific statutory purpose which would be likely to be impeded if the land were to be registered as a town or village green”; hence “Again, there was no question of any statutory incompatibility” (para 100).

50 In relation to each of these cases, Lord Neuberger PSC and Lord Hodge JSC referred in entirely general terms to the statutory powers under which a local authority might hold land and were at pains to emphasise that the land in question was not in fact held in exercise of any such powers which gave rise to a statutory incompatibility. That was the basis on which they distinguished the cases. It is clearly implicit in this part of their analysis that they considered that land which was acquired and held by a local authority in exercise of general statutory powers which were incompatible with use of that land as a town or village green could not be registered as such.

51 Their discussion concludes, at para 101:

“In our view, therefore, these cases do not assist the respondents. The ownership of land by a public body, such as a local authority, which has statutory powers that it can apply in future to develop land, is not of itself sufficient to create a statutory incompatibility. By contrast, in the present case the statutory harbour authority throughout the period of public user of the Beach held the Harbour land for the statutory harbour purposes and as part of a working harbour.”

A *Incompatibility—the case for the appellants*

52 For LCC Mr Edwards submits that the decision in *Newhaven* [2015] AC 1547 is of general application to land held by a statutory authority for statutory purposes, whatever the nature of the Act. He points out that the statutory duties or powers in *Newhaven* were not specific to the Beach itself, but rather applied to all of the land acquired and held, from time to time, by NPP and its predecessors for the operation of the Port. NPP had not, within living memory, used the Beach for its statutory harbour purposes. The critical passage in the majority judgment (para 93) refers generally to land—“which has been acquired by a statutory undertaker (whether by voluntary agreement or by powers of compulsory purchase) and which is held for statutory purposes”. It is not limited to statutory powers directed to a specific location or undertaking. No one has argued that the principle is limited to statutory undertakers, as opposed to public authorities in general. Nor is there any requirement for the land to be in actual use for statutory purposes at the point of registration; it simply has to be held for such purposes. In *Newhaven* the Beach had not been used for harbour purposes nor was there any fixed intention to do so at any particular time in the future: see para 96.

D 53 In the present case, notwithstanding the inspector’s findings, there was, he submits, clear incompatibility with LCC’s functions in respect of the land. The effect of registration would be that there accrues a right vested in the inhabitants of Scotforth East Ward to use the land for lawful sports and pastimes of a variety of forms, including walking and dog walking. LCC could not restrict their entry onto the land, including Area B which was at the time of the inspector’s decision used as a playing field by the school: see Decision Letter, para 10. Given the statutory safeguarding obligations towards primary school pupils, the use of that area for play could not continue. Any use of the land to provide a new or expanded school would be precluded. In substance, the land would be no longer available in any meaningful sense for use in fulfilment of the LCC’s statutory duties as local education authority.

F 54 Mr Laurence makes similar submissions in respect of the Surrey site, supported in that case by the conclusions of Gilbart J [2016] 4 WLR 130.

*Discussion*

G 55 In our judgment, the appeals should be allowed in both cases. On a true reading of the majority judgment in *Newhaven* [2015] AC 1547 on the statutory incompatibility point, the circumstances in each of these cases are such that there is an incompatibility between the statutory purposes for which the land is held and use of that land as a town or village green. This has the result that the provisions of 2006 Act are, as a matter of the construction of that Act, not applicable in relation to it.

H 56 The principle stated in the key passage of the majority judgment at para 93 is expressed in general terms. The test as stated is not whether the land has been allocated by statute itself for particular statutory purposes, but whether it has been acquired for such purposes (compulsorily or by agreement) and is for the time-being so held. Although the passage refers to land “acquired by a statutory undertaker”, we agree with Mr Edwards that there is no reason in principle to limit it to statutory undertakers as such, nor

has that been argued by the respondents. That view is supported also by the fact that the majority felt it necessary to find particular reasons to distinguish cases such as *New Windsor*, the *Trap Grounds* case and *Lewis*, all of which involved local authorities rather than statutory undertakers. Accordingly, the appellants argue with force that the test is directly applicable to the land acquired and held for their respective statutory functions.

57 The reference in para 93 to the manner in which a statutory undertaker acquired the land is significant. Acquisition of land by a statutory undertaker by voluntary agreement will typically be by the exercise of general powers conferred by statute on such an undertaker, where the land is thereafter held pursuant to such powers rather than under specific statutory provisions framed by reference to the land itself (as happened to be a feature of the provisions which were applicable in *Newhaven* itself). That is also true of land acquired by exercise of powers of compulsory purchase. In relation to the latter type of case, the majority said in terms that “the 2006 Act does not enable the public to acquire by user rights which are incompatible with the continuing use of the land for those statutory purposes”: para 93. On our reading of the majority judgment, it is clear that in relation to both types of case Lord Neuberger PSC and Lord Hodge JSC took the view that an incompatibility between general statutory powers under which land is held by a statutory undertaker (or, we would add, a public authority with powers defined by statute) and the use of such land as a town or village green excludes the operation of the 2006 Act.

58 This interpretation of the judgment is reinforced by the analysis it contains of the English and Scottish cases on dedication and prescription in relation to rights of way, easements and servitudes and the guidance derived from those cases (see paras 76–91): para 47 above. It is also reinforced by the way in which Lord Neuberger PSC and Lord Hodge JSC distinguished *New Windsor*, the *Trap Grounds* case and *Lewis*: paras 49 and 50 above.

59 The respondents in these appeals submit that the reasoning of Lord Neuberger PSC and Lord Hodge JSC is more narrowly confined, and depends upon identifying a conflict between a particular regime governing an area of land specified in the statute itself and the general statutory regime in the 2006 Act. In support of this interpretation the respondents point to the highly specific nature of the statutory provisions governing the relevant land in *Newhaven* and to the reference in para 93 to the rule of statutory construction that a general provision does not derogate from a special one (*generalia specialibus non derogant*).

60 However, for the reasons we have set out above, this interpretation of the judgment does not stand up to detailed analysis. Lord Neuberger PSC and Lord Hodge JSC stated only that “some assistance” could be obtained from consideration of that rule of construction, not that it provided a definitive answer on the issue of statutory incompatibility. In other words, they treated it as a helpful analogy for the purposes of seeking guidance to answer the question they posed in para 93, just as they treated the English and Scottish cases on prescriptive acquisition as helpful. The way in which they posed the relevant question in para 93 shows that their reasoning is not limited in the way contended for by the respondents, as does their discussion of the prescriptive acquisition cases and the local authority cases of *New Windsor*, *Trap Grounds* and *Lewis*.

A 61 We do not find the construction of the 2006 Act as identified by the wider reasoning of the majority in *Newhaven* surprising. It would be a strong thing to find that Parliament intended to allow use of land held by a public authority for good public purposes defined in statute to be stymied by the operation of a subsequent general statute such as the 2006 Act. There is no indication in that Act, or its predecessor, that it was intended to have such an effect.

B 62 Lord Hoffmann in *Sunningwell* [2000] 1 AC 335 concluded that it could be inferred that Parliament intended to allow for the creation of new rights pursuant to the 1965 Act by reason of the “public interest in the preservation of open spaces which had for many years been used for recreational purposes”, but in doing so he recognised that “A balance must be struck” between rights attaching to private property and competing public interests of this character: p 359. It is natural to expect that where a public authority is holding land for public purposes defined by statute which are incompatible with the public interest identified by implication from the 1965 Act, and now the 2006 Act, that balance will be affected. The proper inference as to Parliament’s intention is that the general public interest identified by Lord Hoffmann will in such a case be outweighed by the specific public interest which finds expression in the particular statutory powers under which the land is held.

D 63 As Lord Neuberger PSC and Lord Hodge JSC appreciated, this general point can be made with particular force in relation to land purchased using compulsory purchase powers set out in statute. Such powers are generally only created for use in circumstances where an especially strong public interest is engaged, such as could justify the compulsory acquisition of property belonging to others. It seems highly unlikely that Parliament intended that public interests of such a compelling nature could be defeated by the operation of the general provisions in the 2006 Act.

E 64 In construing the 2006 Act it is also significant that it contains no provision pursuant to which a public authority can buy out rights of user of a town or village green arising under that Act in relation to land which it itself owns. That is so however strong the public interest may now be that it should use the land for public purposes. Since in such a case the public authority already owns the land, it cannot use any power of compulsory purchase to eradicate inconsistent rights and give effect to the public interest, as would be possible if the land was owned by a third party. Although section 16 of the 2006 Act makes specific provision for “deregistration” of a green on application to the “appropriate national authority”, in relation to land which is more than 200 square metres in area the application must include a proposal to provide suitable replacement land: subsections (2), (3) and (5). This procedure is available to any owner of registered land, public or private; it is not designed to give effect to the public interest reflected in specific statutory provisions under which the land is held. Often it will be impossible in practice for a public authority to make a proposal to provide replacement land as required to bring section 16 into operation.

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65 In our view, applying section 15 of the 2006 Act as interpreted in the majority judgment in *Newhaven* [2015] AC 1547, LCC and NHS Property Services can show that there is statutory incompatibility in each of their respective cases. As regards the land held by LCC pursuant to statutory powers for use for education purposes, two points may be made. First, so far as concerns the use of Area B as a school playing field, that use engages the statutory duties of LCC in relation to safeguarding children on land used for education purposes. LCC has to ensure that children can play safely, protected from strangers and from risks to health from dog mess. The rights claimed pursuant to the registration of the land as a town or village green are incompatible with the statutory regime under which such use of Area B takes place. Secondly, however, and more generally, such rights are incompatible with the use of any of Areas A, B, C or D for education purposes, including for example construction of new school buildings or playing fields. It is not necessary for LCC to show that they are currently being used for such purposes, only that they are held for such statutory purposes (see *Newhaven*, para 96). The 2006 Act was not intended to foreclose future use of the land for education purposes to which it is already dedicated as a matter of law.

66 Similar points apply in the Surrey case. Although the non-statutory inspector found against the appellant on the statutory incompatibility issue, the registration authority failed to consider it. Gilbart J was satisfied that, within the statutory regime applicable in that case, there was no feasible use for health related purposes, and indeed none had been suggested. The Court of Appeal took a different view, but largely, as we understand it, on the basis that recreational use of the subject land would not inhibit the ability of NHS Property Services to carry out their functions on other land. We consider that Gilbart J was correct in his assessment on this point. The issue of incompatibility has to be decided by reference to the statutory regime which is applicable and the statutory purposes for which the land is held, not by reference to how the land happens to be being used at any particular point in time (again, see *Newhaven*, para 96).

67 As Lady Arden and Lord Wilson JJSC take a different view regarding the effect of the majority judgment in *Newhaven*, we should briefly explain why, with respect, we are not persuaded by their judgments. We are all in agreement that the outcome of these appeals turns upon the proper interpretation of the majority judgment in *Newhaven*. We cannot accept their interpretation of that judgment.

68 In our view, although the case might have been decided on narrower grounds, Lord Neuberger PSC and Lord Hodge JSC deliberately posed the relevant question in para 93 in wide terms, specifically in order to state the issue as one of statutory incompatibility as a matter of principle, having regard to the proper interpretation of the relevant statute pursuant to which the land in question is held. That is why the heading for the relevant section of their judgment is “Statutory incompatibility: statutory construction”. They say in terms in para 93, “The question of incompatibility is one of statutory construction.” Nowhere do they say it is a matter of statutory construction *and* an evaluation of the facts regarding the use to which the land has been put. According to their judgment, the issue of incompatibility is to be determined as a matter of principle, by comparing the statutory purpose for which the land is held with the rights claimed pursuant to the 2006 Act, not by having regard to the actual use to which the authority had put the land thus

- A far or is proposing to put it in future. We consider that this emerges from the critical para 93, and also from the paragraphs which follow in their judgment.
- 69 Thus, in para 94 they identify the relevant incompatibility as that between the 2006 Act and “the statutory regime which confers harbour powers on NPP to operate a working harbour”. In para 96, it is to that statutory incompatibility that they refer, not to incompatibility with any use to which NPP had as yet put the land in question or might in fact put it in the foreseeable future. As a matter of fact, the Beach had not been used for the applicable statutory purposes. Further, in our opinion, by stating in para 96 that it was not necessary for the parties to lead evidence as to NPP’s plans for the future of the harbour “in order to ascertain whether there is an incompatibility between the registration of the Beach as a town or village green and the use of the Harbour for the statutory purposes to which we have referred”, Lord Neuberger PSC and Lord Hodge JSC were seeking to emphasise, contrary to Lady Arden and Lord Wilson JJSC’s interpretation of their judgment, that what matters for statutory incompatibility to exist so as to prevent the application of the 2006 Act is a comparison with the relevant statutory powers under which the land is held, not any factual assessment of how the public authority might in fact be using or proposing to use the land.
- 70 The same point can be made about para 97, where Lord Neuberger PSC and Lord Hodge JSC said that it was unnecessary to consider evidence about actual proposed use of the land on the facts, since they were able to determine by looking at the statutory powers “that there is a clear incompatibility between NPP’s statutory functions in relation to the Harbour, which it continues to operate as a working harbour [i.e. to hold under the statutory powers referred to in para 94], and the registration of the Beach as a town or village green”. Their discussion at paras 98–100 of *New Windsor*, the *Trap Grounds* case and *Lewis* supports the same conclusion. In each of those cases the relevant land had been held for a very long period without actually being put to use which was inconsistent on the facts with use as a town or village green and without any proposal that it should be put to such use. The implication from what Lord Neuberger PSC and Lord Hodge JSC say about them is that if it had been shown that the land was held for specific statutory purposes which were incompatible with registration under the 2006 Act, that would have constituted statutory incompatibility which would have prevented registration. Their treatment of these cases cannot be reconciled with Lady Arden and Lord Wilson JJSC’s proposed interpretation of their judgment. We do not think that para 101 can be reconciled with that proposed interpretation either. In that paragraph Lord Neuberger PSC and Lord Hodge JSC contrast a case in which a public body might have statutory purposes to which it could in future appropriate the land (but has not yet done so) with the situation in *Newhaven* itself, where in the relevant period NPP held the Beach “for the statutory harbour purposes and as part of a working harbour” (i.e. under the statutory regime referred to in para 94). In our view they were there emphasising that what matters for a statutory incompatibility defence to arise is that the land in question should be held pursuant to statutory powers which are incompatible with registration as a town or village green. Nor, with respect, do we think that Lady Arden and Lord Wilson JJSC have offered any good answer to the points we have made at paras 61–64 above.

71 We also consider that the reading of *Newhaven* proposed by Lady Arden and Lord Wilson JJSC would undermine the very clear test which Lord Neuberger PSC and Lord Hodge JSC plainly intended to state. Instead of focusing on the question of the incompatibility of the statutory powers under which the relevant land is held, Lady Arden and Lord Wilson JJSC would introduce an additional factual inquiry into the actual use to which the authority is putting the land or proposes to put the land in the foreseeable future. Thus, Lady Arden and Lord Wilson JJSC would adopt from the English case of *Westmorland* [1958] AC 126 a test of what use could reasonably be foreseen for the land in question, even though Lord Neuberger PSC and Lord Hodge JSC say nothing to support that in the relevant part of their judgment. They refer to both English and Scottish cases on prescriptive acquisition as being relevant to their assessment of the correct approach to be adopted in interpreting the 2006 Act, and in each case only by way of broad analogy, as they explain at para 91. The Scottish cases they cite do not employ any such test as in *Westmorland* and are consistent with the clear principled test, based on statutory construction, which we understand Lord Neuberger PSC and Lord Hodge JSC to have laid down.

#### *Future use*

72 Finally, for completeness, we should mention briefly an issue which does not strictly arise within the scope of the appeals, but has been the subject of some discussion. That is the question whether, notwithstanding registration, there might be scope for use by the appellants of the land for their statutory purposes. This arises from a suggestion put forward in Lord Carnwath JSC's minority judgment in *Newhaven* [2015] AC 1547. He noted that in the *Trap Grounds* case [2006] 2 AC 674 it had not been necessary to consider the potential conflict between the general village green statutes and more specific statutory regimes, such as under the Harbours Acts. He said, at para 139:

“It is at least arguable in my view that registration should be confirmed if the necessary use is established, but with the consequence that the 19th century restrictions are imported subject only to the more specific statutory powers governing the operation of the harbour.”

73 Mr Edwards, supported by Mr Laurence, seeks to build on that tentative suggestion, taken with the principle of “equivalence” adopted in *Lewis* [2010] 2 AC 70. As he submits, the Supreme Court accepted that there should be equivalence between the use of the land for lawful sports and pastimes in the qualifying period (in that case subject to concurrent use as a golf course) and the extent of rights vested in local inhabitants after registration. That approach was taken a stage further by the Court of Appeal in *TW Logistics Ltd v Essex County Council* [2019] Ch 243, holding that the 19th century statutes, as applied to a registered modern green, are not to be construed as interfering with the rights of the landowner to continue pre-existing uses so far as not inconsistent with the uses which led to registration (per Lewison LJ, paras 63–82).

74 This is not a suitable occasion to examine the scope of the principle of equivalence, so far as it can be relied on to protect existing uses by the landowner. *Lewis* was a somewhat special case. Lord Brown of

A Eaton-under-Heywood JSC was able to draw on “[his] own experience both as a golfer and a walker for over six decades” (para 106) to attest to the feasibility of an approach based on “give and take” in that particular context. The same approach may not be so easy to apply in other contexts, and as applied to other forms of competing use. Permission has been granted for an appeal to this court in *TW Logistics*. That may, if the appeal proceeds, provide an opportunity for further consideration of this difficult issue. In any event, those cases were concerned with actual uses by the owners, not with potential uses for statutory purposes for which the land is held, as in the present cases.

B 75 In view of our conclusion that the land in each appeal should not have been found to be capable of being registered under the Act, the issue of what uses might have been open to a statutory owner if it were so registered does not arise, and we prefer to say no more about it on this occasion.

### Conclusion

76 For these reasons we would allow the appeals in both cases.

### LADY ARDEN JSC (dissenting in part)

D *Identifying the difference of view*

77 My views differ from those of Lord Carnwath and Lord Sales JJSC on these appeals in an important respect. My conclusion is that the question of incompatibility between two sets of statutory provisions (on this appeal, the provisions of the Commons Act 2006 and the statute authorising the holding of land by the public authority in question) involves an assessment of the facts as well as a proposition of law. The fact that a public authority holds land for statutory purposes which are incompatible with the use of the land as a town or village green (“TVG”), is not of itself sufficient to make the land incapable of being registered under the 2006 Act as a TVG. It must be shown that the land is in fact also being used pursuant to those powers, or that it is reasonably foreseeable that it will be used pursuant to those powers, in a manner inconsistent with the public’s rights on registration as a TVG. That requirement in my judgment follows from *R (Newhaven Port & Properties Ltd) v East Sussex County Council* [2015] AC 1547. References in this judgment to public authorities exclude public authorities which are subject to a statutory duty to carry out a particular function on specified land, identified by statute, where such land is sought to be registered as a TVG. Such authorities are outside the scope of this judgment.

### *Identifying the correct approach to questions of statutory inconsistency*

H 78 As a matter of constitutional principle, courts must approach the statute book on the basis that it forms a coherent whole. That means that, when interpreting legislation, courts must, in the absence of an indication of some other intention by Parliament, strive to ensure that the provisions work together and apply so far as possible to their fullest extent, such extent being judged according to the intention of Parliament demonstrated principally in the words used. (We have not been shown any other admissible evidence as to Parliament’s intention, such as ministerial statements in Hansard.) The courts cannot simply decline to enforce parts of a statute because there may

**IN THE MATTER OF LAND AT MAES Y FFYNNON, BONVILSTON, VALE OF  
GLAMORGAN**

**IN THE MATTER OF AN APPLICATION UNDER S.15(2) COMMONS ACT 2006**

**APPLICATION NO: 01/2019/VG50**

**MAES Y FYNNON RESIDENTS ASSOCIATION**

**and**

**ST NICHOLAS AND BONVILSTON COMMUNITY COUNCIL**

**APPLICANT**

**-and-**

**VALE OF GLAMORGAN COUNCIL**

**OBJECTOR**

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## COMMONS ACT 2006

### APPLICATION UNDER SECTION 15 TO REGISTER LAND AS A TOWN OR VILLAGE GREEN

#### LAND AT MAES Y FFYNNON, BONVILSTON

#### NOTICE OF OBJECTION

##### Background/Introduction

1. The Vale of Glamorgan Council (**'the Council'**) (acting through the Environment and Housing Services Department – Housing Services Division) wishes to object to the application made to register land at Maes Y Ffynnon, Bonvilston (**'the Land'**) as town or village green (**'TVG'**). This objection is made by the Council in its capacity as landowner. The Council is separately represented in its capacity as town and village green registration authority for the county borough area under the Commons Act 2006. All references to the Council in this notice of objection refer to the Council in its capacity as landowner. References to 'Registration Authority' are references to the Council acting in that capacity.
2. As stated, the Council is the owner of the Land at Maes Y Ffynnon, Bonvilston. The Council's predecessor authority Cardiff Rural District Council acquired the Land by way of a conveyance dated 09 January 1956 (**'the 1956 Conveyance'**). The 1956 Conveyance states that the Land is purchased in exercise of the powers given to Cardiff Rural District Council by the Local Government Act 1933, the Housing Act 1936 and other unspecified powers.
3. The Land was subsequently appropriated to housing and developed as a housing estate with ancillary roads and open space areas in accordance with Cardiff Rural District Council's powers under the Housing Act 1936.
4. The Land is registered in the name of the Council at Land Registry under title number CYM410667 where it is described as land at Maes Y Ffynnon, Bonvilston. The Land comprises a former garage site, roadway and grassed open space areas.

5. The application to register the Land as TVG was made on behalf of the residents of the Maes Y Ffynnon Residents Association together with St Nicholas and Bonvilston Community Council ('**the Applicant**') on the 23 May 2019 ('**the Application**'). The Registration Authority notified the Council of Application to register the Land as TVG on the 13 September 2019. The Registration Authority has provided the Council with a copy of the Application.
6. The Council has submitted a planning application to the Local Planning Authority for the development of 10 affordable housing units on a 0.3ha part of the Land to the north of the existing housing at Maes y Ffynnon. The proposed development lies within the settlement boundary of Bonvilston and is situated on land which can be considered a mix of previously developed land and open space. The loss of open space under the proposal is 0.18ha and therefore, a significant part of the existing open space will be retained despite the proposed development. It is believed that the Application is an attempt to frustrate this development.

#### **Basis for Objection, Legal Framework and Application of Legal Framework**

7. As stated above, the Council wishes to object to the Application and believes that the Application should be refused by the Registration Authority in its entirety and further, that no public inquiry should be necessary on the basis of the following.
8. Before addressing the Council's substantive objection, it should be noted that parts of the Land are intersected and covered by roadway, pathway and disused garages. Most of the roadway is adopted highway and therefore cannot be registered as TVG because use of this part by the public is by legal right.
9. Furthermore, any use that may not be considered lawful for highway purposes could not be reasonably discernible to a landowner so as to give rise to public usage sufficient for a TVG application. Consequently, such use would be incompatible with this part of the Land being TVG in any event.
10. In a similar vein, it is asserted by the Council that the parts of the Land covered by unadopted roadway/pathway and disused garages do not have the physical characteristics or purpose to be included in a TVG application. The use of the

former disused garage site (including access to it and the car parking area) would have been with the Council's permission and the inclusion of these parts of the Land are therefore incompatible with a TVG application also.

11. Moving onto the substantive legal objection to the Application.
12. The Application is made pursuant to section 15(1) of the Commons Act 2006 ('the 2006 Act') on the basis that section 15(2) of the 2006 Act applies. The relevant criteria to be established is therefore whether "*a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years; and they continue to do so at the time of the application*".
13. The burden of proving that the Land has become TVG lies with the Applicant. All the criteria required to establish that the Land has become TVG must be properly and strictly proved by the Applicant on the balance of probabilities. The case law for this is *Beresford* (although *Beresford* has been overruled by *Barkas* – see below - it was not done so on this particular point which remains good law.
14. The Council is not disputing the criteria that a 'significant number of inhabitants' have used parts of the Land for 'lawful sports and pastimes' for a period of 'at least 20 years' and 'continue to do so'. Instead this is relied upon in support of its objection to the Application.
15. The Council's objection to the Application is on the basis that the use of the Land for lawful sports and pastimes by local inhabitants has been 'by right' (i.e. in exercise of a legal right to do so) and not 'as of right' within the meaning of section 15(2) of the 2006 Act (i.e. without permission, force or secrecy).
16. Accordingly, the Council maintains that the statutory criteria under the 2006 Act has not been met or correctly asserted by the Applicant.
17. The legal framework in support of the Council's objection are the cases *R (Beresford) v Sunderland City Council* (2004) 1 AC 889 ('*Beresford*') and *Barkas v North Yorkshire County Council* (2012) EWCA Civ 1373 ('*Barkas*').

18. In *Beresford*, the House of Lords gave strong guidance - albeit *obiter* - that where user is pursuant to a legal right, it cannot be user 'as of right' as required under section 15(1) of the Commons Act 2006. Following this, and more recently, it was accepted in *Barkas* that *Beresford* is authority for the proposition that there is a distinction between use of land 'by right' and use of the land 'as of right'.
19. The Supreme Court's decision in *Barkas* is the leading case on 'by right' use. The Court held that recreational land provided and maintained by a local authority pursuant to section 12 of the Housing Act 1985 or its statutory predecessors was used by the public 'by right' and not 'as of right' within the meaning of section 15 of the 2006 Act. Therefore, if local inhabitants are indulging in lawful sports and pastimes on land 'by right' and not 'as of right' an application to register land as TVG will fail.
20. It further held that a recreation ground provided for public use by a local authority pursuant to any of its statutory powers would similarly be used by the public 'by right' and not 'as of right'. Where land is held by a local authority for the statutory purpose of recreation, and members of the public then use the land for that purpose, then they so use it pursuant to a statutory right to do so. They are accordingly not trespassers, which is a pre-requisite of land being used 'as of right'. A use 'by right' was instead found to be *precario*.
21. In applying the established legal principles derived from *Barkas* specifically to the Land and this Application, please note the following.
22. When the Land was acquired by Cardiff Rural District Council (a predecessor in title of the Council and itself a creature of statute) in 1956 it was by virtue of the 1956 Conveyance and as stated above, in exercise of the powers given to the Rural District Council by the Local Government Act 1933, the Housing Act 1936 and other unspecified powers.
23. Following this, the Rural District Council developed the housing on this part of Maes Y Ffynnon and duly laid out road, open space and other facilities ancillary to the housing development on the Land.
24. It is apparent from the evidence contained in the Application itself that this was done and that since that time, it has been held and managed by the Council as housing land pursuant to the powers conferred on it (and its predecessor

authorities) by sections 79 and 80 of the Housing Act 1936 and in accordance with any subsequent housing legislation.

### **Conclusion**

25. It is therefore proper to assume that the Council has been holding the Land for recreational purpose and associated amenity areas connected with the housing located at Maes Y Ffynnon and for the benefit of the residents. Therefore, any use of that part of the Land that is actually open space by the public for lawful sports and pastimes has been 'by right' and not 'as of right'.
  
26. It is furthermore proper to assume that the local inhabitants i.e. the residents of Maes Y Ffynnon, have had a statutory right to use the Land since it was acquired by the 1956 Conveyance and requirements of section 15(1) of the Commons Act 2006 in connection with the registration of the Land as TVG are therefore, not met and for the reasons stated in this notice, the Application must fail.

### **Further grounds**

27. The Council reserves the right to add to and amplify these grounds for objection at a later stage if required.

Jocelyn Ham, solicitor on behalf of the Council

Date: 04 December 2019.



Date/Dyddiad 9 May 2019  
Ask for/Gofynnwch am James Docherty  
Telephone/Rhif ffôn 01446 709781

The Vale of Glamorgan Council  
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Your Ref/Eich Cyf

My Ref/Cyf JDD/TVG

**Chair of St Nicholas with Bonvilston  
Community Council**  
F Spriggs  
Sarn Bach Bungalow  
St Nicholas  
Vale of Glamorgan  
CF5 6SG

Dear Sirs

**RE: VILLAGE GREEN APPLICATION, MAES Y FYNNON, BONVILSTON**

Please find attached a copy of the letter sent today to MYFRA the contents of which are self explanatory.

For the avoidance of doubt, copies of the submitted documents being returned are not included within this letter

Yours faithfully

**James Docherty**  
**Senior Lawyer**  
**FOR - OPERATIONAL MANAGER, LEGAL SERVICES**





Date/Dyddiad 9 May 2019  
Ask for/Gofynwch am James Docherty  
Telephone/Rhif ffôn 01446 709781

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Your Ref/Eich Cyf

My Ref/Cyf

JDD/TVG

**Maes Y Fynnon Residents Association**  
c/o 21 Maes Y Fynnon  
Bonvilston  
Vale of Glamorgan  
CF5 6TT

Dear Sirs

**RE: VILLAGE GREEN APPLICATION, MAES Y FYNNON, BONVILSTON**

We write further to your letter dated 23<sup>rd</sup> April 2019 received by us on 24<sup>th</sup> April 2019 which enclosed your Village Green Application and supporting documents.

We are currently unable to process your application as it has not been duly made. The Application Form and supporting documents submitted are deficient as it does not sufficiently identify the locality or neighbourhood within the locality to which the claimed green relates.

In Part 6 of the submitted Form 44 ("the Application Form") the response is:

"The locality is within the Vale of Glamorgan Maes y Fynnon, Bonvilston  
Map outlining this area is included."

It is unclear from the answer given as to whether you are defining the locality or neighbourhood within a locality as:

1. Maes Y Fynnon, Bonvilston; or
2. Bonvilston.

Reference is made to a map identifying the locality, however the only map included is that showing the land claimed as a village green itself as appended to the Statutory Declaration with reference to Part 5 of the Application. We attach a copy of the Welsh Government Guidance and would note the content of Note 5 paragraphs 27-30 which expand on this point.

We now return the original application along with the supporting files.

Yours faithfully

A handwritten signature in black ink, appearing to be 'James Docherty'.

**James Docherty**  
**Senior Lawyer**

**FOR - OPERATIONAL MANAGER, LEGAL SERVICES**  
cc. St Nicholas with Bonvilston Community Council



Date/Dyddiad 9 May 2019  
Ask for/Gofynwch am James Docherty  
Telephone/Rhif ffôn 01446 709781

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Your Ref/Eich Cyf

My Ref/Cyf JDD/TVG

**Clerk to St Nicholas with Bonvilston  
Community Council**

N. McGarrigle  
2 Maes Illtuds  
Pentre'r Cwrt  
Llantwit Major  
Vale of Glamorgan  
CF61 2SD

Dear Sirs

**RE: VILLAGE GREEN APPLICATION, MAES Y FYNNON, BONVILSTON**

Please find attached a copy of the letter sent today to MYFRA the contents of which are self explanatory.

For the avoidance of doubt, copies of the submitted documents being returned are not included within this letter

Yours faithfully

A handwritten signature in black ink, appearing to be 'JD'.

**James Docherty  
Senior Lawyer  
FOR - OPERATIONAL MANAGER, LEGAL SERVICES**



**Number: WG36284**



Welsh Government

**Guidance Document**

**Section 15 of the Commons Act 2006**

**Guidance notes for the completion of an application for  
the registration of land as a Town or Village Green**

Mae'r ddogfen yma hefyd ar gael yn Gymraeg.

This document is also available in Welsh.

ISBN 978-1-78964-347-3

## COMMONS ACT 2006 — SECTION 15

### Guidance Notes for the completion of an Application for the Registration of land as a Town or Village Green Introduction

1. These non-statutory guidance notes are designed to help you to complete a form to register land in Wales as a town or village green under section 15(1) or 15(8) of the Commons Act 2006 (“the 2006 Act”).

**2. The registration of town or village greens is a complex area of law and the courts have been asked to rule on the law on a number of occasions. We expect they will continue to do so and this guidance is not, and should not be regarded as, definitive. All applicants are strongly advised to seek their own independent legal advice before proceeding with an application.**

3. Your application must be made using form 44, as required by The Commons (Registration of Town or Village Greens) (Interim Arrangements) (Wales) Regulations 2007 [SI 2396 (W198)], and which regulations set out the information required in an application. Your application must be submitted to the commons registration authority (“the registration authority”) for your area and, while that authority will be able to advise you on completing the application form and the procedures involved, it will not be able to advise you on the quality of the evidence or the merits of your application.

4. The Planning (Wales) Act 2015 (“the 2015” Act) made a number of significant changes to the law on registering new town and village greens under the 2006 Act. Section 53 of the 2015 Act amended section 15C of the 2006 Act so it applies in relation to Wales and inserted Schedule 1B into the 2006 Act. These provisions, which commenced on 22 October 2018 under The Planning (Wales) Act 2015 (Commencement No.5 and Transitional Provisions) Order 2018, exclude the right to apply for the registration of land in Wales as a town or village green where a trigger event has occurred in relation to the land. The right to apply for registration of the land as a green remains excluded unless a terminating event occurs in relation to the land. Trigger and terminating events are set out in Schedule 1B to the 2006 Act. Applications under Section 15(1) sent before 22 October 2018 are unaffected by the changes.

5. Section 52 of the 2015 Act amended Section 15A of the 2006 Act so it applies in relation to Wales. This, along with Section 15B of the 2006 Act, introduces a new mechanism for the deposit of “landowner statements” and the registers in which information relating to such statements and their accompanying maps will be recorded. These provisions came into force on 22 October 2018. The deposit of such a statement by a landowner with a commons registration authority brings to an end any period during which recreational use “as of right” has taken place on the land to which the statement relates. Such a deposit does not prevent the accrual of any future period of use “as of right”, however, subsequent landowner statements can be deposited to interrupt future periods of such use.

6. The Town and Village Greens (Landowner Statements) (Wales) Regulations 2018, which commenced on 22 October 2018, prescribe a form which can be used by landowners to deposit a “landowner statement” under Section 15A(1) of the 2006 Act.

7. You can find a copy of the legislation mentioned above and the associated explanatory notes at [www.legislation.gov.uk](http://www.legislation.gov.uk).

8. In this guidance we refer to different provisions contained in Section 15. For example, Section 15(1) means subsection (1) of Section 15 (i.e the first part of Section 15 marked with (1)).

### **Further Guidance**

9. This guidance only provides an overview of the legislation and procedures for an application to register a new green.

10. Guidance on Sections 15A and 15B (landowner statements and their registers) and 15C and Schedule 1B of the 2006 Act (exclusion of the right to apply to register land as a town or village green) has been published. It is aimed at Commons Registration Authorities not applicants; however, it provides a detailed explanation of the legislative changes and how they work.

11. The Open Spaces Society is a source of useful information on town and village greens and produces a number of helpful publications on the subject. The Society can be contacted at 25A Bell Street, Henley-on-Thames, Oxon RG9 2BA, tel: 01491 573535, [www.oss.org.uk](http://www.oss.org.uk).

### **Registration authorities**

12. You must apply to the registration authority for the area of land which you want to register as a town or village green. This is the county or county borough council. If the land comes under the jurisdiction of more than one registration authority we suggest that you apply to the registration authority within whose area the majority of the land lies. If that is incorrect the registration authority will advise you.

13. In Wales a number of registration authorities have made arrangements for another neighbouring registration authority to deal with applications for registration of greens in its own area. Where this occurs, your registration authority will pass on your application to the other authority.

### **Who may apply for registration**

14. Anyone may apply to register land as a green meeting the criteria in Section 15(1) of the Act, provided the right to apply has not been excluded in relation to the land under section 15C(1). The right to apply for registration of a town or village green is excluded when a trigger event has occurred within the planning system in

relation to the land. However, this exclusion does not apply to an application to register land as a town or village green which is submitted to the relevant Commons Registration Authority before 22 October 2018. The trigger and terminating events are prescribed in Schedule 1B to the 2006 Act. If the right to apply for registration of a green is excluded in relation to the land you wish to register then the registration authority cannot consider any application to register that land unless and until a terminating event which corresponds to the trigger event occurs in relation to that land.

15. Annex B sets out Schedule 1B to the 2006 Act in full and describes the relevant trigger and terminating events.

### **Note 3. Qualifying criteria for registration (applications under section 15(1) only)**

16. Your application must show that use of the land meets the criteria for registration that are set out in one of section 15(2), section 15(3) or section 15(4). These criteria are alternatives, so you will need to see which one of them (if any) applies to your particular circumstances.

17. Whether you apply under section 15(2), 15(3) or 15(4), your application must show that a significant number of local people have indulged in lawful sports or pastimes 'as of right' (i.e. without permission, force or secrecy) on the land for at least 20 years. These requirements reflect the ancient law of custom, where such a pattern of use created a presumption that the local inhabitants had established recreational rights over the land. You should look very carefully at the criteria for registration in the Annex to this guidance.

#### Significant number of the inhabitants

18. The criteria require that a 'significant number of the inhabitants' have indulged in lawful sports and pastimes on the land. The courts have previously considered the interpretation of this requirement and in the case of *R v Staffordshire County Council ex parte Alfred McAlpine Homes Ltd* [2002] the High Court provided some useful guidance as to what 'a significant number' might mean. The court did not accept that 'significant' in this context would mean a considerable or substantial number but that the number of people using the land had to be sufficient to signify that the land was in general use by the local community.

#### Period of use

19. Your application will be examined by the registration authority against the criteria in section 15(2), 15(3) or 15(4) as you have indicated on the form.

20. If you apply under section 15(2) the land must have been used 'as of right' for 20 years or more before the application and the use must be continuing at the time you apply.

21. Under section 15(3) you must apply within two years of the end of recreational use 'as of right' for 20 years or more.

22. Under section 15(4), as a temporary arrangement, you must apply within five years of the end of recreational use 'as of right', providing that it ended before 6 September 2007. In this case only, however, there are special arrangements which apply in the case of planning permission affecting the land which was granted before 23 June 2006 and where subsequent construction works were carried out on the land (see below).

#### Statutory closures

23. In deciding whether there has been 20 years use 'as of right' of the land, you should not take any account of any period of statutory closure of the land (i.e. where access to the land is forbidden because of temporary special restrictions imposed by a local authority or the Government). Examples of this would be where the area of land is closed by order during an outbreak of foot-and-mouth disease. If your application is subject to any period of closure under this provision you will need to state clearly in the application form which period of time is to be disregarded for this purpose.

#### Permission for use of land

24. In some cases a landowner may grant permission for use of their land after there has already been 20 years use of the land 'as of right'. If that happens then section 15(7) says the grant of permission does not stop continuing use of the land being regarded 'as of right'. There is then no time limit by which you must make an application for registration, unless the landowner takes further steps to challenge use (such as by fencing off the land to prevent access).

25. In other cases where use of the land 'as of right' has ended (such as where the land is fenced off or an injunction is obtained against trespassers) you must seek registration within the time limits in section 15(3) or 15(4), otherwise the land will no longer be eligible for registration. We recommend that you apply to register land as a green as soon as reasonably practicable in all cases. If it becomes clear during the course of the registration authority's investigation of the application that it is necessary for you to rely on different qualifying criteria, then it is Welsh Government's view that the application may be amended to reflect the alternative criteria.

#### **Note 4. Land descriptions and plans**

26. You must include a map and description of the land claimed for registration as a town or village green with your application. (Exceptionally, if your application relates to the whole of an area of land already registered as common land, your application need not include a map of the land but you must include the register unit number). You must use an Ordnance Survey map, on a scale of not less than 1:2,500, and you must show the land which you want to register by means of distinctive colouring sufficiently to enable it to be identified by the registration authority (a coloured edging inside the boundary of the land may be the best method). The map must also

be marked as an exhibit to the statutory declaration which accompanies the application (see Note 9 below). Further information about how to obtain Ordnance Survey large scale maps can be found on the internet at [www.ordnancesurvey.co.uk](http://www.ordnancesurvey.co.uk) or by calling 03456 050505.

### **Note 5. Locality or neighbourhood within a locality**

27. You will need to provide a statement or map to identify the locality or neighbourhood within the locality to which the local use of the claimed green relates. In the House of Lords ruling in *Oxfordshire County Council v Oxford City Council and Robinson* (the *Trap Grounds* case) Lord Hoffman expressed the view that any 'locality or neighbourhood within a locality' need not be wholly within a single locality and concluded that it means 'within a locality or localities'.

28. You may sometimes find it difficult to precisely define the neighbourhood or locality and you will need to consider all of the evidence you have to support your case very carefully. You may not be able to specify the neighbourhood or locality by reference to a recognised administrative area, such as a community or electoral ward, and there may not be an obvious geographical characteristic, such as a geographically self-contained village or a particular street. If that is the case then you should instead include a map showing what you believe to be the neighbourhood or locality.

29. If you are applying to register your land voluntarily as a green it is up to you to decide how to define the locality or neighbourhood.

30. In either case, the Welsh Government's view is that, in relation to any land registered as a green, only the inhabitants of the defined locality or neighbourhood will have the legal right to indulge in sports and pastimes over the green.

### **Note 6. Grounds of application and evidence**

31. If your application is made under section 15(1) of the Act you will need to ensure that **all** of the evidence you have to support the nature and extent of use of the land 'as of right' is provided to the registration authority so that it can consider that evidence to see whether the land qualifies for registration. Witness statements, witness forms of evidence and photographs are likely to be helpful to your case. A sample of an evidence questionnaire to use in support of your claim can be obtained from the Open Spaces Society (see note 13 below).

32. You should set out in your application, as briefly as possible, a summary of the case for registration and provide, on separate paper, a fuller statement of the facts supporting the claim - including information on the nature of the activities that have taken place on the land, an estimate of the number of people undertaking these activities, and how this use has been 'as of right'. The registration authority can ask you to provide further evidence in support of the application if it considers this reasonable.

33. Remember that the registration authority may decide to hold a hearing or inquiry into your application. The purpose of the inquiry will be to establish and test the evidence for and against registration of the land. It may be helpful to your case if people are able to attend the hearing or inquiry to give evidence in person (even if similar evidence has been given in writing). Anybody attending the hearing or inquiry may be questioned about their evidence by the person in charge or by objectors to the application (this is known as cross-examination).

**Note 7. Voluntary registration (applications under section 15(8) only)**

34. If you are the owner of land you may apply under section 15(8) to register it voluntarily as a green. You cannot do this unless you have first obtained the consent of any lease or charge holder of the land, such as a tenant or a mortgagee. You must provide evidence that any 'relevant leaseholder' and proprietor of any 'relevant charge' over the land consent to the application. These terms are defined in section 15(9) and (10) of the Act (see Annex to these notes). In such cases you will need to consult these people in advance of the application to inform them of your intention to seek voluntary registration. They will need to provide you with a signed document which includes their name and address, a statement of the nature of their relevant interest in the land and their formal consent to the application.

35. You will need to confirm in the statutory declaration that:

- you, the applicant, are the owner of the land and are applying to register the
- land as a green; and

either

- you have obtained and included with the declaration all necessary consents from the relevant leaseholder or proprietor of any relevant charge over the land;

or

- where no such consents are necessary, that no such consents are required.

36. In some cases the registration authority may decide to ask you for further evidence of your ownership before it accepts your application to register the land as a green.

**Note 8. Supporting documents**

37. You must include with your application the original or (preferably) a copy of every document which might be relevant to the application which is in your possession or control (even if it would not be helpful to your application) or which you can require to be produced. You are recommended not to forward the original of any deed or other private document but should, instead, enclose a copy, preferably endorsed with a certificate signed by a solicitor that it has been examined against the original - in

such a case you should indicate, either on the copy itself or on the application form, who has the original and where it may be inspected. If any related document is believed to exist, but neither the original nor a copy can be produced, this should be mentioned in part 12 of the application where you should describe the missing document and explain why it cannot be produced. Any inquiry or hearing into the application may ask that the original document is produced.

### **Note 9. Statutory Declaration**

38. The statutory declaration must be made before a justice of the peace, practising solicitor, commissioner for oaths or notary public. (You may be asked to pay a fee for this service.) Each map accompanying the application and referred to in the statutory declaration must be marked as an exhibit and signed by the officer taking the declaration (initialling is insufficient). A map is marked by writing on the face in ink an identifying symbol such as the letter 'A'. If there is more than one map a different identifying letter must be used for each. On the back of the map it must state

*"this is the exhibit marked 'A' referred to in the statutory declaration of (name of declarant) made this (date) before me (signature and qualification)".*

39. You are responsible for telling the truth in presenting the application and accompanying evidence and should be aware that your signature of the statutory declaration is a sworn or affirmed statement of truth to that effect. It is a criminal offence to deliberately provide misleading or untrue evidence and if you do so you may be prosecuted.

### **Note 10. Action by the registration authority in deciding an application**

40. The notes in this section provide some guidance on what will happen to your application after you have sent it to the registration authority.

#### Where the application is made under section 15(1)

41. The registration authority will give a valid delivery date to your application when you send it to the registration authority. The delivery date may be important because it is the date against which the time limits on applications in section 15(3) and 15(4) apply. The registration authority will formally acknowledge receipt of your application and if a receipt is not received within ten working days you should contact the registration authority. Sometimes the registration authority may decide that the application is incomplete or otherwise unacceptable but consider that it could be put right. If that happens, the registration authority may return the application to you and allow you to amend and resubmit it with the necessary changes.

42. The registration authority will now look carefully at the evidence in your application. It may decide that your application cannot be accepted (because the evidence is clearly insufficient to support the application) and will reject your application without taking any further steps.

41. Otherwise, the registration authority will publicise your application (for example, by sending notice of the application to the landowner and publishing the notice in the local newspaper) and consider it further in the light of any objections received. You will be supplied with copies of all objections which are to be considered and will have a reasonable opportunity of answering them. If you ask to make any significant amendments to your application at this stage, and the registration authority agrees to accept the amendments, it may be necessary for the authority to publicise the case again.

42. The registration authority may decide to inquire into the application. This may take the form of a hearing before an officer of the authority or of a neighbouring authority, or the case may be heard before a committee of the authority. Alternatively, an independent inspector may be asked to conduct a public inquiry. A hearing or inquiry is particularly likely if the registration authority or another local authority owns the land so that the evidence may be tested impartially. The Court of Appeal has ruled that in determining applications where there is a dispute the registration authority should consider convening such a hearing or inquiry.

43. Lord Hoffman also expressed the view in the *Trap Grounds* case that the registration authority has no duty to look for evidence or to help present the applicant's case in the best way. It is entitled to deal with the application and the evidence as presented by the parties. The registration authority will inform you whether the application has been accepted or rejected. If it is accepted the land will be registered as a town or village green and you will be supplied with particulars of the registration. If it is rejected you will be notified of the rejection.

#### Where the application is made under section 15(8)

44. The registration authority will formally acknowledge receipt of your application. If a receipt is not received within ten working days you should contact the registration authority. If the registration authority is satisfied that your application is properly made the land will be registered as a town or village green and you will be supplied with particulars of the registration. A properly made application cannot be rejected but it may be returned if you appear not to be the owner of the land, if the necessary consents have not been obtained, or the application is otherwise incomplete.

45. Section 24 of the 2006 Act enables the Welsh Ministers to make regulations setting out further or more detailed steps to be taken by applicants and registration authorities in relation to the making and determination of applications for registration. These will not be introduced until a later date, however, when other changes to the registration system for common land and greens are brought into force.

#### **Note 11. Amendment of an application and part registration**

46. The House of Lords judgment in the *Trap Grounds* case considered a number of procedural questions about the registration of greens. The House concluded that registration authorities can exercise discretion in accepting amendments to an application form or register only part of the area of land claimed if only that part meets the registration criteria.

### **Note 12. Repeated and withdrawn applications**

47. You may decide to resubmit your application for registration should you consider that you have significant new evidence that supports your case or that new legal criteria or case law have changed the position. In our opinion the registration authority is required to consider a revised application but under common law principles it would be able to summarily reject repeated successive applications if they fall outside of the time limits in section 15 or are substantially the same as previous applications and do not raise any new issues for consideration. Registration authorities can also exercise discretion in allowing applicants to withdraw an application and subsequently resubmit an amended case.

### **Note 13. Further guidance**

48. The Open Spaces Society is a source of useful information on town and village greens and produces a number of helpful publications on the subject including *Getting Greens Registered — a guide to the law and procedure for town and village greens*, and *Our Common Land — the law and history of common land and village greens*. The Greens guide also includes an evidence questionnaire to use in support of a claim for registration. The Society can be contacted at 25A Bell Street, Henley-on-Thames, Oxon RG9 2BA, telephone 01491 573535, website: [www.oss.org.uk](http://www.oss.org.uk)

## **Annex A**

### **Guidance Notes for the completion of an Application for the Registration of land as a Town or Village Green**

#### **Commons Act 2006 — Text of section 15**

##### **15 Registration of greens**

- (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 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.
- (3) This subsection applies where—
- (a) a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years;
  - (b) they ceased to do so before the time of the application but after the commencement of this section; and
  - (c) the application is made within the period of two years beginning with the cessation referred to in paragraph (b).
- (4) This subsection applies (subject to subsection (5)) where—
- (a) a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years;
  - (b) they ceased to do so before the commencement of this section; and
  - (c) the application is made within the period of five years beginning with the cessation referred to in paragraph (b).
- (5) Subsection (4) does not apply in relation to any land where—
- (a) planning permission was granted before 23 June 2006 in respect of the land;
  - (b) construction works were commenced before that date in accordance with that planning permission on the land or any other land in respect of which the permission was granted; and
  - (c) the land—
    - (i) has by reason of any works carried out in accordance with that planning permission become permanently unusable by members of the public for the purposes of lawful sports and pastimes; or
    - (ii) will by reason of any works proposed to be carried out in accordance with that planning permission become permanently unusable by members of the public for those purposes.
- (6) In determining the period of 20 years referred to in subsections (2)(a), (3)(a) and (4)(a), there is to be disregarded any period during which access to the land was prohibited to members of the public by reason of any enactment.

(7) For the purposes of subsection (2)(b) in a case where the condition in subsection (2)(a) is satisfied—

(a) where persons indulge as of right in lawful sports and pastimes immediately before access to the land is prohibited as specified in subsection (6), those persons are to be regarded as continuing so to indulge; and

(b) where permission is granted in respect of use of the land for the purposes of lawful sports and pastimes, the permission is to be disregarded in determining whether persons continue to indulge in lawful sports and pastimes on the land "as of right".

(8) The owner of any land may apply to the commons registration authority to register the land as a town or village green.

(9) An application under subsection (8) may only be made with the consent of any relevant leaseholder of, and the proprietor of any relevant charge over, the land.

(10) In subsection (9)—

"relevant charge" means—

(a) in relation to land which is registered in the register of title, a registered charge within the meaning of the Land Registration Act 2002 (c. 9);

(b) in relation to land which is not so registered—

(i) a charge registered under the Land Charges Act 1972 (c. 61); or

(ii) a legal mortgage, within the meaning of the Law of Property Act 1925 (c. 20), which is not registered under the Land Charges Act 1972;

"relevant leaseholder" means a leaseholder under a lease for a term of more than seven years from the date on which the lease was granted.

## Annex B

Trigger and terminating events as set out in Schedule 1B to the 2006 Act.

| <i>Trigger Events</i>  | <i>Terminating Events</i>  |
|--|--|
| <p>1. An application for planning permission for development of the land is granted under the 1990 Act, or a direction that planning permission for development of the land is deemed to be granted is given under section 90 of that Act.</p> | <p>(a) Where the planning permission is subject to a condition that the development to which it relates must be begun within a particular period, that period expires without the development having been begun.</p> <p>(b) On the expiry of the period specified in a completion notice, the planning permission ceases to have effect in relation to the land by virtue of section 95(4) of the 1990 Act.</p> <p>(c) An order made by the local planning authority or the Welsh Ministers under section 97 of the 1990 Act revokes the planning permission or modifies it so that it does not apply in relation to the land.</p> <p>(d) The planning permission is quashed by a court.</p>   |
| <p>2. A local development order which grants planning permission for operational development of the land is adopted for the purposes of paragraph 3 of Schedule 4A to the 1990 Act.</p>  | <p>(a) The permission granted by the order for operational development of the land ceases to apply by virtue of a condition or limitation specified in the order under section 61C(1) of the 1990 Act.</p> <p>(b) A direction is issued under powers conferred by the order under section 61C(2) of the 1990 Act, with the effect that the grant of permission by the order does not apply to operational development of the land.</p> <p>(c) The order is revised under paragraph 2 of Schedule 4A to the 1990 Act so that it does not grant planning permission for operational development of the land.</p> <p>(d) The order is revoked under section 61A(6) or 61B(8) of the 1990 Act.</p> <p>(e) The order is quashed by a court.</p> |

3. An order granting development consent for development of the land is made under section 114 of the 2008 Act.

(a) The order granting development consent ceases to have effect by virtue of section 154(2) of the 2008 Act.

(b) An order made by the Secretary of State under paragraph 2 or 3 of Schedule 6 to the 2008 Act changes the order granting development consent so that it does not apply in relation to the land.

(c) An order made by the Secretary of State under paragraph 3 of Schedule 6 to the 2008 Act revokes the order granting development consent.

(d) The order granting development consent is quashed by a court.

## **Extract from the Commons Act 2006 Explanatory Notes**

### **Section 15 Registration of greens**

87. Section 15 sets out the circumstances in which land may be newly registered as a town or village green. It is derived from, but varies in certain respects from, the definition of a town or village green in section 22(1), (1A) and (1B) of the 1965 Act. (There is no substantive distinction in law between a 'town' and a 'village' green: these terms merely reflect the physical setting of a green.) *Subsection (1)* provides that in qualifying circumstances, any person may apply to the commons registration authority to register land as a green. *Subsections (2), (3) and (4)* set out the three alternative qualifying circumstances.

88. The first case (*subsection (2)*) is where a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years, and continue to do so at the time of the application. 'As of right' has been defined in case law as meaning openly, without force, and without permission. The reference to "a locality" does not necessarily connote a defined area for administrative purposes, such as a parish, and the phrase "any neighbourhood within a locality" means in effect 'any neighbourhood within one or more administrative areas'.

89. The second case (*subsection (3)*) is where a significant number of such inhabitants indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years which ceased after commencement of section 15, and the application is made within two years of this cessation.

90. The third case (*subsection (4)*) is where a significant number of such inhabitants indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years which ceased before commencement of section 15, and the application is made within five years of this cessation. Land is not covered by this third case (because of *subsection (5)*) if three conditions are all met:

- planning permission was granted in respect of the land before 23 June 2006;
- before that date, construction works were commenced in accordance with the permission on that land, or on any other land covered by the permission; and
- the land either has become, or will become, permanently unusable by the public for lawful sports and pastimes as a result of works carried out in accordance with that planning permission.

91. *Subsections (6) and (7)* amplify how *subsections (2) to (4)* are to work.

*Subsection (6)* provides that any period during which access to the land was prohibited by reason of any enactment is to be disregarded in the calculation of the 20 year period. *Subsection (7)* makes provision about when use is to be regarded as continuing for the purpose of *subsection (2)(b)*.

92. *Subsection (8)* enables the owner of any land to apply voluntarily for its registration as a green, without having to show that there has first been 20 years' qualifying use of it by local inhabitants. *Subsection (9)* requires the consent to such an application of any 'relevant leaseholder', and of the proprietor of any 'relevant charge' over the land, thereby protecting these parties' interests in the land. Both of these terms are defined in *subsection (10)*.

## Docherty, James

---

**From:** loumol <loumol@sky.com>  
**Sent:** 09 September 2019 18:52  
**To:** Docherty, James  
**Subject:** Village Green Maes Y Ffynnon

Dear James

Further to our conversation this morning and exchanges around the Village Green in Maes Y Ffynnon, Bonvilston, since April 23rd 2019. Could you please provide me with clarity of where you are in processing the application? I have sent this from my personal email, in case you were unable to contact me at the address I provided you with earlier today.

Look forward to your response.

Kind Regards

For and on behalf of MYFRA

Sian Clarke

Sent from my Samsung Galaxy smartphone.

## Docherty, James

---

**From:** Docherty, James  
**Sent:** 12 September 2019 16:06  
**To:** 'loumol'  
**Cc:** 'sclarke@elitesea.co.uk'  
**Subject:** RE: Village Green Maes Y Ffynnon

Dear Sian,

Apologies for the delay in responding. The documents have been received and are in acceptable form so that the Application has been duly made. I will be writing to you formally to confirm that this is the case and explaining the next steps.

Kind regards

James

James Docherty  
Principal Lawyer / Uwch Gyfreithiwr  
Resources / Adnoddau  
Vale of Glamorgan Council / Cyngor Bro Morgannwg  
tel / ffôn: 01446 709781  
mob / sym:  
e-mail / e-bost: [jdocherty@valeofglamorgan.gov.uk](mailto:jdocherty@valeofglamorgan.gov.uk)

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Ewch i'n gwefan yn [www.bromorgannwg.gov.uk](http://www.bromorgannwg.gov.uk)

[Find us on Facebook / Cewch ddod o hyd i ni ar Facebook](#)  
[Follow us on Twitter / Dilynwch ni ar Twitter](#)

Correspondence is welcomed in Welsh or English / Croesewir Gohebiaeth yn y Gymraeg neu yn Saesneg.

---

**From:** loumol <loumol@sky.com>  
**Sent:** 09 September 2019 18:52  
**To:** Docherty, James <jdocherty@valeofglamorgan.gov.uk>  
**Subject:** Village Green Maes Y Ffynnon

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Look forward to your response.

Date/Dyddiad 13 September 2019

Ask for/Gofynwch am James Docherty

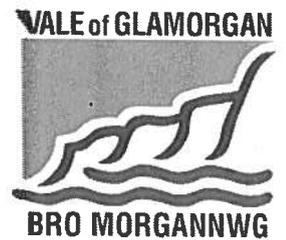
Telephone/Rhif ffôn 01446 709781

e-mail/e-bost [jdocherty@valeofglamorgan.gov.uk](mailto:jdocherty@valeofglamorgan.gov.uk)

The Vale of Glamorgan Council  
Civic Offices, Holton Road, Barry CF63 4RU

Cyngor Bro Morgannwg  
Swyddfeydd Dinesig, Heol Holton, Y Barri CF63 4RU

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Your Ref/Eich Cyf

My Ref/Cyf

JDD/TVG/C03-0275

**Maes Y Fynnon Residents Association**

c/o 21 Maes Y Ffynnon  
Bonvilston  
Vale of Glamorgan  
CF5 6TT

Also by e-mail: [loumol@sky.com](mailto:loumol@sky.com)

Dear Sirs

**RE: VILLAGE GREEN APPLICATION, MAES Y FYNNON, BONVILSTON**

**Commons Act 2006 – Village Green Application – Maes Y Ffynnon**  
**Application No: 01/2019/VG50**

I write to acknowledge safe receipt of your application on Form 44 dated the 22<sup>nd</sup> May 2019 together supporting documentation, which was hand delivered and received at these offices on the 23<sup>rd</sup> May 2019.

Please note that your application has been allocated the above-mentioned number which, along with file reference C03-0275, should now be quoted on all correspondence.

The Council as the Commons Registration Authority will now proceed to give publicity to the application e.g. notices in local papers and (if necessary) posting notices on the land.

If you require any further assistance or information in this matter, please do not hesitate to contact me.

Yours sincerely

**Victoria Davidson**  
**OPERATIONAL MANAGER, LEGAL SERVICES**  
cc. St Nicholas with Bonvilston Community Council



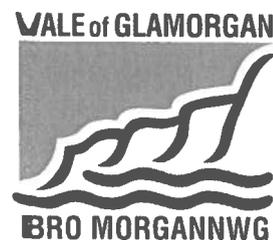
Date/Dyddiad 13 September 2019  
Ask for/Gofynwch am James Docherty  
Telephone/Rhif ffôn 01446 709781

The Vale of Glamorgan Council  
Civic Offices, Holton Road, Barry CF63 4RU

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e-mail/e-bost [jdocherty@valeofglamorgan.gov.uk](mailto:jdocherty@valeofglamorgan.gov.uk)

[www.valeofglamorgan.gov.uk](http://www.valeofglamorgan.gov.uk)  
[www.bromorgannwg.gov.uk](http://www.bromorgannwg.gov.uk)



Your Ref/Eich Cyf

My Ref/Cyf

JDD/TVG/C03-0275

**St Nicholas with Bonvilston Community Council**

c/o N McGarrigle  
2 Maes Illtuds  
Pentre'r Cwrt  
Llantwit Major  
CF61 2SD

Also by e-mail: [clerk.snbcc@hotmail.com](mailto:clerk.snbcc@hotmail.com)

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**Commons Act 2006 – Village Green Application – Maes Y Ffynon**

**Application No: 01/2019/VG50**

Please find attached a copy of the letter sent to Maes Y Ffynon Residents Association today in respect of the above mentioned application.

Yours faithfully

**Victoria Davidson**

**OPERATIONAL MANAGER – LEGAL SERVICES**



Date/Dyddiad 13 September 2019

Ask for/Gofynwch am James Docherty

Telephone/Rhif ffôn 01446 709781

e-mail/e-bost jdocherty@valeofglamorgan.gov.uk

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JDD/TVG/C03-0275

**Maes Y Ffynon Residents Association**

c/o 21 Maes Y Ffynon  
Bonvilston  
Vale of Glamorgan  
CF5 6TT

Also by e-mail: loumol@sky.com

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Yours sincerely

**Victoria Davidson**

**OPERATIONAL MANAGER, LEGAL SERVICES**

cc. St Nicholas with Bonvilston Community Council



## Docherty, James

---

**From:** Docherty, James  
**Sent:** 09 December 2019 17:16  
**To:** Ioumol  
**Subject:** Maes Y Ffynon - Town and Village Green Application  
**Attachments:** Letter to MYFRA - 9 December 2019.pdf

**Switch-MessageID:** 8bd12dcc40fa4605b606e95cb7fac9c7

Dear Sian,

Please find attached the Council's Objection to the Town and Village Green Application.

I would be grateful if you are able to provide a response or any comments you have on the same by 17<sup>th</sup> January 2020.

Kind regards

James

James Docherty  
Principal Lawyer / Uwch Gyfreithiwr  
Resources / Adnoddau  
Vale of Glamorgan Council / Cyngor Bro Morgannwg  
tel / ffôn: 01446 709781  
mob / sym:  
e-mail / e-bost: [jdocherty@valeofglamorgan.gov.uk](mailto:jdocherty@valeofglamorgan.gov.uk)

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Correspondence is welcomed in Welsh or English / Croesewir Gohebiaeth yn y Gymraeg neu yn Saesneg.

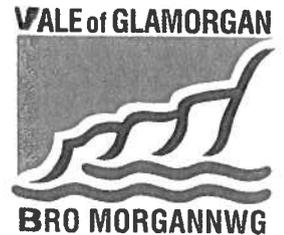
Date/Dyddiad 9 December 2019  
Ask for/Gofynwch am James Docherty  
Telephone/Rhif ffôn 01446 709781

The Vale of Glamorgan Council  
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**St Nicholas with Bonvilston Community Council**  
c/o N McGarrigle  
2 Maes Illtuds  
Pentre'r Cwrt  
Llantwit Major  
CF61 2SD

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**Commons Act 2006 – Village Green Application – Maes Y Ffynon**  
**Application No: 01/2019/VG50**

Please find attached a copy of the letter sent to Maes Y Ffynon Residents Association today in respect of the above mentioned application.

Yours faithfully

**Victoria Davidson**  
**OPERATIONAL MANAGER – LEGAL SERVICES**



Date/Dyddiad 9 December 2019  
Ask for/Gofynwch am James Docherty  
Telephone/Rhif ffôn 01446 709781

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**Commons Act 2006 – Village Green Application – Maes Y Ffynnon**  
**Application No: 01/2019/VG50**

Please find attached a copy of the Council's objection to your Town and Village Green Application.

Noting that we are now close to the Christmas break I would be grateful if you were able to provide a response to the objection by Friday 17<sup>th</sup> January 2020.

Yours sincerely

**Victoria Davidson**  
**OPERATIONAL MANAGER, LEGAL SERVICES**  
cc. St Nicholas with Bonvilston Community Council



## COMMONS ACT 2006

### APPLICATION UNDER SECTION 15 TO REGISTER LAND AS A TOWN OR VILLAGE GREEN

#### LAND AT MAES Y FFYNNON, BONVILSTON

#### NOTICE OF OBJECTION

##### Background/Introduction

1. The Vale of Glamorgan Council (**'the Council'**) (acting through the Environment and Housing Services Department – Housing Services Division) wishes to object to the application made to register land at Maes Y Ffynnon, Bonvilston (**'the Land'**) as town or village green (**'TVG'**). This objection is made by the Council in its capacity as landowner. The Council is separately represented in its capacity as town and village green registration authority for the county borough area under the Commons Act 2006. All references to the Council in this notice of objection refer to the Council in its capacity as landowner. References to 'Registration Authority' are references to the Council acting in that capacity.
2. As stated, the Council is the owner of the Land at Maes Y Ffynnon, Bonvilston. The Council's predecessor authority Cardiff Rural District Council acquired the Land by way of a conveyance dated 09 January 1956 (**'the 1956 Conveyance'**). The 1956 Conveyance states that the Land is purchased in exercise of the powers given to Cardiff Rural District Council by the Local Government Act 1933, the Housing Act 1936 and other unspecified powers.
3. The Land was subsequently appropriated to housing and developed as a housing estate with ancillary roads and open space areas in accordance with Cardiff Rural District Council's powers under the Housing Act 1936.
4. The Land is registered in the name of the Council at Land Registry under title number CYM410667 where it is described as land at Maes Y Ffynnon, Bonvilston. The Land comprises a former garage site, roadway and grassed open space areas.

5. The application to register the Land as TVG was made on behalf of the residents of the Maes Y Ffynnon Residents Association together with St Nicholas and Bonvilston Community Council ('the Applicant') on the 23 May 2019 ('the Application'). The Registration Authority notified the Council of Application to register the Land as TVG on the 13 September 2019. The Registration Authority has provided the Council with a copy of the Application.
6. The Council has submitted a planning application to the Local Planning Authority for the development of 10 affordable housing units on a 0.3ha part of the Land to the north of the existing housing at Maes y Ffynnon. The proposed development lies within the settlement boundary of Bonvilston and is situated on land which can be considered a mix of previously developed land and open space. The loss of open space under the proposal is 0.18ha and therefore, a significant part of the existing open space will be retained despite the proposed development. It is believed that the Application is an attempt to frustrate this development.

#### **Basis for Objection, Legal Framework and Application of Legal Framework**

7. As stated above, the Council wishes to object to the Application and believes that the Application should be refused by the Registration Authority in its entirety and further, that no public inquiry should be necessary on the basis of the following.
8. Before addressing the Council's substantive objection, it should be noted that parts of the Land are intersected and covered by roadway, pathway and disused garages. Most of the roadway is adopted highway and therefore cannot be registered as TVG because use of this part by the public is by legal right.
9. Furthermore, any use that may not be considered lawful for highway purposes could not be reasonably discernible to a landowner so as to give rise to public usage sufficient for a TVG application. Consequently, such use would be incompatible with this part of the Land being TVG in any event.
10. In a similar vein, it is asserted by the Council that the parts of the Land covered by unadopted roadway/pathway and disused garages do not have the physical characteristics or purpose to be included in a TVG application. The use of the

former disused garage site (including access to it and the car parking area) would have been with the Council's permission and the inclusion of these parts of the Land are therefore incompatible with a TVG application also.

11. Moving onto the substantive legal objection to the Application.
12. The Application is made pursuant to section 15(1) of the Commons Act 2006 ('the 2006 Act') on the basis that section 15(2) of the 2006 Act applies. The relevant criteria to be established is therefore whether "*a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years; and they continue to do so at the time of the application*".
13. The burden of proving that the Land has become TVG lies with the Applicant. All the criteria required to establish that the Land has become TVG must be properly and strictly proved by the Applicant on the balance of probabilities. The case law for this is **Beresford** (although **Beresford** has been overruled by **Barkas** – see below - it was not done so on this particular point which remains good law.
14. The Council is not disputing the criteria that a 'significant number of inhabitants' have used parts of the Land for 'lawful sports and pastimes' for a period of 'at least 20 years' and 'continue to do so'. Instead this is relied upon in support of its objection to the Application.
15. The Council's objection to the Application is on the basis that the use of the Land for lawful sports and pastimes by local inhabitants has been 'by right' (i.e. in exercise of a legal right to do so) and not 'as of right' within the meaning of section 15(2) of the 2006 Act (i.e. without permission, force or secrecy).
16. Accordingly, the Council maintains that the statutory criteria under the 2006 Act has not been met or correctly asserted by the Applicant.
17. The legal framework in support of the Council's objection are the cases **R (Beresford) v Sunderland City Council (2004) 1 AC 889 ('Beresford')** and **Barkas v North Yorkshire County Council (2012) EWCA Civ 1373 ('Barkas')**

18. In *Beresford*, the House of Lords gave strong guidance - albeit *obiter* - that where user is pursuant to a legal right, it cannot be user 'as of right' as required under section 15(1) of the Commons Act 2006. Following this, and more recently, it was accepted in *Barkas* that *Beresford* is authority for the proposition that there is a distinction between use of land 'by right' and use of the land 'as of right'.
19. The Supreme Court's decision in *Barkas* is the leading case on 'by right' use. The Court held that recreational land provided and maintained by a local authority pursuant to section 12 of the Housing Act 1985 or its statutory predecessors was used by the public 'by right' and not 'as of right' within the meaning of section 15 of the 2006 Act. Therefore, if local inhabitants are indulging in lawful sports and pastimes on land 'by right' and not 'as of right' an application to register land as TVG will fail.
20. It further held that a recreation ground provided for public use by a local authority pursuant to any of its statutory powers would similarly be used by the public 'by right' and not 'as of right'. Where land is held by a local authority for the statutory purpose of recreation, and members of the public then use the land for that purpose, then they so use it pursuant to a statutory right to do so. They are accordingly not trespassers, which is a pre-requisite of land being used 'as of right'. A use 'by right' was instead found to be *precario*.
21. In applying the established legal principles derived from *Barkas* specifically to the Land and this Application, please note the following.
22. When the Land was acquired by Cardiff Rural District Council (a predecessor in title of the Council and itself a creature of statute) in 1956 it was by virtue of the 1956 Conveyance and as stated above, in exercise of the powers given to the Rural District Council by the Local Government Act 1933, the Housing Act 1936 and other unspecified powers.
23. Following this, the Rural District Council developed the housing on this part of Maes Y Ffynnon and duly laid out road, open space and other facilities ancillary to the housing development on the Land.
24. It is apparent from the evidence contained in the Application itself that this was done and that since that time, it has been held and managed by the Council as housing land pursuant to the powers conferred on it (and its predecessor

authorities) by sections 79 and 80 of the Housing Act 1936 and in accordance with any subsequent housing legislation.

### **Conclusion**

25. It is therefore proper to assume that the Council has been holding the Land for recreational purpose and associated amenity areas connected with the housing located at Maes Y Ffynnon and for the benefit of the residents. Therefore, any use of that part of the Land that is actually open space by the public for lawful sports and pastimes has been 'by right' and not 'as of right'.
26. It is furthermore proper to assume that the local inhabitants i.e. the residents of Maes Y Ffynnon, have had a statutory right to use the Land since it was acquired by the 1956 Conveyance and requirements of section 15(1) of the Commons Act 2006 in connection with the registration of the Land as TVG are therefore, not met and for the reasons stated in this notice, the Application must fail.

### **Further grounds**

27. The Council reserves the right to add to and amplify these grounds for objection at a later stage if required.

Jocelyn Ham, solicitor on behalf of the Council

Date: 04 December 2019.

## Docherty, James

---

**From:** loumol@sky.com  
**Sent:** 20 December 2019 12:56  
**To:** Docherty, James  
**Subject:** Town and Village Green Application - Maes y Ffynnon, Bonvilston  
**Attachments:** Village Green Response to Council Dec 2019.docx

Dear Sirs

We acknowledge receipt of your objection to register the Village Green and attach an initial request to extend the period proposed to allow appropriate consultation and time to draft a response.

Yours Sincerely

Maes Y Ffynnon Residents Association

Maes Y Ffynnon Residents Association  
c/o 21 Maes Y Ffynnon  
Bonvilston,  
CF5 6TT

Victoria Davidson  
c/o James Docherty  
The Vale of Glamorgan Council  
Civic Offices  
Holton Road  
Barry  
CF63 4RU

12/12/2019

Dear Sirs

**Village Green Application, Maes Y Ffynnon, Bonvilston - No: 1/2019/VG50**

I acknowledge receipt of your correspondence dated the 9<sup>th</sup> December 2019, received via email on Tuesday 10<sup>th</sup> December 2019. Due to the logistics and timescales to circulate the correspondence to all those involved and request and collate feedback for an appropriate response, this reply has been issued to yourselves as soon as possible, prior to Xmas. The correspondence you issued provides a 'Notice of Objection' and provides a background of information, reasons for the objection and a conclusion in respect of the reasons for the objection.

In the cover letter accompanying the objection to the application to register the area of land as a Village Green you request a response to the objection by the 17<sup>th</sup> January 2020. As this only provides a very short timescale to collate and present an informed and appropriate response I am requesting that there is an extension to this period, to the 31<sup>st</sup> March 2020. The reasons and rationale for the request to extend the period proposed for a response to your objection are detailed below:

- The application was originally submitted in April 2019. A minor amendment to the initial application to include an additional map defining the locality using the Green was made and it was resubmitted and accepted on the 23<sup>rd</sup> May 2020.
- We have been awaiting a response from the Council for nearly 7 months to this initial application.
- The application was only passed via internal departments to the Council by the Registration Authority on the 13<sup>th</sup> September 2019, 16 weeks after it had been acknowledged and accepted.
- The timescale proposed is limited and thus restricts the opportunities to engage with the residents involved within the local community and the St Nicholas and Bonvilston Community Council.
- The Christmas and New Year festivities present significant challenge to arrange and facilitate appropriate meetings and discussions amongst residents from, Maes Y Ffynnon Residents Association, (MYFRA), or the Community Council to understand the implications of the objections.

- There are significant challenges presented to prevent opportunities to facilitate appropriate meetings to allow MYFRA to make informed decisions on the next steps we should take and how to move forward, most significantly engaging with the Community Council.
- Key individuals within the MYFRA group are unavailable for several weeks during December and January, which presents a difficulty in collating and presenting a comprehensive response, by those most integral to the required and planned response.
- This deadline does not allow enough time to engage and consult with the St Nicholas and Bonvilston, Community Council and facilitate appropriate meetings.
- The details of the objection provided, includes a range of historical data around how the land was acquired by the council that has not been made available to the applicant on behalf of the residents.
- The timescale proposed prevents the opportunity to further pursue appropriate information to understand the background of how the land was acquired and its intended use, as previous requests for factual evidence relating to the purchase / usage of this land through a 'Freedom of Information request', have proved to be lengthy and not provided any information, as the council concluded that there was no information of this nature available. The objection to this application suggests otherwise.
- The reasons provided for the objection make reference to legal framework and case history around previous failed applications to register a Village Green, that are historical and based in England. An accurate and informed response to the significance and relevance of the inclusion of this case history, would need to allow an appropriate timescale to obtain legal advice and contextualise this in relation to the Maes Y Ffynnon development, existing situation and Welsh legislation. The date of the 17/01/2020 would not allow enough time for this process, of obtaining legal advice to happen.
- The Council has presented an argument in relation to the definition of usage of the Village Green in terms of 'by right' and 'as of right', which for us to prepare a response would require consultation with our legal advisors. This would not be possible by the 17/01/2020. (as per above point).
- The Council has asserted that there are separate departments dealing with this application, however, we need further legal advice around a conflict of interest in relation to this application and in particular why there has been extensive periods of time in this process.
- Information in the public domain around recent case study relating to applications to register an area of land as TVG with the Vale of Glamorgan Council, notably the field behind the Bear Hotel, refer to 'fairness and transparency' and the responsibility of the Council to uphold these principles. The response from the Council to our application to register the area in Maes Y Ffynnon, as a Village Green are conflicting with the practice of the Council in relation to this most recent precedent.
- If comparisons are made then the reference to fairness and transparency, in your objection needs to be consistent with other recent and local applications, to include the recommendation to take it to a public enquiry, which is openly accessible.
- As there is a potential for a conflict of interest for the Vale of Glamorgan Council in this case, we MYFRA and the Community Council should be afforded additional time to respond, to the statements, rational and legal position presented by the Vale of Glamorgan Council's response.
- The Council has afforded themselves significant time to research and draft a response to MYFRA and the local Community Council and therefore it is only fair to allow us the same timescales to respond to their objection.
- The objection also refers to an attempt to 'frustrate a planning application' for affordable housing in Maes Y Ffynnon. This stance is subjective and the planning proposal, is not referred to in the Village Green application and had not been submitted when we applied to register the Village Green.

- The proposed short timescale for responses, could also be viewed as an attempt by the Council to 'frustrate' the process of our appeal, to the Councils objection to the application to register the Village Green, at Maes Y Ffynnon.

Please be advised that this correspondence is not a final or conclusive response to the objections presented by the Council, but rationale to support an extension to the proposed deadline of the 17/01/2020, to allow MYFRA and the Community Council, a fair timescale in line with that which the Council themselves had, to present an accurate and legitimate response, that complies with a fair and transparent process operated by the land owner. This would also be consistent with the 'fair and transparent' approach afforded other organisations making applications to register land as TVG within the Vale of Glamorgan Council over recent years.

For and on Behalf of MYFRA

Sian Clarke

Chairperson

## Docherty, James

---

**From:** Docherty, James  
**Sent:** 24 December 2019 15:37  
**To:** loumol@sky.com  
**Subject:** RE: Town and Village Green Application - Maes y Ffynnon, Bonvilston

**Switch-MessageId:** f9b2ca157dab4426a86bac916aa406ac

Dear Sirs,

Thank you for your e-mail below and letter that was attached. This has now been passed on to the solicitor acting on behalf of the Council in its position as Landowner.

I must stress that I act for the Council in its capacity as Commons Registration Authority. I note your request that the date for providing a response be extended to 31<sup>st</sup> March 2020 but I consider that the period requested is too long. I suggest that an extension of 6 weeks until the 28<sup>th</sup> February 2020, to take account of the Christmas and New Year break should be sufficient.

Your letter has been passed on to the Solicitor acting for the Council as Landowner, and should I receive any comments/response from her in respect of the same I shall pass the same on to you as soon as possible.

Kind regards

James

James Docherty  
Principal Lawyer / Uwch Gyfreithiwr  
Resources / Adnoddau  
Vale of Glamorgan Council / Cyngor Bro Morgannwg  
tel / ffôn: 01446 709781  
mob / sym:  
e-mail / e-bost: [jdocherty@valeofglamorgan.gov.uk](mailto:jdocherty@valeofglamorgan.gov.uk)

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Ewch i'n gwefan yn [www.bromorgannwg.gov.uk](http://www.bromorgannwg.gov.uk)

[Find us on Facebook / Cewch ddod o hyd i ni ar Facebook](#)

[Follow us on Twitter / Dilynwch ni ar Twitter](#)

Correspondence is welcomed in Welsh or English / Croesewir Gohebiaeth yn y Gymraeg neu yn Saesneg.

**From:** loumol@sky.com <loumol@sky.com>  
**Sent:** 20 December 2019 12:56  
**To:** Docherty, James <jdocherty@valeofglamorgan.gov.uk>  
**Subject:** Town and Village Green Application - Maes y Ffynnon, Bonvilston

Dear Sirs

## Docherty, James

---

**From:** loumol <loumol@sky.com>  
**Sent:** 24 December 2019 15:50  
**To:** Docherty, James  
**Subject:** RE: Town and Village Green Application - Maes y Ffynnon, Bonvilston

Dear Sirs

Thank you for your response. I will circulate with MYFRA and the Community Council and provide a further response to you in the New Year and by the end of February.

Regards

Sian

Sent from my Samsung Galaxy smartphone.

----- Original message -----

**From:** "Docherty, James" <jdocherty@valeofglamorgan.gov.uk>  
**Date:** 24/12/2019 15:36 (GMT+00:00)  
**To:** loumol@sky.com  
**Subject:** RE: Town and Village Green Application - Maes y Ffynnon, Bonvilston

Dear Sirs,

Thank you for your e-mail below and letter that was attached. This has now been passed on to the solicitor acting on behalf of the Council in its position as Landowner.

I must stress that I act for the Council in its capacity as Commons Registration Authority. I note your request that the date for providing a response be extended to 31<sup>st</sup> March 2020 but I consider that the period requested is too long. I suggest that an extension of 6 weeks until the 28<sup>th</sup> February 2020, to take account of the Christmas and New Year break should be sufficient.

Your letter has been passed on to the Solicitor acting for the Council as Landowner, and should I receive any comments/response from her in respect of the same I shall pass the same on to you as soon as possible.

Kind regards

## **Docherty, James**

---

**From:** loumol@sky.com  
**Sent:** 28 February 2020 18:05  
**To:** Docherty, James  
**Subject:** Response to Village Green Rejection at Maes Y Ffynnon  
**Attachments:** Response to Rejection of the Village Green Application v1.3.docx

Dear James

As agreed, please find attached MYFRA's responses to the rejection of our Village Green application.

I look forward to hearing from you soon in relation to this matter.

Kind Regards

Sian Clarke

## Docherty, James

---

**From:** Sian Clarke <sclarke@elitesea.co.uk>  
**Sent:** 28 February 2020 18:06  
**To:** Docherty, James  
**Subject:** Village Green at Maes Y Ffynnon Bonvilston  
**Attachments:** Response to Rejection of the Village Green Application v1.3.docx

Dear James

As agreed, please find attached MYFRA's responses to the rejection of our Village Green application.

I look forward to hearing from you soon in relation to this matter.

Kind Regards

Sian Clarke

Maes Y Ffynnon Residents Association  
c/o 21 Maes Y Ffynnon  
Bonvilston,  
CF5 6TT

Victoria Davidson  
c/o James Docherty  
The Vale of Glamorgan Council  
Civic Offices  
Holton Road  
Barry  
CF63 4RU

23/02/2020

Dear Sirs

**Village Green Application, Maes Y Ffynnon, Bonvilston - No: 1/2019/VG50**

Further to your original correspondence on the 9<sup>th</sup> of December which provided the Maes Y Ffynnon Residents Association (MYFRA) and St Nicholas and Bonvilston Community Council, with your 'Notice of Objection' in relation to our application to protect the Village Green area, please find below our comments and responses:

- At no time has any resident of Maes Y Ffynnon, or Village Farm ever been required to seek permission to use the land for lawful sports and pastimes.
- The areas of land that flank the hardstands that used to hold the garages have provided the identified green space for this usage over the years.
- The Council has provided limited maintenance, or upkeep of this land and over the last 10 years this has only been the intermittent cutting of grass.
- We recognise and understand that the hard stands and road area, cannot be classed as a green space, but they sit inside of the area we wish to protect and our evidence proves that the areas either side have been used extensively and are central to village life in Bonvilston, since the 1950s.
- Your 'Notice of Objection', does not dispute the fact that the area has been used continuously by residents for over 50 years. It acknowledges the use but in referring us to the case history of Barkus, is asserting that we have used it 'by right' and not 'as of right'.
- As the Council acknowledges the usage of the land for these activities, it should concur and appreciate how important this area is to the residents of Maes Y Ffynnon and the wider population of Bonvilston.
- The use of this land either 'by right' or 'as of right' has been extensive and consistent since the 1950s and therefore has formed a significant part of Bonvilston's history and continues to unite the community.
- The fact that the Council is not disputing the usage of the land, by implication are accepting the importance of it providing an area for children to safely play, provide dog walking spaces, social events and lawful sports.

- In your 'Notice of Objection' you state that our motivation for protecting the area is to 'frustrate' a planning application for dwellings at Maes Y Fynnon. MYFRA refute this suggestion and feel the need to assert that our motive for protecting the area has been misrepresented, by this statement.
- As described in our application we are driven by the wish to maintain, a safe natural area where children can play and adults can socialise, at village events, or walking their dogs. Any development, or encroachment on the green area would be environmentally degrading and socially damaging to the community.
- Our wish is to preserve the much-threatened wildlife that is in abundance in the area. This includes ancient trees, Bats, the reptile population of snakes, toads and Greater Crested Newts, Tawny, Barn and Little Owls and every species of wild birds, such as Finches, Woodpeckers, Cuckoo's, and Tits.
- We understand that the Council has operated a 'Chinese wall' approach in relation to this application. Whilst we accept that this is a standard practice where another department is objecting to a village green application being dealt with by the same council, in its role as Registration Authority, it would also be standard to avoid a 'conflict of interest' and to ensure transparency to hold a non-statutory inquiry, which would address any issue of potential prejudice.
- In your 'Notice of Objection' you state that a public inquiry is not necessary for this application. We would therefore ask how the issue of potential prejudice has been addressed in the processing of this case, to ensure transparency and avoid a conflict of interest, particularly in light of any future plans the council may have for the land.
- We would like to highlight that recent planning applications and proposed developments in other parts of Bonvilston, incorporate as central features within their designs, green areas depicting children playing. The clear message being that a green space in a village like Bonvilston is central to the community. It is not logical, or in the interests of the community to leave a green space that has been used for over 50 years vulnerable, unappreciated or unrecognised, for its significant part in serving the community.
- Recent development plans in Bonvilston identify areas for potential green space in locations that are unsafe for children to play, due to the close proximity to traffic and the A48 main road. Maes y Ffynnon for over 50 years has provided a safe place for children to play and if protected could continue to do so in the future.

We understand that Welsh legislation in this area falls behind that in place in England and that this is not favourable in terms of our application. We do not wish in any way to antagonise the council in relation to the enclosed responses, following the rejection of our application and also aim to avoid any conflict. We request that the council takes time to listen to our concerns in a pragmatic and objective way, that is not purely focused on a legal approach around meeting eligibility criteria for registering a green space. As residents of MYFRA we ask the council to look beyond the criteria of how the land was originally purchased over 50 years ago, in a post war climate and consider how Maes Y Ffynnon, has subsequently evolved and understand how important the green is to the whole community.

In light of the above concerns and the evidence provided by MYFRA in the original application, we would request the following opportunity to engage with the council on this matter and appeal the decision made around the protection of this open space:

**MYFRA formally requests the opportunity to discuss further with the Vale of Glamorgan Council an exploration of the options available around a voluntary registration of the village green under section 15 (8) of the Commons Act 2006.**

Hopefully we can move forward and engage in some positive discussions and negotiations around the above proposal of voluntary registration of all, or part of the land described, taking into consideration our evidence and rationale.

We would be grateful if you could contact me, on behalf of MYFRA, by the 31<sup>st</sup> March 2020, with an indication of how the council plan to proceed regarding responses to our concerns and request for voluntary registration.

Yours Sincerely

Sian Clarke

On and Behalf of Maes Y Ffynnon Residents Association

## **Docherty, James**

---

**From:** Docherty, James  
**Sent:** 02 March 2020 15:48  
**To:** 'Sian Clarke'  
**Cc:** 'loumol@sky.com'  
**Subject:** RE: Village Green at Maes Y Ffynnon Bonvilston

**Switch-MessageId:** 9bac150323444af9853d6d6c3632d450

Dear Sian,

Thank you for your e-mail below.

Below I raise some points in relation to clarification on your letter and next steps.

### **1. The Commons Registration Authority ("CRA") has not rejected your application.**

As you point out the Council is both (i) the Landowner (and objector to the Application); and (ii) the CRA is responsible for assessing and determining the Application – for the purposes of this e-mail I am going to refer to the Council acting in its CRA capacity as the CRA and in respect of its capacity as the Landowner as the Landowner.

I am acting as solicitor to the CRA, my colleague Jos Ham is acting for the Landowner and as you note we are working with a "Chinese Wall" in respect of the matter. All correspondence you receive will be from me on behalf of the CRA. The CRA's role at this stage is to try to narrow the issues between the parties by allowing each party to comment on the representations given by the other. The objection that I forwarded to you is the Landowner's response to the application and does not represent any view of the CRA.

### **2. It is intended that there will be a non-statutory Inquiry.**

As you note it is standard practice where the Council is both Landowner and CRA for a non-statutory inquiry to be held and for an independent Inspector to be appointed to hear the case from both the Applicant and any Objectors and to thereafter provide a report to the CRA with a recommendation as to whether to allow the Application or dismiss it. It has always been my intention as solicitor for the CRA to follow that process. Subject to point 3 below, I now intend to give the Landowner chance to respond to your response to their Objection following which I will assess whether there is any benefit to further correspondence or whether it is, at that stage, appropriate to proceed directly to arranging the Inquiry.

### **3. Re-issue of your letter**

In light of the content of your letter, and noting that you were under the impression that the Application had been rejected, I am prepared to a further short extension of 1 week for you to confirm if there are any points which, now knowing that the application is still live, you would like to add to your response to the Landowner's objection. There are a number of points raised in your letter which do respond to the Landowner's objection and I will be forwarding a copy of the letter to the Landowner in order that they can start to consider the points raised and whether they wish to put forward any further response. It is also my intention to provide them with a copy of this e-mail in order that they are aware of the same and the fact that I have unilaterally agreed to provide you with an extra 7 days to consider any additions to your correspondence.

I would note that all correspondence between (i) the CRA and the Applicant and (ii) the CRA and the Landowner/Objector is usually required to be produced in full at the Inquiry.

In conclusion, I am allowing you a further 7 days from today to provide any additional response to the Landowner's objection which you may not have included in the response attached to the e-mail below due to the fact that you

thought the Application had already been dismissed/refused. Please ensure that any additional response is with me no later than 5pm on Monday 9<sup>th</sup> March.

If you would like to discuss the content of this e-mail further please feel free to contact me on the number below.

Kind regards

James

James Docherty  
Principal Lawyer / Uwch Gyfreithiwr  
Resources / Adnoddau  
Vale of Glamorgan Council / Cyngor Bro Morgannwg  
tel / ffôn: 01446 709781  
mob / sym:  
e-mail / e-bost: [jdocherty@valeofglamorgan.gov.uk](mailto:jdocherty@valeofglamorgan.gov.uk)

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[Find us on Facebook / Cewch ddod o hyd i ni ar Facebook](#)  
[Follow us on Twitter / Dilynwch ni ar Twitter](#)

Correspondence is welcomed in Welsh or English / Croesewir Gohebiaeth yn y Gymraeg neu yn Saesneg.

---

**From:** Sian Clarke <[sclarke@elitesea.co.uk](mailto:sclarke@elitesea.co.uk)>  
**Sent:** 28 February 2020 18:06  
**To:** Docherty, James <[jdocherty@valeofglamorgan.gov.uk](mailto:jdocherty@valeofglamorgan.gov.uk)>  
**Subject:** Village Green at Maes Y Ffynnon Bonvilston

Dear James

As agreed, please find attached MYFRA's responses to the rejection of our Village Green application.

I look forward to hearing from you soon in relation to this matter.

Kind Regards

Sian Clarke

## Docherty, James

---

**From:** loumol@sky.com  
**Sent:** 09 March 2020 21:06  
**To:** Docherty, James  
**Subject:** Re: Village Green at Maes Y Ffynnon Bonvilston

Dear James

Thank you for your correspondence dated the 2 March 2020.

You have now stated within your capacity as the CRA that our application (MYFRA) to register the area as a Village Green, has not been rejected. You have also stated that you intend to hold a public enquiry, which I assume is to ensure transparency and avoid any conflict of interest. I would like to note and highlight that this was never forthcoming, or clear in any of the previous correspondence sent to MYFRA. We (MYFRA) have not received any written correspondence relating to your position as the acting body and representative for the CRA and therefore this is the first official notification that we can accept in terms of the details regarding the application and enquiry to date, for the Village Green protection.

I apologise for the late submission of this response in terms of not meeting the 5.00 pm deadline, however, due to residents commitment and the timescale dictated by your last correspondence this was unachievable, under the circumstances.

I look forward to responses from the land owners and also your comments in capacity as the CRA.

Yours Sincerely

Sian Clarke

On Monday, 2 March 2020, 15:48:30 GMT, Docherty, James <jdocherty@valeofglamorgan.gov.uk> wrote:

Dear Sian,

Thank you for your e-mail below.

Below I raise some points in relation to clarification on your letter and next steps.

### **1. The Commons Registration Authority ("CRA") has not rejected your application.**

As you point out the Council is both (i) the Landowner (and objector to the Application); and (ii) the CRA is responsible for assessing and determining the Application – for the purposes of this e-mail I am going to refer to the Council acting in its CRA capacity as the CRA and in respect of its capacity as the Landowner as the Landowner.

I am acting as solicitor to the CRA, my colleague Jos Ham is acting for the Landowner and as you note we are working with a "Chinese Wall" in respect of the matter. All correspondence you receive will be from me on behalf of the CRA. The CRA's role at this stage is to try to narrow the issues between the parties by allowing each party to comment on the representations given by the other. The objection that I forwarded to you is the Landowner's response to the application and does not represent any view of the CRA.

## **2. It is intended that there will be a non-statutory Inquiry.**

As you note it is standard practice where the Council is both Landowner and CRA for a non-statutory inquiry to be held and for an independent Inspector to be appointed to hear the case from both the Applicant and any Objectors and to thereafter provide a report to the CRA with a recommendation as to whether to allow the Application or dismiss it. It has always been my intention as solicitor for the CRA to follow that process. Subject to point 3 below, I now intend to give the Landowner chance to respond to your response to their Objection following which I will assess whether there is any benefit to further correspondence or whether it is, at that stage, appropriate to proceed directly to arranging the Inquiry.

## **3. Re-issue of your letter**

In light of the content of your letter, and noting that you were under the impression that the Application had been rejected, I am prepared to a further short extension of 1 week for you to confirm if there are any points which, now knowing that the application is still live, you would like to add to your response to the Landowner's objection. There are a number of points raised in your letter which do respond to the Landowner's objection and I will be forwarding a copy of the letter to the Landowner in order that they can start to consider the points raised and whether they wish to put forward any further response. It is also my intention to provide them with a copy of this e-mail in order that they are aware of the same and the fact that I have unilaterally agreed to provide you with an extra 7 days to consider any additions to your correspondence.

I would note that all correspondence between (i) the CRA and the Applicant and (ii) the CRA and the Landowner/Objector is usually required to be produced in full at the Inquiry.

In conclusion, I am allowing you a further 7 days from today to provide any additional response to the Landowner's objection which you may not have included in the response attached to the e-mail below due to the fact that you thought the Application had already been dismissed/refused. Please ensure that any additional response is with me no later than 5pm on Monday 9<sup>th</sup> March.

If you would like to discuss the content of this e-mail further please feel free to contact me on the number below.

Kind regards

James

James Docherty

Principal Lawyer / Uwch Gyfreithiwr

Resources / Adnoddau

Vale of Glamorgan Council / Cyngor Bro Morgannwg

tel / ffôn: 01446 709781

mob / sym:

e-mail / e-bost: [jdocherty@valeofglamorgan.gov.uk](mailto:jdocherty@valeofglamorgan.gov.uk)

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Correspondence is welcomed in Welsh or English / Croesewir Gohebiaeth yn y Gymraeg neu yn Saesneg.

**From:** Sian Clarke <[sclarke@elitesea.co.uk](mailto:sclarke@elitesea.co.uk)>

**Sent:** 28 February 2020 18:06

**To:** Docherty, James <[jdocherty@valeofglamorgan.gov.uk](mailto:jdocherty@valeofglamorgan.gov.uk)>

**Subject:** Village Green at Maes Y Ffynnon Bonvilston

Dear James

As agreed, please find attached MYFRA's responses to the rejection of our Village Green application.

I look forward to hearing form you soon in relation to this matter.

Kind Regards

Sian Clarke

## Docherty, James

---

**From:** Docherty, James  
**Sent:** 13 March 2020 14:40  
**To:** loumol@sky.com  
**Subject:** RE: Village Green at Maes Y Ffynnon Bonvilston

**Switch-MessageId:** 72426e5ce194452e995a8ae8b317f9f4

Dear Sian,

Thank you for your e-mail below. Apologies for the misunderstanding, I thought that we had been through this on the telephone.

I have given the Council until 9<sup>th</sup> April 2020 to make any further points in response to your latest correspondence.

Subject to any comments received by from the Council I shall then consider whether there is any benefit in further correspondence to narrow the issues further or whether to proceed to take steps to arrange for the Inquiry.

The process for establishing an Inquiry will require me to get authority from the relevant committee to appoint an Independent inspector to hear the Inquiry, this would usually be a qualified Barrister. Once an Inspector is appointed he or she will make directions for the Inquiry including proposed dates and tasks to be completed prior to the hearing (preparation of documents etc). I will then need to advertise the dates of the Inquiry in the local press. The Inquiry would usually run for between 1 and 5 days depending on the amount of evidence and number of witnesses to be called to give evidence, it may be worth considering at this point which of the people who have provided statements you would wish to give verbal evidence at an Inquiry as this may assist when we need to explore what dates may be possible to hold the Inquiry.

Following the hearing the Inspector will write a report with a recommendation as to whether the Application should be granted or refused.

I shall contact you further once I have received any further comments from the Council.

Kind regards

James

James Docherty  
Principal Lawyer / Uwch Gyfreithiwr  
Resources / Adnoddau  
Vale of Glamorgan Council / Cyngor Bro Morgannwg  
tel / ffôn: 01446 709781  
mob / sym:  
e-mail / e-bost: [jdocherty@valeofglamorgan.gov.uk](mailto:jdocherty@valeofglamorgan.gov.uk)

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Find us on Facebook / Cewch ddod o hyd i ni ar Facebook  
Follow us on Twitter / Dilynwch ni ar Twitter

## Docherty, James

---

**From:** Docherty, James  
**Sent:** 08 April 2020 17:45  
**To:** loumol@sky.com  
**Subject:** RE: Village Green at Maes Y Ffynnon Bonvilston

**Switch-MessageId:** 3d5c6628746a4d47acf33060c5d9cb42

Dear Sian,

Please find below the Landowner's solicitors latest response to me in respect of your previous correspondence. I would note as is pointed out in that response that it is the CRA's intention to hold a non-statutory public inquiry in respect of the application which I have confirmed previously has not been rejected. If you wish make any further representations in respect of any of the points raised by the Landowner's solicitor I would be grateful if you could do so by Friday 15<sup>th</sup> May 2020. In the event that you have no further comments to make please let me know and we can conclude this element of the process and move to the next stage which is arranging for the appointment of the inspector in order that we can subsequently arrange the Inquiry.

"From: Ham, Jocelyn <JHam@valeofglamorgan.gov.uk>  
Sent: 08 April 2020 17:18  
To: Docherty, James <jdocherty@valeofglamorgan.gov.uk>; James Docherty <jdocherty.vogc@gmail.com>  
Subject: Maes Y Ffynnon TVG Application

Dear James

With reference to the letter you have received from the Applicant in this matter, MYFRA and your email response of 02 March 2020.

I have flagged up a couple of the issues raised by the Applicant and would respond/comment (**in bold**) as follows:

- *At no time has any resident of Maes Y Ffynnon, or Village Farm ever been required to seek permission to use the land for lawful sports and pastimes.*

**This is correct, the residents of Maes Y Ffynnon use the land with the consent of the Council i.e. by right. This means that an application to register land as new TVG must fail, in the Council as landowner's view.**

- *The areas of land that flank the hardstands that used to hold the garages have provided the identified green space for this usage over the years.*

**This is not disputed.**

- *The Council has provided limited maintenance, or upkeep of this land and over the last 10 years this has only been the intermittent cutting of grass.*

**The land belongs to and is maintained by the Council. The perceived frequency and standard of maintenance is not a relevant factor here.**

- *We recognise and understand that the hard stands and road area, cannot be classed as a green space, but they sit inside of the area we wish to protect and our evidence proves that the areas either side have been used extensively and are central to village life in Bonvilston, since the 1950s.*

**It is important to correctly identify the area of land that is to be subject to the TVG application and as stated in the 'Notice of Objection' the parts of the land covered by unadopted roadway/pathway and disused garages do not have the physical characteristics or purpose to be included in a TVG application. Further, the use of the former**

disused garage site (including access to it and the car parking area) would have been with the Council's permission and the inclusion of these parts of the land are therefore also incompatible with a TVG application.

- *Your 'Notice of Objection', does not dispute the fact that the area has been used continuously by residents for over 50 years. It acknowledges the use but in referring us to the case history of Barkus, is asserting that we have used it 'by right' and not 'as of right'.*

This is correct. 'By right' means that the land has been used with the Council's permission whereas 'as of right' means it has been used without the Council's permission. 'As of right' is a critical part of the lexicological jigsaw in a TVG application and if permission to use land is essentially granted or allowed, then an application must fail.

- *As the Council acknowledges the usage of the land for these activities, it should concur and appreciate how important this area is to the residents of Maes Y Fynnon and the wider population of Bonvilston.*

This comment is noted but as previously stated in the 'Notice of Objection', a significant part of the existing open space will be retained despite the proposed development.

- *The use of this land either 'by right' or 'as of right' has been extensive and consistent since the 1950s and therefore has formed a significant part of Bonvilston's history and continues to unite the community.*

The use of the land has been by right – see above. As the MYFRA are aware, the Council's predecessor authority acquired the land in the 1950s under powers given to it by the Local Government Act 1933, the Housing Act 1936 and other unspecified powers. The land was subsequently appropriated to housing and developed as a housing estate with ancillary roads and open space areas in accordance with Cardiff Rural District Council's powers under these Acts.

As stated in the 'Notice of Objection' it is therefore proper to assume that Cardiff Rural District Council and now this Council as a statutory successor has held the developed land for housing and the other parts for recreational purpose and associated amenity areas connected with this housing. In other words, some of the land was specifically provided for amenity and recreation purpose and any subsequent use in this regard is with the Council's permission.

- *The fact that the Council is not disputing the usage of the land, by implication are accepting the importance of it providing an area for children to safely play, provide dog walking spaces, social events and lawful sports.*

It is not disputed that parts of the land subject to the TVG application has been provided for recreational purposes. However, use of the land for this purpose is with the Council's permission and the Council intends to continue to preserve and maintain a proportion of the land for this purpose as the new development will primarily focus on the former garage site and the area around this.

- *In your 'Notice of Objection' you state that our motivation for protecting the area is to 'frustrate' a planning application for dwellings at Maes Y Fynnon. MYFRA refute this suggestion and feel the need to assert that our motive for protecting the area has been mis-represented, by this statement.*

The comment is duly noted but it is common for a TVG application to be made to restrict or even prevent development and as far as landowner is aware, this application was made once the garage area land had been identified for redevelopment and a public consultation event was held at Bonvilston Reading Rooms on the 4th February 2019, as part of a statutory pre-application consultation process.

- *As described in our application we are driven by the wish to maintain, a safe natural area where children can play and adults can socialise, at village events, or walking their dogs. Any development, or encroachment on the green area would be environmentally degrading and socially damaging to the community.*

The comment is duly noted but the intention of the landowner is to preserve some open space despite the development.

- *Our wish is to preserve the much-threatened wildlife that is in abundance in the area. This includes ancient trees, Bats, the reptile population of snakes, toads and Greater Crested Newts, Tawny, Barn and Little Owls and every species of wild birds, such as Finches, Woodpeckers, Cuckoo's, and Tits.*

**The comment is duly noted but preservation of wildlife etc is not the objective of a TVG application. Most of the preservation and ecology issues will be considered as part of the planning process in any event.**

- *We understand that the Council has operated a 'Chinese wall' approach in relation to this application. Whilst we accept that this is a standard practice where another department is objecting to a village green application being dealt with by the same council, in its role as Registration Authority, it would also be standard to avoid a 'conflict of interest' and to ensure transparency to hold a non-statutory inquiry, which would address any issue of potential prejudice.*

**I believe this issue has been addressed by yourself in your email response to the Applicant dated 02 March 2020.**

- *In your 'Notice of Objection' you state that a public inquiry is not necessary for this application. We would therefore ask how the issue of potential prejudice has been addressed in the processing of this case, to ensure transparency and avoid a conflict of interest, particularly in light of any future plans the council may have for the land.*

**The 'Notice of Objection' came from myself on behalf of the Council as landowner. It is standard to say in a such a notice that no inquiry is needed if the landowner feels it has a strong case. However, the Council as landowner will still participate in an inquiry as appropriate and as required.**

- *We would like to highlight that recent planning applications and proposed developments in other parts of Bonvilston, incorporate as central features within their designs, green areas depicting children playing. The clear message being that a green space in a village like Bonvilston is central to the community. It is not logical, or in the interests of the community to leave a green space that has been used for over 50 years vulnerable, unappreciated or unrecognised, for its significant part in serving the community.*

**As stated above, the intention of the landowner is to preserve a proportion of the open space.**

- *Recent development plans in Bonvilston identify areas for potential green space in locations that are unsafe for children to play, due to the close proximity to traffic and the A48 main road. Maes y Ffynnon for over 50 years has provided a safe place for children to play and if protected could continue to do so in the future.*

**See above.**

- *We understand that Welsh legislation in this area falls behind that in place in England and that this is not favourable in terms of our application. We do not wish in any way to antagonise the council in relation to the enclosed responses, following the rejection of our application and also aim to avoid any conflict. We request that the council takes time to listen to our concerns in a pragmatic and objective way, that is not purely focused on a legal approach around meeting eligibility criteria for registering a green space. As residents of MYFRA we ask the council to look beyond the criteria of how the land was originally purchased over 50 years ago, in a post war climate and consider how Maes Y Ffynnon, has subsequently evolved and understand how important the green is to the whole community.*

**I understand the English legislation on TVG applications is more rigid than the Welsh which was introduced to circumvent the abuse of the TVG process to prevent development. Therefore, I am not sure why Welsh legislation is perceived to be less favourable to their application.**

**I believe you have addressed the issue of rejection of the application in your email response to the Applicant dated 02 March 2020.**

- MYFRA formally requests the opportunity to discuss further with the Vale of Glamorgan Council an exploration of the options available around a voluntary registration of the village green under section 15 (8) of the Commons Act 2006.

Voluntary registration of all the land subject to the current TVG application is not an option.

Regards

Jocelyn

Jocelyn Ham  
Senior Lawyer / Uwch Gyfreithiwr  
Legal Services / Gwasanaethau Cyfreithiol  
Vale of Glamorgan Council / Cyngor Bro Morgannwg

Given the current circumstances relating to the Covid-19 outbreak many of the Council's Committees are not sitting and public meetings are not being held. It may therefore be sometime before we are able to arrange for the appointment of the Inspector, unless we are able to use the emergency powers available to the Managing Director, which I will investigate.

If you have any further queries please do get in touch.

Kind regards

James

James Docherty  
Principal Lawyer / Uwch Gyfreithiwr  
Resources / Adnoddau  
Vale of Glamorgan Council / Cyngor Bro Morgannwg  
tel / ffôn: 01446 709781  
mob / sym:  
e-mail / e-bost: [jdocherty@valeofglamorgan.gov.uk](mailto:jdocherty@valeofglamorgan.gov.uk)

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**From:** [loumol@sky.com](mailto:loumol@sky.com) <[loumol@sky.com](mailto:loumol@sky.com)>  
**Sent:** 09 March 2020 21:06  
**To:** Docherty, James <[jdocherty@valeofglamorgan.gov.uk](mailto:jdocherty@valeofglamorgan.gov.uk)>  
**Subject:** Re: Village Green at Maes Y Ffynnon Bonvilston

Dear James

Thank you for your correspondence dated the 2 March 2020.

You have now stated within your capacity as the CRA that our application (MYFRA) to register the area as a Village Green, has not been rejected. You have also stated that you intend to hold a public enquiry, which I assume is to ensure transparency and avoid any conflict of interest. I would like to note and highlight that this was never forthcoming, or clear in any of the previous correspondence sent to MYFRA. We (MYFRA) have not received any written correspondence relating to your position as the acting body and representative for the CRA and therefore this is the first official notification that we can accept in terms of the details regarding the application and enquiry to date, for the Village Green protection.

I apologise for the late submission of this response in terms of not meeting the 5.00 pm deadline, however, due to residents commitment and the timescale dictated by your last correspondence this was unachievable, under the circumstances.

I look forward to responses from the land owners and also your comments in capacity as the CRA.

Yours Sincerely

Sian Clarke

On Monday, 2 March 2020, 15:48:30 GMT, Docherty, James <[jdocherty@valeofglamorgan.gov.uk](mailto:jdocherty@valeofglamorgan.gov.uk)> wrote:

Dear Sian,

Thank you for your e-mail below.

Below I raise some points in relation to clarification on your letter and next steps.

**1. The Commons Registration Authority (“CRA”) has not rejected your application.**

As you point out the Council is both (i) the Landowner (and objector to the Application); and (ii) the CRA is responsible for assessing and determining the Application – for the purposes of this e-mail I am going to refer to the Council acting in its CRA capacity as the CRA and in respect of its capacity as the Landowner as the Landowner.

I am acting as solicitor to the CRA, my colleague Jos Ham is acting for the Landowner and as you note we are working with a “Chinese Wall” in respect of the matter. All correspondence you receive will be from me on behalf of the CRA. The CRA’s role at this stage is to try to narrow the issues between the parties by allowing each party to comment on the representations given by the other. The objection that I forwarded to you is the Landowner’s response to the application and does not represent any view of the CRA.

**2. It is intended that there will be a non-statutory Inquiry.**

## Docherty, James

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**From:** Docherty, James  
**Sent:** 16 July 2020 17:00  
**To:** 'loumol@sky.com'  
**Subject:** RE: Village Green at Maes Y Ffynnon Bonvilston

**Switch-MessageId:** 12d2bb96956848f3b47e690e17f0272e

Dear Sian,

Further to my correspondence below and having not received a reply from you with any further response it is now my intention to obtain authority from the Council's Public Protection Licensing Committee to move to a public inquiry and the appointment of an independent inspector. Whilst the committees have been on hold in the Council due to the COVID 19 Pandemic they are now starting to operate again and I intend to take a report to the Committee meeting which is being proposed for the 30<sup>th</sup> July 2020.

Once the date of the Committee meeting is confirmed I shall confirm the same to you.

Kind regards

James

James Docherty  
Principal Lawyer / Uwch Gyfreithiwr  
Resources / Adnoddau  
Vale of Glamorgan Council / Cyngor Bro Morgannwg  
tel / ffôn: 01446 709781  
mob / sym:  
e-mail / e-bost: [jdocherty@valeofglamorgan.gov.uk](mailto:jdocherty@valeofglamorgan.gov.uk)

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---

**From:** Docherty, James  
**Sent:** 08 April 2020 17:45  
**To:** loumol@sky.com  
**Subject:** RE: Village Green at Maes Y Ffynnon Bonvilston

Dear Sian,

Please find below the Landowner's solicitors latest response to me in respect of your previous correspondence. I would note as is pointed out in that response that it is the CRA's intention to hold a non-statutory public inquiry in

## Docherty, James

---

**From:** Docherty, James  
**Sent:** 23 July 2020 16:50  
**To:** 'loumol@sky.com'  
**Cc:** 'clerk.snbcc@hotmail.com'  
**Subject:** RE: Village Green at Maes Y Ffynnon Bonvilston

**Switch-MessageId:** eac9e01ae592495a8493f81cb715be47

Dear Sian/Naomi,

Further to my e-mail below I write to confirm that the Council's Public Protection Licensing Committee (PPLC) meeting is going ahead next Thursday (30<sup>th</sup> July) and the Maes Y Ffynnon Town and Village Green Report will be considered at the meeting.

The Report sets out that my recommendation is that the matter proceeds to a Non-statutory Public Inquiry and that an independent Inspector is appointed to hear the evidence and make a recommendation to the PPLC at the conclusion of the Inquiry as to whether the Application should be approved or refused.

The Report is not controversial and I would expect that approval will be provided for me to take steps to appoint the Inspector.

If you have any questions please do contact me. I would note that I am on leave next week so in my absence please contact my colleague Victoria Davidson, copied into this e-mail.

Kind regards

James

James Docherty  
Principal Lawyer / Uwch Gyfreithiwr  
Resources / Adnoddau  
Vale of Glamorgan Council / Cyngor Bro Morgannwg  
tel / ffôn: 01446 709781  
mob / sym:  
e-mail / e-bost: [jdocherty@valeofglamorgan.gov.uk](mailto:jdocherty@valeofglamorgan.gov.uk)

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Correspondence is welcomed in Welsh or English / Croesewir Gohebiaeth yn y Gymraeg neu yn Saesneg.

**From:** Docherty, James  
**Sent:** 16 July 2020 17:00  
**To:** 'loumol@sky.com' <loumol@sky.com>  
**Subject:** RE: Village Green at Maes Y Ffynnon Bonvilston

## Docherty, James

---

**From:** loumol@sky.com  
**Sent:** 25 July 2020 10:21  
**To:** Docherty, James  
**Cc:** clerk.snbcc@hotmail.com; Davidson, Victoria  
**Subject:** Re: Village Green at Maes Y Ffynnon Bonvilston

Dear James

Apologies for not responding to you sooner, but I have been experiencing problems with my personal email account and I have only just picked up your correspondence.

Am I correct in my understanding here, that this is the next step, for the process of moving towards a public enquiry?

Can you please clarify if you require anything further in terms of a response?

Kind Regards

Sian Clarke

On Thursday, 23 July 2020, 16:50:52 BST, Docherty, James <jdocherty@valeofglamorgan.gov.uk> wrote:

Dear Sian/Naomi,

Further to my e-mail below I write to confirm that the Council's Public Protection Licensing Committee (PPLC) meeting is going ahead next Thursday (30<sup>th</sup> July) and the Maes Y Ffynnon Town and Village Green Report will be considered at the meeting.

The Report sets out that my recommendation is that the matter proceeds to a Non-statutory Public Inquiry and that an independent Inspector is appointed to hear the evidence and make a recommendation to the PPLC at the conclusion of the Inquiry as to whether the Application should be approved or refused.

The Report is not controversial and I would expect that approval will be provided for me to take steps to appoint the Inspector.

If you have any questions please do contact me. I would note that I am on leave next week so in my absence please contact my colleague Victoria Davidson, copied into this e-mail.

Kind regards

James

## Docherty, James

---

**From:** Davidson, Victoria  
**Sent:** 27 July 2020 15:23  
**To:** 'loumol@sky.com'; Docherty, James  
**Cc:** clerk.snbcc@hotmail.com  
**Subject:** RE: Village Green at Maes Y Ffynnon Bonvilston  
  
**Switch-MessageId:** 52d72b2b190e47968bc4a426126bb690

In James's absence your understanding as set out below is correct.

Regards,

Victoria

Victoria Davidson  
Operational Manager / Rheolydd Gweithredol, Gwasanaethau Cyfreithiol  
Director's Office - Resources / Swyddfa'r Cyfarwyddwr - Adnoddau  
Vale of Glamorgan Council / Cyngor Bro Morgannwg  
tel / ffôn: 01446 709407  
mob / sym: 07891 449715  
e-mail / e-bost: [VDavidson@valeofglamorgan.gov.uk](mailto:VDavidson@valeofglamorgan.gov.uk)

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**From:** loumol@sky.com <loumol@sky.com>  
**Sent:** 25 July 2020 10:21  
**To:** Docherty, James <jdocherty@valeofglamorgan.gov.uk>  
**Cc:** clerk.snbcc@hotmail.com; Davidson, Victoria <VDavidson@valeofglamorgan.gov.uk>  
**Subject:** Re: Village Green at Maes Y Ffynnon Bonvilston

Dear James

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Can you please clarify if you require anything further in terms of a response?

Kind Regards

Sian Clarke

## Docherty, James

---

**From:** Docherty, James  
**Sent:** 21 August 2020 14:45  
**To:** Davidson, Victoria; 'loumol@sky.com'  
**Cc:** clerk.snbcc@hotmail.com  
**Subject:** RE: Village Green at Maes Y Ffynnon Bonvilston

**Switch-MessageId:** cee288d82a6848798b80e22116ad8fa0

Dear Sian,

Further to the e-mail correspondence below the committee gave approval for the matter to proceed to a non-statutory public inquiry and the appointment of an independent inspector to chair the inquiry.

I am now taking steps to appoint Mr James Marwick a barrister at St John's Chambers in Bristol who is an experienced chairman of such inquiries - <https://www.stjohnschambers.co.uk/profile/james-marwick>.

Once appointed Mr Marwick will provide his initial views before providing advice as to the proposed length of the Inquiry, whether a pre-inquiry meeting is required and give directions to the parties as to the procedure for the preparation for and hearing of the Inquiry.

I shall forward any information received from the Inspector to you in due course.

Kind regards

James

James Docherty  
Principal Lawyer / Uwch Gyfreithiwr  
Resources / Adnoddau  
Vale of Glamorgan Council / Cyngor Bro Morgannwg  
tel / ffôn: 01446 709781  
mob / sym:  
e-mail / e-bost: [jdocherty@valeofglamorgan.gov.uk](mailto:jdocherty@valeofglamorgan.gov.uk)

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Correspondence is welcomed in Welsh or English / Croesewir Gohebiaeth yn y Gymraeg neu yn Saesneg.

**From:** Davidson, Victoria <VDavidson@valeofglamorgan.gov.uk>  
**Sent:** 27 July 2020 15:23  
**To:** 'loumol@sky.com' <loumol@sky.com>; Docherty, James <jdocherty@valeofglamorgan.gov.uk>

## Docherty, James

---

**From:** Docherty, James  
**Sent:** 25 September 2020 15:56  
**To:** 'loumol@sky.com'; Ham, Jocelyn; clerk.snbcc@hotmail.com  
**Subject:** Maes Y Ffynnon - Town and Village Green Inquiry  
**Attachments:** Note and Directions (Maes Y Ffynnon TVG Application).doc

**Switch-MessageId:** 2ef80d0df8fd4e95b59acd866f0a20d0

Good afternoon all,

The Commons Registration Authority has appointed James Marwick, barrister at St John's Chambers in Bristol (<https://www.stjohnschambers.co.uk/profile/james-marwick>), as the independent inspector to hear the Town and Village Green Inquiry in relation to the land at Maes Y Ffynnon.

Mr Marwick has provided the attached Note and Directions setting out the background to the matter and also setting a number of dates for supplying information and for a Pre-Inquiry Review.

If you have any queries in relation to the content of the attached document or questions for the Inspector at this stage please let me know.

Kind regards

James

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## Docherty, James

---

**From:** loumol@sky.com  
**Sent:** 06 October 2020 16:40  
**To:** Ham, Jocelyn; clerk.snbcc@hotmail.com; Docherty, James  
**Subject:** Re: Maes Y Ffynnon - Town and Village Green Inquiry

Good Afternoon

I am in the process of collating dates we are unavailable and when reading the attached document, noted that The Green has been described as being in the village of St Nicholas, when actually it is located in Bonvilston. I believe this will need to be amended and reissued to us, as St Nicholas is a completely different village, even though we have a joint Community Council.

This could affect the set timescales laid out in the document, so please could you advise as to how this could impact on the stated dates?

Kind Regards

Sian

On Friday, 25 September 2020, 15:56:29 BST, Docherty, James <jdocherty@valeofglamorgan.gov.uk> wrote:

Good afternoon all,

The Commons Registration Authority has appointed James Marwick, barrister at St John's Chambers in Bristol (<https://www.stjohnschambers.co.uk/profile/james-marwick>), as the independent inspector to hear the Town and Village Green Inquiry in relation to the land at Maes Y Ffynnon.

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If you have any queries in relation to the content of the attached document or questions for the Inspector at this stage please let me know.

Kind regards

James

James Docherty

Principal Lawyer / Uwch Gyfreithiwr

## Docherty, James

---

**From:** loulol@sky.com  
**Sent:** 09 October 2020 15:00  
**To:** Ham, Jocelyn; clerk.snbcc@hotmail.com; Docherty, James  
**Subject:** Re: Maes Y Ffynnon - Town and Village Green Inquiry

Good Morning

Due to the work commitments of some of the identified Witnesses we have limited availability during the timescale provided and therefore we are unable to offer any slots for December, which is further complicated by the Xmas period. I was not sure from the directions whether the enquiry could take place on a weekend, so I have assumed that it would not in relation to the dates we are unavailable. So in the weeks where we have availability can you please assume that this excludes weekends. If a weekend date was available I would need to revisit Witness availability to see if this could be accommodated.

Please see below the dates that the Witnesses for the Village Green enquiry are unavailable:

7th - 31st December  
1st - 3rd January  
6th January  
18th - 24th January

As mentioned above a number of us will have additional work requirements and we also have 1 witness who is awaiting a hospital appointment.

Could you also confirm receipt of my earlier correspondence, highlighting an error in the document issued in relation to the enquiry, where it sites Maes Y Ffynnon, as being located in the Village of St Nicholas and not Bonvilston.

Kind Regards

Sian Clarke

On Friday, 25 September 2020, 15:56:29 BST, Docherty, James <jdocherty@valeofglamorgan.gov.uk> wrote:

Good afternoon all,

The Commons Registration Authority has appointed James Marwick, barrister at St John's Chambers in Bristol (<https://www.stjohnschambers.co.uk/profile/james-marwick>), as the independent inspector to hear the Town and Village Green Inquiry in relation to the land at Maes Y Ffynnon.

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If you have any queries in relation to the content of the attached document or questions for the Inspector at this stage please let me know.

## Docherty, James

---

**From:** Docherty, James  
**Sent:** 09 October 2020 15:18  
**To:** loumol@sky.com  
**Cc:** clerk.snbcc@hotmail.com  
**Subject:** RE: Maes Y Ffynnon - Town and Village Green Inquiry

**Switch-MessageId:** db6ff79e58f949088be53d2f25bbe1db

Dear Sian,

Thank you for your e-mail below. I will advise the Inspector of the same.

We would not consider an inquiry being held on a weekend.

I am also notifying the Inspector of your previous e-mail and will ask for the error to be corrected.

Kind regards

James

James Docherty  
Principal Lawyer / Uwch Gyfreithiwr  
Resources / Adnoddau  
Vale of Glamorgan Council / Cyngor Bro Morgannwg  
tel / ffôn: 01446 709781  
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**From:** loumol@sky.com <loumol@sky.com>  
**Sent:** 09 October 2020 15:00  
**To:** Ham, Jocelyn <JHam@valeofglamorgan.gov.uk>; clerk.snbcc@hotmail.com; Docherty, James <jdocherty@valeofglamorgan.gov.uk>  
**Subject:** Re: Maes Y Ffynnon - Town and Village Green Inquiry

Good Morning

Due to the work commitments of some of the identified Witnesses we have limited availability during the timescale provided and therefore we are unable to offer any slots for December, which is further complicated by the Xmas

## Docherty, James

---

**From:** Docherty, James  
**Sent:** 20 October 2020 10:44  
**To:** 'loumol@sky.com'; clerk.snbcc@hotmail.com  
**Subject:** FW: Maes Y Ffynnon TVG application

**Switch-MessageId:** 059f54cb7fd24902af1d277e8b06bb20

Dear Sian,

Please find below an e-mail which I received from the Council's lawyer this morning requesting an extension to the deadline for preparation of bundles for in accordance with the Inspectors Note and Directions.

Please could you confirm whether the Applicants are happy to agree to an extension of time for submission of the bundles in light of the impending COVID lockdown?

If not then it will be a matter for the Inspector to make a decision on.

Kind regards

James

James Docherty  
Principal Lawyer / Uwch Gyfreithiwr  
Resources / Adnoddau  
Vale of Glamorgan Council / Cyngor Bro Morgannwg  
tel / ffôn: 01446 709781  
mob / sym:  
e-mail / e-bost: [jdocherty@valeofglamorgan.gov.uk](mailto:jdocherty@valeofglamorgan.gov.uk)

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**From:** Ham, Jocelyn <[JHam@valeofglamorgan.gov.uk](mailto:JHam@valeofglamorgan.gov.uk)>  
**Sent:** 20 October 2020 10:41  
**To:** Docherty, James <[jdocherty@valeofglamorgan.gov.uk](mailto:jdocherty@valeofglamorgan.gov.uk)>  
**Subject:** Maes Y Ffynnon TVG application

Dear James

In relation to compliance with the Inspector's Notes and Directions in this matter, I write to enquire whether - given the imminent lockdown period and subject to the applicant's and Inspector's agreement - consideration could be

## Docherty, James

---

**From:** loulol@sky.com  
**Sent:** 22 October 2020 15:04  
**To:** clerk.snbcc@hotmail.com; Docherty, James  
**Subject:** Re: Maes Y Ffynnon TVG application

Dear James

Further to your correspondence on the 20th October 2020, please accept this email as confirmation of our agreement to an extension to the deadline for preparation of bundles, as requested.

I am assuming that moving forward a new timeline of dates and deadlines will be issued in line with the agreed extension?

I look forward to hearing from you soon.

Kind Regards

Sian

On Tuesday, 20 October 2020, 10:44:26 BST, Docherty, James <jdocherty@valeofglamorgan.gov.uk> wrote:

Dear Sian,

Please find below an e-mail which I received from the Council's lawyer this morning requesting an extension to the deadline for preparation of bundles for in accordance with the Inspectors Note and Directions.

Please could you confirm whether the Applicants are happy to agree to an extension of time for submission of the bundles in light of the impending COVID lockdown?

If not then it will be a matter for the Inspector to make a decision on.

Kind regards

James

James Docherty

Principal Lawyer / Uwch Gyfreithiwr

Resources / Adnoddau

## Docherty, James

---

**From:** Docherty, James  
**Sent:** 22 October 2020 15:15  
**To:** loumol@sky.com; clerk.snbcc@hotmail.com  
**Subject:** RE: Maes Y Ffynnon TVG application

**Switch-MessageId:** a4359e8c62a44c0d89f20ada54829c34

Dear Sian,

Thank you for your e-mail below. I will forward the correspondence to the inspector and he will then advise on any amendments he feels are required in respect of the timetable.

Kind regards

James

James Docherty  
Principal Lawyer / Uwch Gyfreithiwr  
Resources / Adnoddau  
Vale of Glamorgan Council / Cyngor Bro Morgannwg  
tel / ffôn: 01446 709781  
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**From:** loumol@sky.com <loumol@sky.com>  
**Sent:** 22 October 2020 15:04  
**To:** clerk.snbcc@hotmail.com; Docherty, James <jdocherty@valeofglamorgan.gov.uk>  
**Subject:** Re: Maes Y Ffynnon TVG application

Dear James

Further to your correspondence on the 20th October 2020, please accept this email as confirmation of our agreement to an extension to the deadline for preparation of bundles, as requested.

I am assuming that moving forward a new timeline of dates and deadlines will be issued in line with the agreed extension?

I look forward to hearing from you soon.

## Docherty, James

---

**From:** Docherty, James  
**Sent:** 26 October 2020 14:53  
**To:** loumol@sky.com; clerk.snbcc@hotmail.com  
**Subject:** RE: Maes Y Ffynnon TVG application

**Switch-MessageId:** 44d3665aa2dc4dd18c4a83de10584b53

Dear Sian,

Further to the e-mails below I have now spoken with the Inspector and he has provided the following instructions:

1. Please can you provide your availability for a Pre-Inquiry Hearing in the week commencing 7<sup>th</sup> December 2020. The estimated time for the PIH is 1 hour.
2. The Inquiry shall be preliminarily set for Monday 25<sup>th</sup> January 2020 as this appears to be acceptable to all parties.

I look forward to hear from you in respect of availability for the Pre-Inquiry Hearing.

Kind regards

James

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Principal Lawyer / Uwch Gyfreithiwr  
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**From:** loumol@sky.com <loumol@sky.com>  
**Sent:** 22 October 2020 15:04  
**To:** clerk.snbcc@hotmail.com; Docherty, James <jdocherty@valeofglamorgan.gov.uk>  
**Subject:** Re: Maes Y Ffynnon TVG application

Dear James

## Docherty, James

---

**From:** loumol@sky.com  
**Sent:** 06 November 2020 12:24  
**To:** clerk.snbcc@hotmail.com; Docherty, James  
**Subject:** Re: Maes Y Ffynnon TVG application

Dear James

I currently have availability on Monday the 7th of December and Friday the 11th of December, for the preliminary hearing. From the dates provided below I am concluding that an extension was not agreed or deemed necessary. I also note from the instructions issued by the Inspector that the application pack needs to be re-submitted by the 9th of November to yourself. Please could you confirm that this is the pack that we originally submitted, with any further or additional information, plus a list of witnesses? Can I also ask where this is to be submitted and to whom? Due to the recent local lockdown and subsequent circuit breaker, I am struggling to meet this deadline as I have been unable to engage with my some of my neighbours effectively, particularly those who are elderly and do not have access to email, mobile phone or IT systems. I am still waiting for some updated Witness Statements to support the application that will bring the usage of the Green up to date. would it be possible to have an extension to the date of the 9th please?

In terms of the witnesses that will be available for the enquiry I have identified 5 individuals below. I have included additional names as due to the nature of some residents work requirements, they may find themselves unavailable closer to the date, especially if the pandemic continues as it is currently.

Sian Clarke - 21 Maes Y Ffynnon  
Ceri Hunt - 13 Maes Y Ffynnon  
Cecil Mustow - 17 Maes Y Ffynnon

Leigh or Tracy Ivory - 23 Maes Y Ffynnon  
Lynne Morgan - 20 Maes Y ffynnon  
Chris or Alex Brown - 24 Maes Y Ffynnon

We do understand that the number of witnesses is limited to 5 and will confirm closer to the date who will be available for the 25th of January.

Kind Regards

Sian Clarke

On Monday, 26 October 2020, 14:53:22 GMT, Docherty, James <jdocherty@valeofglamorgan.gov.uk> wrote:

Dear Sian,

Further to the e-mails below I have now spoken with the Inspector and he has provided the following instructions:

1. Please can you provide your availability for a Pre-Inquiry Hearing in the week commencing 7<sup>th</sup> December 2020. The estimated time for the PIH is 1 hour.

## Docherty, James

---

**From:** Docherty, James  
**Sent:** 06 November 2020 13:11  
**To:** loumol@sky.com; clerk.snbcc@hotmail.com  
**Subject:** RE: Maes Y Ffynnon TVG application  
**Attachments:** Amended - Note and Directions (Maes Y Ffynnon TVG Application).doc

**Switch-MessageId:** 17a4f9fb97384a1991e080eb1b42308f

Dear Sian,

Apologies the e-mail below did not make it clear that the Inspector confirmed the agreed extension to the date for providing the Bundles to 23<sup>rd</sup> November 2020.

In respect of the content of the bundle the inspectors instructions set out what should be included in the consolidated bundle, as set out below. The idea of the consolidated bundle is that it makes the running of the Inquiry much easier by having all the relevant documents (the application, outline legal argument and any legal authorities being relied upon and witness statements of those witnesses appearing at the inquiry) in order at the front of the bundle with the other witness statements other documents to the rear. This bundle would ideally be paginated in order that, on the day of the hearing, it is easy for witnesses to be directed to relevant pages when giving their evidence or for referring the inspector to any particular pages. As set out you do not need to provide the documents set out in (ii) but this will no doubt assist the inspector when considering the matter and if any legal authorities (legislation or case law) is being referred to having copies of those documents available on the day will mean that they do not have be checked after the event.

### Applicants' Bundle

- (i) The application.
- (ii) If desired, an outline of their case together with any skeleton argument or legal submissions and copies of any legal authorities which are to be relied upon.
- (iii) A list of the witnesses whom the applicant intends to call to give oral evidence at the Inquiry, limited to no more than 5 witnesses.
- (iv) In chronological order, signed and dated witness statements, letters, questionnaires or proofs of evidence of every witness the Applicants intend to call, containing the substance of their evidence (for the avoidance of doubt this can be the existing evidence already served and/or updated evidence on behalf of a witness).
- (v) All other witness statements (if any), evidence questionnaires, statutory declarations and affidavits upon which the applicant wishes to rely.
- (vi) In chronological order, any other documents (including maps and photographs) which are relied upon.

If you have not already done so it may be helpful to obtain legal support in relation to the formation of the bundle.

I have been informed by the Objector that they will be represented by a Barrister at both the Pre-Inquiry Hearing and the Inquiry Hearing itself.

Please also find the amended version of the directions and instructions noting that Maes Y Ffynnon is actually located in Bonvilston and not St Nicholas.

Kind regards

James

James Docherty  
Principal Lawyer / Uwch Gyfreithiwr  
Resources / Adnoddau

Vale of Glamorgan Council / Cyngor Bro Morgannwg  
tel / ffôn: 01446 709781  
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Correspondence is welcomed in Welsh or English / Croesewir Gohebiaeth yn y Gymraeg neu yn Saesneg.

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**Sent:** 06 November 2020 12:24  
**To:** clerk.snbcc@hotmail.com; Docherty, James <jdocherty@valeofglamorgan.gov.uk>  
**Subject:** Re: Maes Y Ffynnon TVG application

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Kind Regards

Sian Clarke

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I look forward to hear from you in respect of availability for the Pre-Inquiry Hearing.

Kind regards

James

James Docherty

Principal Lawyer / Uwch Gyfreithiwr

Resources / Adnoddau

Vale of Glamorgan Council / Cyngor Bro Morgannwg

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**IN THE MATTER OF AN APPLICATION TO REGISTER LAND SITUATE  
AT MAES Y FFYNNON, BONVILSTON, VALE OF GLAMORGAN AS A  
TOWN OR VILLAGE GREEN**

**-Application Number 01/2019/VG50-**

---

**INSPECTOR'S NOTE & DIRECTIONS**

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1. I am instructed by The Vale of Glamorgan Council in its capacity as the relevant registration authority (the **Registration Authority**) to act as an independent inspector in respect of an application to register land situate at Maes Y Ffynnon in Bonvilston, Vale of Glamorgan as a town or village green under section 15(2) of the Commons Act 2006 (as amended).
  
2. The application dated 22<sup>nd</sup> May 2019 is made jointly by the Maes Y Ffynnon Residents Association and St Nicholas with Bonvilston Community Council (the **Applicants**) and seeks registration of an area of land at the north end of Maes Y Ffynnon on the basis of longstanding user of the land for lawful sports and pastimes within the meaning of the statutory test for registration provided for at section 15(2) of the Commons Act. The application was supported by a large number of statements, letters and questionnaires from local residents who speak to such user of what is often referred to as "*The Green*" in the evidence.
  
3. The land is owned by The Vale of Glamorgan Council. It comprises grassed open space together with a former garage site and roadways/paths which form part of the public highway. The Council in its capacity as land-owner (the **Objector**) objected to the application in written submissions dated 4<sup>th</sup> December 2019 on the principal bases that any user of the grassed open spaces has been "*by right*" and not "*as of right*" and that any user of the garage site and roadways does not otherwise satisfy the criteria for registration under section 15(2) of the Commons Act. The parties have had the further opportunity to address each other's cases including in an exchange of correspondence in March/April 2020.

4. I am asked to conduct a non-statutory public inquiry in respect of the application and thereafter to submit a written report to the Registration Authority with a recommendation as to whether or not the land ought to be registered as a town or village green. This is recognised good practice where a registration authority is also land-owner in relation to an application for town or village green registration. This note addresses procedural matters relating to the Inquiry but it is right to observe that in considering the application I am not concerned with the advantages or disadvantages of registration or the planning merits of any prospective development of the land.

5. The Inquiry ought to be listed with a time estimate of 1 day with a reserve of 1 day in case of over-run. Insofar as is relevant:-

5.1 This is a case where it is both fair and proportionate to control the extent of oral evidence at the Inquiry. There is no significant dispute as to the extent of user of the grassed open space(s) at material times (per paragraph 14 of the Objector's written submissions) but rather the core dispute is whether any such user was "*by right*" or "*as of right*". It would therefore be disproportionate- and not in the public interest during the ongoing COVID-19 pandemic- to require a large number of local residents to speak to how, when and how often they use the land at an attended hearing when the same is not controversial (and where likewise the advantages of registration do not fall for consideration). I consider it is therefore appropriate to limit the oral evidence to no more than 5 witnesses each on the part of both Parties. It will be a matter for the Parties to choose their lead witnesses and they may call less than 5 witnesses. I will be able to have due regard to any evidence provided (including the full evidence already provided by the Applicants) in assessing the application.

5.2 The Inquiry ought to be capable of being conducted remotely (whether by MS Teams, Zoom or other video platform software and this is capable of being organised through my Chambers). My experience is that most technology issues are surmountable, and Inquiries and other Court work are now frequently being conducted in this way.

5.3 I have time-tabled for a Pre-Inquiry Hearing in order that the same can be considered and any arrangements implemented for the Inquiry to proceed remotely. I bear in mind that the Applicants do not presently have legal representation. I will take the required time at the Pre-Inquiry Hearing to explain the process and to clarify any aspect of presenting the evidence and submissions on which any party is unclear about. It is essential that no one feels pressurised or intimidated by the procedure and that each party is able to present their case fairly and fully. I will pro-actively manage the Inquiry so as to ensure this remains the case at all times. I have provided for a direction dealing with the filing of any legal submissions and authorities. It might be that the Applicants do not wish to rely upon any such material. In that case, the Registration Authority ought to be notified by the relevant deadline that this is the case. I am satisfied though that both parties are aware of the respective legal and factual cases presented by each side and the directions below allow the further opportunity for the same to be addressed.

5.4 If any party is unable to comply with a direction, they should seek an extension to the deadline by writing to the Registration Authority with an explanation as to why the deadline cannot be complied with. Any extension should be sought in advance of the deadline. I will then consider whether it is appropriate to grant any extension. Any party which fails to comply with a deadline, in particular those relating to the filing of evidence, may not be able to rely on such evidence at the Inquiry.

5.5 I should be grateful if this note and the directions below could be circulated to the parties as soon as reasonably possible. I am grateful for the cooperation of the parties. If there is any matter that a party wishes to raise, please do not hesitate to do so through the Registration Authority.

6. The below Directions provide for the procedure and preparatory steps to be adopted in respect of the Inquiry.

(1) The date of the Inquiry and the venue for it (including the question of whether it will proceed remotely) are not yet fixed. The present time estimate for the Inquiry is 1 day. The parties shall provide any dates of non-availability for attendance at the Inquiry for the period of 7<sup>th</sup> December 2020 to 31<sup>st</sup> January 2021 to the Registration Authority on or before 9<sup>th</sup> October 2020 and thereafter the Registration Authority will fix the date for the Inquiry and notify the same to the Parties. If any of the parties object to a remote hearing, they should provide written reasons in support of their position at the same time as providing non-availability.

(2) By 9<sup>th</sup> November 2020 each party shall provide to the Registration Authority three copies of a bundle containing the following:-

Applicants' Bundle

- (i) The application.
- (ii) If desired, an outline of their case together with any skeleton argument or legal submissions and copies of any legal authorities which are to be relied upon.
- (iii) A list of the witnesses whom the applicant intends to call to give oral evidence at the Inquiry, limited to no more than 5 witnesses.
- (iv) In chronological order, signed and dated witness statements, letters, questionnaires or proofs of evidence of every witness the Applicants intend to call, containing the substance of their evidence (for the avoidance of doubt this can be the existing evidence already served and/or updated evidence on behalf of a witness).
- (v) All other witness statements (if any), evidence questionnaires, statutory declarations and affidavits upon which the applicant wishes to rely.
- (vi) In chronological order, any other documents (including maps and photographs) which are relied upon.

#### Objector's Bundle

- (i) The objection (and any supplemental objection statements).
- (ii) If desired, an outline of its case together with any skeleton argument or legal submissions and copies of any legal authorities which are to be relied upon.
- (iii) A list of the witnesses whom the objector intends to call to give oral evidence at the Inquiry, limited to no more than 5 witnesses.
- (iv) In chronological order, signed and dated witness statements, letters or proofs of evidence of every witness whom the objector intends to call, containing the substance of their evidence.
- (v) All other witness statements, evidence questionnaires, statutory declarations and affidavits upon which the objector wishes to rely.
- (vi) In chronological order, any other documents (including maps, photographs and grants of planning permission) which is relied upon.

- (3) Thereafter the Registration Authority will circulate copies of the respective bundles to the parties as soon as possible together with an Inquiry bundle which shall contain the following:-

#### Registration Authority's Bundle

- (i) Copies of all letters of support to the application or letters of objection sent to the Registration Authority.
- (ii) Copies of all correspondence between the Registration Authority, the applicant and the objector.
- (iii) A plan and statement as to the extent and nature of any public right of way or ways passing over or in the vicinity of the application land (including a copy of any relevant definitive map and statement).

- (4) There shall be a Pre-Inquiry Hearing (time estimate 1 hour) on a suitable date in a window in the week commencing 16<sup>th</sup> November 2020.

- (5) The hearing date will be fixed upon receipt of dates of non-availability for that week by 9<sup>th</sup> October 2020. The Pre-Inquiry Hearing shall be conducted remotely. The parties shall provide the Registration Authority with an email address of the representative who will attend the Pre-Inquiry Hearing on their behalf by no later than 7 days before the hearing. An email invitation will be sent by return which will allow attendance at the hearing regardless of the software on the representative's device. In default of all parties having access to a camera-enabled device, the hearing will proceed without video.
- (6) Thereafter the Registration Authority will publicise the Inquiry by placing an advertisement in a local newspaper circulating in the area of the land subject to the application and by posting notices at the main points of entry to the town or village green (or, if there are no such places, in a conspicuous place at the site) not later than 14 days before the date of the Inquiry. If the Inquiry is to proceed remotely (as will be determined at the Pre-Inquiry Hearing), the advertisements will invite members of the public who wish to participate or attend the Inquiry to provide an email address by way of registration in order that they can be provided with an online link enabling them to join the Inquiry remotely. Any interested person shall be entitled, on reasonable notice, in Registration Authority business hours at any time before the conclusion of the Inquiry to inspect the inquiry bundle held by the Registration Authority.
- (7) The sitting hours are subject to any direction by the Inspector during the course of the Inquiry, but will generally be from 10am to 1pm and 2pm to 5pm. The Inquiry will usually be conducted in the following order:
- (a) Opening Remarks by the Inspector.
  - (b) Any opening statement by the applicants.
  - (c) The evidence of the applicants' witnesses (including cross-examination and re-examination).
  - (d) Any opening statement by the objector.

- (e) The evidence of the objector's witnesses (including cross-examination and re-examination)
  - (f) Evidence and submissions by members of the public, at the discretion of the Inspector.
  - (g) The objector's closing statement.
  - (h) The applicants' closing statement.
  - (i) Any closing observations by the Inspector.
- (8) Witnesses and/or submissions may be heard out of order at the discretion of the Inspector and evidence will be given unsworn. If the matter proceeds remotely it will be likely that written closing statements will be directed to be provided within 7 days of completion of oral evidence at the Inquiry. The Inspector will hold an unaccompanied site visit to the application site and the parties can assume that such a site visit will have been undertaken by the time of the Pre-Inquiry Hearing.
- (9) The applicants or the objector may make a written application to the Inspector through the Registration Authority to vary or supplement these directions at any time before the Inquiry commences. The Inspector may supplement or vary these directions at any time prior to the commencement of the Inquiry, with or without such an application.
- (10) The Inspector will provide the Registration Authority with a report and recommendation to assist the Registration Authority in deciding whether or not to grant the application.
- (11) With these directions, the Registration Authority will provide its relevant contact details relating to any matter set out above, including an address for services of documents and an email address for ongoing correspondence.

7. The Registration Authority should not hesitate to contact me with any queries.

James Marwick

St John's Chambers

21<sup>st</sup> September 2020

[James.marwick@stjohnschambers.co.uk](mailto:James.marwick@stjohnschambers.co.uk)

## Docherty, James

---

**From:** loumol@sky.com  
**Sent:** 15 November 2020 14:53  
**To:** Docherty, James  
**Subject:** Re: Maes Y Ffynnon TVG application

Hi James

Can I query, do you or the Council still have the Green application?

Regards

Sian

On Friday, 6 November 2020, 13:10:38 GMT, Docherty, James <jdocherty@valeofglamorgan.gov.uk> wrote:

Dear Sian,

Apologies the e-mail below did not make it clear that the Inspector confirmed the agreed extension to the date for providing the Bundles to 23<sup>rd</sup> November 2020.

In respect of the content of the bundle the inspectors instructions set out what should be included in the consolidated bundle, as set out below. The idea of the consolidated bundle is that it makes the running of the Inquiry much easier by having all the relevant documents (the application, outline legal argument and any legal authorities being relied upon and witness statements of those witnesses appearing at the inquiry) in order at the front of the bundle with the other witness statements other documents to the rear. This bundle would ideally be paginated in order that, on the day of the hearing, it is easy for witnesses to be directed to relevant pages when giving their evidence or for referring the inspector to any particular pages. As set out you do not need to provide the documents set out in (ii) but this will no doubt assist the inspector when considering the matter and if any legal authorities (legislation or case law) is being referred to having copies of those documents available on the day will mean that they do not have be checked after the event.

### Applicants' Bundle

- (i) The application.
- (ii) If desired, an outline of their case together with any skeleton argument or legal submissions and copies of any legal authorities which are to be relied upon.
- (iii) A list of the witnesses whom the applicant intends to call to give oral evidence at the Inquiry, limited to no more than 5 witnesses.
- (iv) In chronological order, signed and dated witness statements, letters, questionnaires or proofs of evidence of every witness the Applicants intend to call, containing the substance of their evidence (for the avoidance of doubt this can be the existing evidence already served and/or updated evidence on behalf of a witness).
- (v) All other witness statements (if any), evidence questionnaires, statutory declarations and affidavits upon which the applicant wishes to rely.

## Docherty, James

---

**From:** Docherty, James  
**Sent:** 16 November 2020 10:17  
**To:** loumol@sky.com  
**Subject:** RE: Maes Y Ffynnon TVG application

**Switch-MessageId:** dba3e100c72443d9a75caf6d2f55847c

Hi Sian,

I have the original copy of the Application as Commons Registration Authority.

Kind regards

James

---

**From:** loumol@sky.com <loumol@sky.com>  
**Sent:** 15 November 2020 14:53  
**To:** Docherty, James <jdocherty@valeofglamorgan.gov.uk>  
**Subject:** Re: Maes Y Ffynnon TVG application

Hi James

Can I query, do you or the Council still have the Green application?

Regards

Sian

On Friday, 6 November 2020, 13:10:38 GMT, Docherty, James <[jdocherty@valeofglamorgan.gov.uk](mailto:jdocherty@valeofglamorgan.gov.uk)> wrote:

Dear Sian,

Apologies the e-mail below did not make it clear that the Inspector confirmed the agreed extension to the date for providing the Bundles to 23<sup>rd</sup> November 2020.

In respect of the content of the bundle the inspectors instructions set out what should be included in the consolidated bundle, as set out below. The idea of the consolidated bundle is that it makes the running of the Inquiry much easier by having all the relevant documents (the application, outline legal argument and any legal authorities being relied upon and witness statements of those witnesses appearing at the inquiry) in order at the front of the bundle with the other witness statements other documents to the rear. This bundle would ideally be paginated in order that, on the day of the hearing, it is easy for witnesses to be directed to relevant pages when giving their evidence or for referring the inspector to any particular pages. As set out you do not need to provide the documents set out in (ii) but this will no doubt assist the inspector when considering the matter and if any legal authorities (legislation or case law) is being referred to having copies of those documents available on the day will mean that they do not have be checked after the event.

## Docherty, James

---

**From:** loumol@sky.com  
**Sent:** 18 November 2020 11:35  
**To:** Docherty, James  
**Subject:** Re: Maes Y Ffynnon TVG application

Morning James

Thank you for the information.

I need to advise you that we are struggling to get everything together for the 23rd, in light of the recent disruptions due to lockdowns and also some key witnesses becoming infected with Covid-19. A number of the MYFRA association and witnesses are currently self isolating. I feel that this is now being rushed through considering the timescales that have elapsed since we submitted our original application, early in 2019. I am concerned that the circumstances we find ourselves in due to the pandemic, could compromise the hearing and put us at a disadvantage, due to restrictions on engagement with residents and other parties. Some more elderly witnesses cannot access digital technology and could not be supported by others due to their vulnerability and social distancing restrictions. We are also struggling to meet and engage with the St Nicholas and Bonvilston Community Council due to the impact that Covid-19 has had on their ability to undertake meetings, for us to attend and some members do not have access to digital technology. These circumstances also make engaging potential legal representation extremely challenging, as due to restrictions we are unable to group together in person, or digitally as joint applicants MYFRA and the Community Council, to gain approval of how we spend our finances. Both organisations require for any matters around making financial decisions, that the attendance is quorate at meetings and that is not possible at present.

In light of the above, can I request a review of these dates, as I feel we are being put at an unfair disadvantage under extreme circumstances during unprecedented times. I believe a more appropriate date for the hearing would be in the spring, as it is likely that restrictive conditions will continue until the roll out of an vaccine and some form of normality has been restored.

I look forward to your response.

Kind Regards

Sian Clarke

On Monday, 16 November 2020, 10:16:52 GMT, Docherty, James <jdocherty@valeofglamorgan.gov.uk> wrote:

Hi Sian,

I have the original copy of the Application as Commons Registration Authority.

Kind regards

James

## Docherty, James

---

**From:** Docherty, James  
**Sent:** 18 November 2020 17:58  
**To:** loumol@sky.com  
**Subject:** RE: Maes Y Ffynnon TVG application

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**Switch-MessageId:** fa86dbc15cb54e1eb57e2957aef82bfd

Good morning Sian,

Thank you for your e-mail below of which I note the contents, I hope that all those suffering with Covid-19 make a swift and full recovery.

I appreciate that this is a very difficult time and understand the difficulties that this can cause you as applicants.

I shall forward your request to the inspector but could I ask whether you could confirm what alternative arrangements you are requesting. When do you think that you could be able to comply with the directions and are you suggesting that the applicants are unable to have the Inquiry held virtually or is it just the case that it would be preferable?

I shall also forward your request to the Council of the same for their comments.

I would like to reassure you that the Commons Registration Authority is not and has never sought to try and "rush the matter through" but has just tried, in consultation with both parties and the Inspector, to formulate a reasonable time frame within which to make preparations for and hold the Inquiry without unnecessary delay but also to give the parties the opportunity to prepare.

I look forward to hearing from you.

Kind regards

James

James Docherty  
Principal Lawyer / Uwch Gyfreithiwr  
Resources / Adnoddau  
Vale of Glamorgan Council / Cyngor Bro Morgannwg  
tel / ffôn: 01446 709781  
mob / sym:  
e-mail / e-bost: [jdocherty@valeofglamorgan.gov.uk](mailto:jdocherty@valeofglamorgan.gov.uk)

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## Docherty, James

---

**From:** loulomol@sky.com  
**Sent:** 19 November 2020 14:50  
**To:** Docherty, James  
**Subject:** Re: Maes Y Ffynnon TVG application

Afternoon James

There are a mixture of problems in terms of meeting these deadlines because of the pandemic. coordinating discussions to move this forward through MYFRA and the CC is difficult as a number of members cannot work digitally and certain engagement is required due to financial matters. i am also facing significant challenges due to local lockdowns and the fire breaker in putting the pack together, gain witness statements and signatures'. I was contacted by track and trace yesterday and advised to self-isolate, which again has added another problem.

There has been a number of developments in relation to the Green since March that need to be collated and every time I start to bring things together, we are faced with legislative changes due to Covid-19. I do not wish to disrupt anybody's work load and I obviously what to have the hearing, but the continued ever changing situation is making this very problematic and we are likely to experience a further lockdown. I am sure you appreciate that taking part in a public enquiry, is not an everyday occurrence and one that needs to be dealt with in detail and correctly and I am concerned we will not be able to meet the requirements for this by Monday. A date for submission early in the New Year, would hopefully make this more manageable.

Kind Regards

Sian

On Wednesday, 18 November 2020, 17:58:02 GMT, Docherty, James <jdocherty@valeofglamorgan.gov.uk> wrote:

Good morning Sian,

Thank you for your e-mail below of which I note the contents, I hope that all those suffering with Covid-19 make a swift and full recovery.

I appreciate that this is a very difficult time and understand the difficulties that this can cause you as applicants.

I shall forward your request to the inspector but could I ask whether you could confirm what alternative arrangements you are requesting. When do you think that you could be able to comply with the directions and are you suggesting that the applicants are unable to have the Inquiry held virtually or is it just the case that it would be preferable?

I shall also forward your request to the Council of the same for their comments.

I would like to reassure you that the Commons Registration Authority is not and has never sought to try and "rush the matter through" but has just tried, in consultation with both parties and the Inspector, to formulate a reasonable time frame within which to make preparations for and hold the Inquiry without unnecessary delay but also to give the parties the opportunity to prepare

## Docherty, James

---

**From:** Docherty, James  
**Sent:** 24 November 2020 10:40  
**To:** loumol@sky.com  
**Subject:** RE: Maes Y Ffynnon TVG application

**Switch-MessageId:** 5e614402ec274e7fa0851417803263a5

Good morning Sian,

Further to the correspondence last week and also some additional correspondence from the Council who were struggling to obtain some records from the Glamorgan Archives who were closed during the firebreak and are operating a limited service, I have spoken with the Inspector and he has proposed the following:

I heed the concerns of both the Applicant and the Objector. In the circumstances, it seems sensible for the exchange of any evidence to be put back to 11th January 2021 with the PIH on 7th December 2020 vacated and 25th January 2021 utilised for a PIH rather than the Inquiry. At the PIH, we can assess whether or not the Inquiry is suitable to proceed remotely or whether or not it should proceed in person. The parties will have the opportunity to make submissions on such matters at the PIH. I would not propose re-listing the Inquiry until such matters have been considered at the PIH. I would hope that any issues with the preparation of evidence have been resolved in time for 11th January 2021 but if they have not I will deal with the admission of any further evidence or documentation at the PIH. I would also hope that the inquiry will be able to proceed sometime in the window of March to April 2021, and parties should be prepared to deal with the relisting of the Inquiry at the PIH in January 2021.

As set out above we are now looking to have evidence submitted by 11<sup>th</sup> January 2021 with a pre-inquiry hearing to take place on 25<sup>th</sup> January 2021 to assess where the parties are at and whether it is possible to set a date for the full inquiry and/or whether the issues with evidence have been resolved.

If you have any further queries please do not hesitate to get in touch.

Kind regards

James

James Docherty  
Principal Lawyer / Uwch Gyfreithiwr  
Resources / Adnoddau  
Vale of Glamorgan Council / Cyngor Bro Morgannwg  
tel / ffôn: 01446 709781  
mob / sym:  
e-mail / e-bost: [jdocherty@valeofglamorgan.gov.uk](mailto:jdocherty@valeofglamorgan.gov.uk)

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## Docherty, James

---

**From:** loumol@sky.com  
**Sent:** 25 November 2020 18:02  
**To:** Docherty, James  
**Subject:** Re: Maes Y Ffynnon TVG application

Evening James

Many thanks for the email and your support in this matter.

I am looking to seek some advice on putting the pack together and hopefully the new dates should be more manageable. I believe I need to submit within the pack to the Inspector the original application and evidence and then create a copy.

Can you confirm if this is your understanding and if so, will I need to collect the original from yourself to do this?

Kind Regards

Sian

On Tuesday, 24 November 2020, 10:39:43 GMT, Docherty, James <jdocherty@valeofglamorgan.gov.uk> wrote:

Good morning Sian,

Further to the correspondence last week and also some additional correspondence from the Council who were struggling to obtain some records from the Glamorgan Archives who were closed during the firebreak and are operating a limited service, I have spoken with the Inspector and he has proposed the following:

I heed the concerns of both the Applicant and the Objector. In the circumstances, it seems sensible for the exchange of any evidence to be put back to 11th January 2021 with the PIH on 7th December 2020 vacated and 25th January 2021 utilised for a PIH rather than the Inquiry. At the PIH, we can assess whether or not the Inquiry is suitable to proceed remotely or whether or not it should proceed in person. The parties will have the opportunity to make submissions on such matters at the PIH. I would not propose re-listing the Inquiry until such matters have been considered at the PIH. I would hope that any issues with the preparation of evidence have been resolved in time for 11th January 2021 but if they have not I will deal with the admission of any further evidence or documentation at the PIH. I would also hope that the inquiry will be able to proceed sometime in the window of March to April 2021, and parties should be prepared to deal with the relisting of the Inquiry at the PIH in January 2021.

As set out above we are now looking to have evidence submitted by 11<sup>th</sup> January 2021 with a pre-inquiry hearing to take place on 25<sup>th</sup> January 2021 to assess where the parties are at and whether it is possible to set a date for the full inquiry and/or whether the issues with evidence have been resolved.

If you have any further queries please do not hesitate to get in touch.

## Docherty, James

---

**From:** Docherty, James  
**Sent:** 06 January 2021 17:47  
**To:** James Marwick; loumol@sky.com; clerk.snbcc@hotmail.com  
**Subject:** Maes Y Ffynnon TVG application

**Switch-MessageId:** bc2a8aa497814be2b94a2c1bd30e3557

Good afternoon all and Happy New Year,

I have received a telephone call from the Council's solicitor this afternoon to ask whether it would be possible to extend the date for submission of bundles until 18<sup>th</sup> January 2021. The reason being that she went down with COVID-19 on Christmas Day and is still suffering the effects and is not likely to be back in work this week to finalise the preparations for submission.

I don't consider that the delay in submissions should affect the Pre-Inquiry Hearing date scheduled for 25<sup>th</sup> January and no request to move that has been received.

I look forward to hearing from you.

Kind regards

James

James Docherty  
Principal Lawyer / Uwch Gyfreithiwr  
Resources / Adnoddau  
Vale of Glamorgan Council / Cyngor Bro Morgannwg  
tel / ffôn: 01446 709781  
mob / sym:  
e-mail / e-bost: [jdocherty@valeofglamorgan.gov.uk](mailto:jdocherty@valeofglamorgan.gov.uk)

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[Follow us on Twitter / Dilynwch ni ar Twitter](#)

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## Docherty, James

---

**From:** Docherty, James  
**Sent:** 11 January 2021 09:51  
**To:** loumol@sky.com  
**Cc:** clerk.snbcc@hotmail.com  
**Subject:** RE: Maes Y Ffynnon TVG application  
  
**Switch-MessageId:** 9c6bbe2975754a75ada4bb85cacf625d

Good morning Sian,

Just a note to confirm that the Inspector has confirmed that in light of the Council's solicitor having been off work with COVID-19 he is agreeable to a further extension of 1 week for submission of the bundles. In the event that your bundles are already complete and/or delivered, I shall not provide copies of the same to the Council until I am in receipt of their bundles in order that I can ensure that you receive them at the same time.

Kind regards

James

James Docherty  
Principal Lawyer / Uwch Gyfreithiwr  
Resources / Adnoddau  
Vale of Glamorgan Council / Cyngor Bro Morgannwg  
tel / ffôn: 01446 709781  
mob / sym:  
e-mail / e-bost: [jdocherty@valeofglamorgan.gov.uk](mailto:jdocherty@valeofglamorgan.gov.uk)

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---

**From:** Docherty, James  
**Sent:** 06 January 2021 17:47  
**To:** James Marwick <[James.Marwick@stjohnschambers.co.uk](mailto:James.Marwick@stjohnschambers.co.uk)>; loumol@sky.com; clerk.snbcc@hotmail.com  
**Subject:** Maes Y Ffynnon TVG application

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## Docherty, James

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**From:** loulol@sky.com  
**Sent:** 18 January 2021 17:01  
**To:** Docherty, James  
**Cc:** clerk.snbcc@hotmail.com  
**Subject:** Re: Maes Y Ffynnon TVG application

Good Afternoon James

I have taken the bundle to the Civic Offices in Barry and passed it on to Aaron Gilitnon who is the Civic Porter and he as asked if you could contact him on 07967619217. he has promised me he will keep it safe for you, as there was nobody available in the legal team.

Regards

Sian

On Monday, 11 January 2021, 09:51:21 GMT, Docherty, James <jdocherty@valeofglamorgan.gov.uk> wrote:

Good morning Sian,

Just a note to confirm that the Inspector has confirmed that in light of the Council's solicitor having been off work with COVID-19 he is agreeable to a further extension of 1 week for submission of the bundles. In the event that your bundles are already complete and/or delivered, I shall not provide copies of the same to the Council until I am in receipt of their bundles in order that I can ensure that you receive them at the same time.

Kind regards

James

James Docherty

Principal Lawyer / Uwch Gyfreithiwr

Resources / Adnoddau

Vale of Glamorgan Council / Cyngor Bro Morgannwg

tel / ffôn: 01446 709781

mob / sym:

e-mail / e-bost: [jdocherty@valeofglamorgan.gov.uk](mailto:jdocherty@valeofglamorgan.gov.uk)

## Docherty, James

---

**From:** Docherty, James  
**Sent:** 19 January 2021 11:02  
**To:** 'loumol@sky.com'  
**Cc:** clerk.snbcc@hotmail.com  
**Subject:** RE: Maes Y Ffynnon TVG application

**Switch-MessageId:** 963beae4e3124df6b380ad1aaef16ffe

Good morning Sian,

Thank you for arranging for the delivery of the bundles. I am going to go into the office today with the intention of arranging for the various bundles to be prepared for circulation to the Inspector and the other side. I can confirm that the Council's bundle has also been received.

I trust that your home address is the best place for delivery.

Kind regards

James

**From:** loumol@sky.com <loumol@sky.com>  
**Sent:** 18 January 2021 17:01  
**To:** Docherty, James <jdocherty@valeofglamorgan.gov.uk>  
**Cc:** clerk.snbcc@hotmail.com  
**Subject:** Re: Maes Y Ffynnon TVG application

Good Afternoon James

I have taken the bundle to the Civic Offices in Barry and passed it on to Aaron Giliton who is the Civic Porter and he has asked if you could contact him on 07967619217. he has promised me he will keep it safe for you, as there was nobody available in the legal team.

Regards

Sian

On Monday, 11 January 2021, 09:51:21 GMT, Docherty, James <jdocherty@valeofglamorgan.gov.uk> wrote:

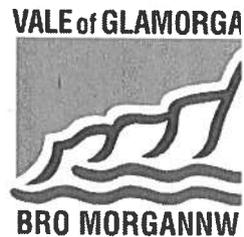
Good morning Sian,

Just a note to confirm that the Inspector has confirmed that in light of the Council's solicitor having been off work with COVID-19 he is agreeable to a further extension of 1 week for submission of the bundles. In the event that your bundles are already complete and/or delivered, I shall not provide copies of the same to the Council until I am in receipt of their bundles in order that I can ensure that you receive them at the same time.

Kind regards

Date/Dyddiad 13 September 2019  
Ask for/Gofynwch am Victoria Davidson  
Telephone/Rhif ffôn 01446 709407  
Fax/Ffacs 01446 709306  
e-mail/e-bost vdavidson@valeofglamorgan.gov.uk

The Vale of Glamorgan Council  
Civic Offices, Holton Road, Barry  
CF63 4RU  
Cyngor Bro Morgannwg  
Swyddfeydd Dinesig, Heol  
Holton, Y Barri CF63 4RU  
www.valeofglamorgan.gov.uk  
www.bromorgannwg.gov.uk



Your  
Ref/Eich  
Cyf

My  
Ref/Cyf

VD/C03-0275

The Vale of Glamorgan Council  
Civic Offices  
Holton Road  
Barry  
CF63 4RU

For the attention of: Legal Services

Dear Sirs,

Application for the registration of land as town/village green – Maes Y Ffynon Village Green – Application No. 1/2019/VG50

I write on behalf of the Vale of Glamorgan Council as the Registration Authority for the district to confirm receipt of the above-mentioned application which has been made under section 15(1) of the Commons Act 2006.

The Registration Authority understands that the Vale of Glamorgan is the owner of part of the land subject of the application and I therefore attach for your information and attention the formal notice of the application and a copy of the application together with the accompanying/supporting evidence for it for your consideration.

Should you wish to object to registration of the land as a town/village green, I would ask that you submit a written and signed statement of the facts on which you base your objection on or before the 1 November 2019 to the Vale of Glamorgan Registration Authority, Civic Offices, Holton Road, Barry, CF63 4RU marked for the attention of Victoria Davidson.

Yours faithfully

Victoria Davidson – Operational Manager – Legal Services  
On behalf of  
Vale of Glamorgan Commons Registration Authority  
Enc.



Correspondence is welcomed in Welsh or English/Croesawir Gohebiaeth yn y Gymraeg neu yn Saesneg

Date/Dyddiad 31 October 2019  
Ask for/Gofynwch am Jocelyn Ham  
Telephone/Rhif ffôn 01446 709406  
Fax/Ffacs  
e-mail/e-bost jham@valeofglamorgan.gov.uk  
My Ref/Cyf JSH/C13-1249

The Vale of Glamorgan Council  
Civic Offices, Holton Road, Barry CF63 4RU

Cyngor Bro Morgannwg  
Swyddfeydd Dinesig, Heol Holton, Y Barri CF63 4RU  
www.valeofglamorgan.gov.uk  
www.bromorgannwg.gov.uk



James Docherty  
Vale of Glamorgan Commons Registration Authority  
Civic Offices  
Holton Road  
Barry  
CF63 4RU

Dear James

**Re: New village green application – Land at Maes Y Ffynnon Bonvilston**

I am in the process of drafting the Council's notice of objection to the above-mentioned application and would request a short extension of time to submit this.

Please accept this letter as a holding response whilst I bring together the various elements of the Council's objection, which can be summarised as follows:

- The Council's development proposal only relates to part of the TVG application site. In other words, the part of the site earmarked for housing development is not the green/grassed open space area which I understand will be retained in any event. I am awaiting further details on this from the Housing Project Officer.
- The land that does comprise the open space area was specifically laid out by the Council's predecessor authority to provide an amenity space ancillary to the surrounding housing development pursuant to its statutory powers contained in section 79 of the Housing Act 1936. Accordingly, it necessarily follows that the use of the application land has been "by right" and not "as of right", which means that the criteria of application are not made.
- The application is an attempt to frustrate the Council's proposal to develop part of the site for social housing

I look forward to hearing from you but in any event will submit a more comprehensive response shortly.

Yours sincerely

**Jocelyn S Ham**  
**Senior Lawyer**  
**Legal and Democratic Services**



Date/Dyddiad • 04 December 2019  
Ask for/Gofynwch am Jocelyn Ham  
Telephone/Rhif ffôn 01446 709406  
Fax/Ffacs  
e-mail/e-bost jham@valeofglamorgan.gov.uk  
My Ref/Cyf JSH/C13-1249

The Vale of Glamorgan Council  
Civic Offices, Holton Road, Barry CF63 4RU

Cyngor Bro Morgannwg  
Swyddfeydd Dinesig, Heol Holton, Y Barri CF63 4RU  
www.valeofglamorgan.gov.uk  
www.bromorgannwg.gov.uk



James Docherty  
Vale of Glamorgan Commons Registration Authority  
Civic Offices  
Holton Road  
Barry  
CF63 4RU

Dear James

**Re: New village green application – Land at Maes Y Ffynnon Bonvilston**

Further to previous correspondence in this matter, please now find enclosed the Council's notice of objection to the above-mentioned application.

Yours sincerely

Jocelyn S Ham  
Senior Lawyer  
**Legal and Democratic Services**

Enc.



## Docherty, James

---

**From:** Docherty, James  
**Sent:** 24 December 2019 15:38  
**To:** Ham, Jocelyn  
**Subject:** FW: Town and Village Green Application - Maes y Ffynnon, Bonvilston  
**Attachments:** Village Green Response to Council Dec 2019.docx

**Switch-MessageId:** 241a40e0fc87493aa4b3795bdfd7b35c

Dear Jos,

Please see the attached response from MYFRA. For your information I have agreed to an extension of time for their response to your objection until 28<sup>th</sup> February 2020.

Kind regards

James

James Docherty  
Principal Lawyer / Uwch Gyfreithiwr  
Resources / Adnoddau  
Vale of Glamorgan Council / Cyngor Bro Morgannwg  
tel / ffôn: 01446 709781  
mob / sym:  
e-mail / e-bost: [jdocherty@valeofglamorgan.gov.uk](mailto:jdocherty@valeofglamorgan.gov.uk)

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Ewch i'n gwefan yn [www.bromorgannwg.gov.uk](http://www.bromorgannwg.gov.uk)

[Find us on Facebook / Cewch ddod o hyd i ni ar Facebook](#)  
[Follow us on Twitter / Dilynwch ni ar Twitter](#)

Correspondence is welcomed in Welsh or English / Croesewir Gohebiaeth yn y Gymraeg neu yn Saesneg.

---

**From:** loulol@sky.com <loulol@sky.com>  
**Sent:** 20 December 2019 12:56  
**To:** Docherty, James <jdocherty@valeofglamorgan.gov.uk>  
**Subject:** Town and Village Green Application - Maes y Ffynnon, Bonvilston

Dear Sirs

We acknowledge receipt of your objection to register the Village Green and attach an initial request to extend the period proposed to allow appropriate consultation and time to draft a response.

Yours Sincerely

Maes Y Ffynnon Residents Association

Maes Y Ffynnon Residents Association  
c/o 21 Maes Y Ffynnon  
Bonvilston,  
CF5 6TT

Victoria Davidson  
c/o James Docherty  
The Vale of Glamorgan Council  
Civic Offices  
Holton Road  
Barry  
CF63 4RU

12/12/2019

Dear Sirs

**Village Green Application, Maes Y Ffynnon, Bonvilston - No: 1/2019/VG50**

I acknowledge receipt of your correspondence dated the 9<sup>th</sup> December 2019, received via email on Tuesday 10<sup>th</sup> December 2019. Due to the logistics and timescales to circulate the correspondence to all those involved and request and collate feedback for an appropriate response, this reply has been issued to yourselves as soon as possible, prior to Xmas. The correspondence you issued provides a 'Notice of Objection' and provides a background of information, reasons for the objection and a conclusion in respect of the reasons for the objection.

In the cover letter accompanying the objection to the application to register the area of land as a Village Green you request a response to the objection by the 17<sup>th</sup> January 2020. As this only provides a very short timescale to collate and present an informed and appropriate response I am requesting that there is an extension to this period, to the 31<sup>st</sup> March 2020. The reasons and rationale for the request to extend the period proposed for a response to your objection are detailed below:

- The application was originally submitted in April 2019. A minor amendment to the initial application to include an additional map defining the locality using the Green was made and it was resubmitted and accepted on the 23<sup>rd</sup> May 2020.
- We have been awaiting a response from the Council for nearly 7 months to this initial application.
- The application was only passed via internal departments to the Council by the Registration Authority on the 13<sup>th</sup> September 2019, 16 weeks after it had been acknowledged and accepted.
- The timescale proposed is limited and thus restricts the opportunities to engage with the residents involved within the local community and the St Nicholas and Bonvilston Community Council.
- The Christmas and New Year festivities present significant challenge to arrange and facilitate appropriate meetings and discussions amongst residents from, Maes Y Ffynnon Residents Association, (MYFRA), or the Community Council to understand the implications of the objections.

- There are significant challenges presented to prevent opportunities to facilitate appropriate meetings to allow MYFRA to make informed decisions on the next steps we should take and how to move forward, most significantly engaging with the Community Council.
- Key individuals within the MYFRA group are unavailable for several weeks during December and January, which presents a difficulty in collating and presenting a comprehensive response, by those most integral to the required and planned response.
- This deadline does not allow enough time to engage and consult with the St Nicholas and Bonvilston, Community Council and facilitate appropriate meetings.
- The details of the objection provided, includes a range of historical data around how the land was acquired by the council that has not been made available to the applicant on behalf of the residents.
- The timescale proposed prevents the opportunity to further pursue appropriate information to understand the background of how the land was acquired and its intended use, as previous requests for factual evidence relating to the purchase / usage of this land through a 'Freedom of Information request', have proved to be lengthy and not provided any information, as the council concluded that there was no information of this nature available. The objection to this application suggests otherwise.
- The reasons provided for the objection make reference to legal framework and case history around previous failed applications to register a Village Green, that are historical and based in England. An accurate and informed response to the significance and relevance of the inclusion of this case history, would need to allow an appropriate timescale to obtain legal advice and contextualise this in relation to the Maes Y Ffynnon development, existing situation and Welsh legislation. The date of the 17/01/2020 would not allow enough time for this process, of obtaining legal advice to happen.
- The Council has presented an argument in relation to the definition of usage of the Village Green in terms of 'by right' and 'as of right', which for us to prepare a response would require consultation with our legal advisors. This would not be possible by the 17/01/2020. (as per above point).
- The Council has asserted that there are separate departments dealing with this application, however, we need further legal advice around a conflict of interest in relation to this application and in particular why there has been extensive periods of time in this process.
- Information in the public domain around recent case study relating to applications to register an area of land as TVG with the Vale of Glamorgan Council, notably the field behind the Bear Hotel, refer to 'fairness and transparency' and the responsibility of the Council to uphold these principles. The response from the Council to our application to register the area in Maes Y Ffynnon, as a Village Green are conflicting with the practice of the Council in relation to this most recent precedent.
- If comparisons are made then the reference to fairness and transparency, in your objection needs to be consistent with other recent and local applications, to include the recommendation to take it to a public enquiry, which is openly accessible.
- As there is a potential for a conflict of interest for the Vale of Glamorgan Council in this case, we MYFRA and the Community Council should be afforded additional time to respond, to the statements, rational and legal position presented by the Vale of Glamorgan Council's response.
- The Council has afforded themselves significant time to research and draft a response to MYFRA and the local Community Council and therefore it is only fair to allow us the same timescales to respond to their objection.
- The objection also refers to an attempt to 'frustrate a planning application' for affordable housing in Maes Y Ffynnon. This stance is subjective and the planning proposal, is not referred to in the Village Green application and had not been submitted when we applied to register the Village Green.

- The proposed short timescale for responses, could also be viewed as an attempt by the Council to 'frustrate' the process of our appeal, to the Council's objection to the application to register the Village Green, at Maes Y Ffynnon.

Please be advised that this correspondence is not a final or conclusive response to the objections presented by the Council, but rationale to support an extension to the proposed deadline of the 17/01/2020, to allow MYFRA and the Community Council, a fair timescale in line with that which the Council themselves had, to present an accurate and legitimate response, that complies with a fair and transparent process operated by the land owner. This would also be consistent with the 'fair and transparent' approach afforded other organisations making applications to register land as TVG within the Vale of Glamorgan Council over recent years.

For and on Behalf of MYFRA

Sian Clarke

Chairperson

## Docherty, James

---

**From:** Docherty, James  
**Sent:** 13 March 2020 14:27  
**To:** Ham, Jocelyn  
**Subject:** FW: Village Green at Maes Y Ffynnon Bonvilston  
**Attachments:** Response to Rejection of the Village Green Application v1.3.docx

**Switch-MessageId:** 3381cb88af0f4662afac2890f12e7067

Dear Jos,

Please find attached the response received from the Applicant along with an e-mail I sent to the Applicant to explain that the Application had not been decided and giving and additional 7 days to add any further comments that they might wish to make. I can confirm that the Applicant has responded to my e-mail but has added no further substantive information or evidence to the correspondence attached.

Please can you provide any further comments your client may have on the matter no later than 5pm on Thursday 9<sup>th</sup> April 2020.

Kind regards

James

James Docherty  
Principal Lawyer / Uwch Gyfreithiwr  
Resources / Adnoddau  
Vale of Glamorgan Council / Cyngor Bro Morgannwg  
tel / ffôn: 01446 709781  
mob / sym:  
e-mail / e-bost: [jdocherty@valeofglamorgan.gov.uk](mailto:jdocherty@valeofglamorgan.gov.uk)

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---

**From:** Docherty, James  
**Sent:** 02 March 2020 15:48  
**To:** 'Sian Clarke' <[sclarke@elitesea.co.uk](mailto:sclarke@elitesea.co.uk)>  
**Cc:** 'loumol@sky.com' <[loumol@sky.com](mailto:loumol@sky.com)>  
**Subject:** RE: Village Green at Maes Y Ffynnon Bonvilston

Dear Sian,

Thank you for your e-mail below.

Below I raise some points in relation to clarification on your letter and next steps.

**1. The Commons Registration Authority (“CRA”) has not rejected your application.**

As you point out the Council is both (i) the Landowner (and objector to the Application); and (ii) the CRA is responsible for assessing and determining the Application – for the purposes of this e-mail I am going to refer to the Council acting in its CRA capacity as the CRA and in respect of its capacity as the Landowner as the Landowner.

I am acting as solicitor to the CRA, my colleague Jos Ham is acting for the Landowner and as you note we are working with a “Chinese Wall” in respect of the matter. All correspondence you receive will be from me on behalf of the CRA. The CRA’s role at this stage is to try to narrow the issues between the parties by allowing each party to comment on the representations given by the other. The objection that I forwarded to you is the Landowner’s response to the application and does not represent any view of the CRA.

**2. It is intended that there will be a non-statutory Inquiry.**

As you note it is standard practice where the Council is both Landowner and CRA for a non-statutory inquiry to be held and for an independent Inspector to be appointed to hear the case from both the Applicant and any Objectors and to thereafter provide a report to the CRA with a recommendation as to whether to allow the Application or dismiss it. It has always been my intention as solicitor for the CRA to follow that process. Subject to point 3 below, I now intend to give the Landowner chance to respond to your response to their Objection following which I will assess whether there is any benefit to further correspondence or whether it is, at that stage, appropriate to proceed directly to arranging the Inquiry.

**3. Re-issue of your letter**

In light of the content of your letter, and noting that you were under the impression that the Application had been rejected, I am prepared to a further short extension of 1 week for you to confirm if there are any points which, now knowing that the application is still live, you would like to add to your response to the Landowner’s objection. There are a number of points raised in your letter which do respond to the Landowner’s objection and I will be forwarding a copy of the letter to the Landowner in order that they can start to consider the points raised and whether they wish to put forward any further response. It is also my intention to provide them with a copy of this e-mail in order that they are aware of the same and the fact that I have unilaterally agreed to provide you with an extra 7 days to consider any additions to your correspondence.

I would note that all correspondence between (i) the CRA and the Applicant and (ii) the CRA and the Landowner/Objector is usually required to be produced in full at the Inquiry.

In conclusion, I am allowing you a further 7 days from today to provide any additional response to the Landowner’s objection which you may not have included in the response attached to the e-mail below due to the fact that you thought the Application had already been dismissed/refused. Please ensure that any additional response is with me no later than 5pm on Monday 9<sup>th</sup> March.

If you would like to discuss the content of this e-mail further please feel free to contact me on the number below.

Kind regards

James

James Docherty  
Principal Lawyer / Uwch Gyfreithiwr  
Resources / Adnoddau  
Vale of Glamorgan Council / Cyngor Bro Morgannwg  
tel / ffôn: 01446 709781

mob / sym:

e-mail / e-bost: [jdocherty@valeofglamorgan.gov.uk](mailto:jdocherty@valeofglamorgan.gov.uk)

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Correspondence is welcomed in Welsh or English / Croesewir Gohebiaeth yn y Gymraeg neu yn Saesneg.

---

**From:** Sian Clarke <[sclarke@elitesea.co.uk](mailto:sclarke@elitesea.co.uk)>

**Sent:** 28 February 2020 18:06

**To:** Docherty, James <[jdocherty@valeofglamorgan.gov.uk](mailto:jdocherty@valeofglamorgan.gov.uk)>

**Subject:** Village Green at Maes Y Ffynnon Bonvilston

Dear James

As agreed, please find attached MYFRA's responses to the rejection of our Village Green application.

I look forward to hearing from you soon in relation to this matter.

Kind Regards

Sian Clarke

## Docherty, James

---

**From:** Ham, Jocelyn  
**Sent:** 08 April 2020 17:18  
**To:** Docherty, James; James Docherty  
**Subject:** Maes Y Ffynnon TVG Application

Dear James

With reference to the letter you have received from the Applicant in this matter, MYFRA and your email response of 02 March 2020.

I have flagged up a couple of the issues raised by the Applicant and would respond/comment (in **bold**) as follows:

- *At no time has any resident of Maes Y Ffynnon, or Village Farm ever been required to seek permission to use the land for lawful sports and pastimes.*

**This is correct, the residents of Maes Y Ffynnon use the land with the consent of the Council i.e. by right. This means that an application to register land as new TVG must fail, in the Council as landowner's view.**

- *The areas of land that flank the hardstands that used to hold the garages have provided the identified green space for this usage over the years.*

**This is not disputed.**

- *The Council has provided limited maintenance, or upkeep of this land and over the last 10 years this has only been the intermittent cutting of grass.*

**The land belongs to and is maintained by the Council. The perceived frequency and standard of maintenance is not a relevant factor here.**

- *We recognise and understand that the hard stands and road area, cannot be classed as a green space, but they sit inside of the area we wish to protect and our evidence proves that the areas either side have been used extensively and are central to village life in Bonvilston, since the 1950s.*

**It is important to correctly identify the area of land that is to be subject to the TVG application and as stated in the 'Notice of Objection' the parts of the land covered by unadopted roadway/pathway and disused garages do not have the physical characteristics or purpose to be included in a TVG application. Further, the use of the former disused garage site (including access to it and the car parking area) would have been with the Council's permission and the inclusion of these parts of the land are therefore also incompatible with a TVG application.**

- *Your 'Notice of Objection', does not dispute the fact that the area has been used continuously by residents for over 50 years. It acknowledges the use but in referring us to the case history of Barkus, is asserting that we have used it 'by right' and not 'as of right'.*

**This is correct. 'By right' means that the land has been used with the Council's permission whereas 'as of right' means it has been used without the Council's permission. 'As of right' is a critical part of the lexicological jigsaw in a TVG application and if permission to use land is essentially granted or allowed, then an application must fail.**

- *As the Council acknowledges the usage of the land for these activities, it should concur and appreciate how important this area is to the residents of Maes Y Ffynnon and the wider population of Bonvilston.*

**This comment is noted but as previously stated in the 'Notice of Objection', a significant part of the existing open space will be retained despite the proposed development.**

- *The use of this land either 'by right' or 'as of right' has been extensive and consistent since the 1950s and therefore has formed a significant part of Bonvilston's history and continues to unite the community.*

The use of the land has been by right – see above. As the MYFRA are aware, the Council's predecessor authority acquired the land in the 1950s under powers given to it by the Local Government Act 1933, the Housing Act 1936 and other unspecified powers. The land was subsequently appropriated to housing and developed as a housing estate with ancillary roads and open space areas in accordance with Cardiff Rural District Council's powers under these Acts.

As stated in the 'Notice of Objection' it is therefore proper to assume that Cardiff Rural District Council and now this Council as a statutory successor has held the developed land for housing and the other parts for recreational purpose and associated amenity areas connected with this housing. In other words, some of the land was specifically provided for amenity and recreation purpose and any subsequent use in this regard is with the Council's permission.

- *The fact that the Council is not disputing the usage of the land, by implication are accepting the importance of it providing an area for children to safely play, provide dog walking spaces, social events and lawful sports.*

It is not disputed that parts of the land subject to the TVG application has been provided for recreational purposes. However, use of the land for this purpose is with the Council's permission and the Council intends to continue to preserve and maintain a proportion of the land for this purpose as the new development will primarily focus on the former garage site and the area around this.

- *In your 'Notice of Objection' you state that our motivation for protecting the area is to 'frustrate' a planning application for dwellings at Maes Y Fynnon. MYFRA refute this suggestion and feel the need to assert that our motive for protecting the area has been mis-represented, by this statement.*

The comment is duly noted but it is common for a TVG application to be made to restrict or even prevent development and as far as landowner is aware, this application was made once the garage area land had been identified for redevelopment and a public consultation event was held at Bonvilston Reading Rooms on the 4th February 2019, as part of a statutory pre-application consultation process.

- *As described in our application we are driven by the wish to maintain, a safe natural area where children can play and adults can socialise, at village events, or walking their dogs. Any development, or encroachment on the green area would be environmentally degrading and socially damaging to the community.*

The comment is duly noted but the intention of the landowner is to preserve some open space despite the development.

- *Our wish is to preserve the much-threatened wildlife that is in abundance in the area. This includes ancient trees, Bats, the reptile population of snakes, toads and Greater Crested Newts, Tawny, Barn and Little Owls and every species of wild birds, such as Finches, Woodpeckers, Cuckoo's, and Tits.*

The comment is duly noted but preservation of wildlife etc is not the objective of a TVG application. Most of the preservation and ecology issues will be considered as part of the planning process in any event.

- *We understand that the Council has operated a 'Chinese wall' approach in relation to this application. Whilst we accept that this is a standard practice where another department is objecting to a village green application being dealt with by the same council, in its role as Registration Authority, it would also be standard to avoid a 'conflict of interest' and to ensure transparency to hold a non-statutory inquiry, which would address any issue of potential prejudice.*

I believe this issue has been addressed by yourself in your email response to the Applicant dated 02 March 2020.

- *In your 'Notice of Objection' you state that a public inquiry is not necessary for this application. We would therefore ask how the issue of potential prejudice has been addressed in the processing of this case, to ensure*

*transparency and avoid a conflict of interest, particularly in light of any future plans the council may have for the land.*

**The 'Notice of Objection' came from myself on behalf of the Council as landowner. It is standard to say in a such a notice that no inquiry is needed if the landowner feels it has a strong case. However, the Council as landowner will still participate in an inquiry as appropriate and as required.**

- *We would like to highlight that recent planning applications and proposed developments in other parts of Bonvilston, incorporate as central features within their designs, green areas depicting children playing. The clear message being that a green space in a village like Bonvilston is central to the community. It is not logical, or in the interests of the community to leave a green space that has been used for over 50 years vulnerable, unappreciated or unrecognised, for its significant part in serving the community.*

**As stated above, the intention of the landowner is to preserve a proportion of the open space.**

- *Recent development plans in Bonvilston identify areas for potential green space in locations that are unsafe for children to play, due to the close proximity to traffic and the A48 main road. Maes y Ffynnon for over 50 years has provided a safe place for children to play and if protected could continue to do so in the future.*

**See above.**

- *We understand that Welsh legislation in this area falls behind that in place in England and that this is not favourable in terms of our application. We do not wish in any way to antagonise the council in relation to the enclosed responses, following the rejection of our application and also aim to avoid any conflict. We request that the council takes time to listen to our concerns in a pragmatic and objective way, that is not purely focused on a legal approach around meeting eligibility criteria for registering a green space. As residents of MYFRA we ask the council to look beyond the criteria of how the land was originally purchased over 50 years ago, in a post war climate and consider how Maes Y Ffynnon, has subsequently evolved and understand how important the green is to the whole community.*

**I understand the English legislation on TVG applications is more rigid than the Welsh which was introduced to circumvent the abuse of the TVG process to prevent development. Therefore, I am not sure why Welsh legislation is perceived to be less favourable to their application.**

**I believe you have addressed the issue of rejection of the application in your email response to the Applicant dated 02 March 2020.**

- *MYFRA formally requests the opportunity to discuss further with the Vale of Glamorgan Council an exploration of the options available around a voluntary registration of the village green under section 15 (8) of the Commons Act 2006.*

**Voluntary registration of all the land subject to the current TVG application is not an option.**

Regards

Jocelyn

Jocelyn Ham  
Senior Lawyer / Uwch Gyfreithiwr  
Legal Services / Gwasanaethau Cyfreithiol  
Vale of Glamorgan Council / Cyngor Bro Morgannwg  
tel / ffôn: 01446 709406  
mob / sym:  
e-mail / e-bost: [JHam@valeofglamorgan.gov.uk](mailto:JHam@valeofglamorgan.gov.uk)

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## Docherty, James

---

**From:** Docherty, James  
**Sent:** 16 July 2020 17:02  
**To:** Ham, Jocelyn  
**Subject:** Maes Y Ffynnon Town and Village Green Application

**Switch-MessageId:** d0cf3776cc814e08a09702e03456d20e

Dear Jos,

I write further to previous correspondence on this matter and advise that I have not received any further comments from the applicant in respect of the Council's previous response.

It is now my intention to obtain authority from the Council's Public Protection Licensing Committee to move to a public inquiry and the appointment of an independent inspector. Whilst the committees have been on hold in the Council due to the COVID 19 Pandemic they are now starting to operate again and I intend to take a report to the Committee meeting which is being proposed for the 30<sup>th</sup> July 2020.

Once the date of the Committee meeting is confirmed I shall confirm the same to you.

Kind regards

James

James Docherty  
Principal Lawyer / Uwch Gyfreithiwr  
Resources / Adnoddau  
Vale of Glamorgan Council / Cyngor Bro Morgannwg  
tel / ffôn: 01446 709781  
mob / sym:  
e-mail / e-bost: [jdocherty@valeofglamorgan.gov.uk](mailto:jdocherty@valeofglamorgan.gov.uk)

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## Docherty, James

---

**From:** Docherty, James  
**Sent:** 23 July 2020 16:52  
**To:** Ham, Jocelyn  
**Cc:** Davidson, Victoria  
**Subject:** Town and Village Green Application - Maes Y Ffynnon

**Switch-MessageId:** 22d0a2da6d71414591013e79ad6ce93a

Dear Jos,

Further to my previous e-mail below I write to confirm that the Council's Public Protection Licensing Committee (PPLC) meeting is going ahead next Thursday (30<sup>th</sup> July) and the Maes Y Ffynnon Town and Village Green Report will be considered at the meeting.

The Report sets out that my recommendation is that the matter proceeds to a Non-statutory Public Inquiry and that an independent Inspector is appointed to hear the evidence and make a recommendation to the PPLC at the conclusion of the Inquiry as to whether the Application should be approved or refused.

The Report is not controversial and I would expect that approval will be provided for me to take steps to appoint the Inspector.

If you have any questions please do contact me. I would note that I am on leave next week so in my absence please contact my colleague Victoria Davidson, copied into this e-mail.

Kind regards

James

James Docherty  
Principal Lawyer / Uwch Gyfreithiwr  
Resources / Adnoddau  
Vale of Glamorgan Council / Cyngor Bro Morgannwg  
tel / ffôn: 01446 709781  
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e-mail / e-bost: [jdocherty@valeofglamorgan.gov.uk](mailto:jdocherty@valeofglamorgan.gov.uk)

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## Docherty, James

---

**From:** Ham, Jocelyn  
**Sent:** 23 July 2020 17:31  
**To:** Docherty, James  
**Cc:** Davidson, Victoria  
**Subject:** RE: Town and Village Green Application - Maes Y Ffynnon

Thanks James, duly noted. I will let the landowning department know.

Jos

Jocelyn Ham  
Senior Lawyer / Uwch Gyfreithiwr  
Legal Services / Gwasanaethau Cyfreithiol  
Vale of Glamorgan Council / Cyngor Bro Morgannwg  
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e-mail / e-bost: [JHam@valeofglamorgan.gov.uk](mailto:JHam@valeofglamorgan.gov.uk)

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---

**From:** Docherty, James <[jdocherty@valeofglamorgan.gov.uk](mailto:jdocherty@valeofglamorgan.gov.uk)>  
**Sent:** 23 July 2020 16:52  
**To:** Ham, Jocelyn <[JHam@valeofglamorgan.gov.uk](mailto:JHam@valeofglamorgan.gov.uk)>  
**Cc:** Davidson, Victoria <[VDavidson@valeofglamorgan.gov.uk](mailto:VDavidson@valeofglamorgan.gov.uk)>  
**Subject:** Town and Village Green Application - Maes Y Ffynnon

Dear Jos,

Further to my previous e-mail below I write to confirm that the Council's Public Protection Licensing Committee (PPLC) meeting is going ahead next Thursday (30<sup>th</sup> July) and the Maes Y Ffynnon Town and Village Green Report will be considered at the meeting.

The Report sets out that my recommendation is that the matter proceeds to a Non-statutory Public Inquiry and that an independent Inspector is appointed to hear the evidence and make a recommendation to the PPLC at the conclusion of the Inquiry as to whether the Application should be approved or refused.

The Report is not controversial and I would expect that approval will be provided for me to take steps to appoint the Inspector.

If you have any questions please do contact me. I would note that I am on leave next week so in my absence please contact my colleague Victoria Davidson, copied into this e-mail.

Kind regards

James

## Docherty, James

---

**From:** Docherty, James  
**Sent:** 21 August 2020 14:46  
**To:** Ham, Jocelyn  
**Subject:** Maes Y Ffynnon - Town and Village Green Application

**Switch-MessageId:** 5a3d440a667e4b74a11ccae79416c89

Dear Jos,

Further to previous e-mail correspondence the committee gave approval for the matter to proceed to a non-statutory public inquiry and the appointment of an independent inspector to chair the inquiry.

I am now taking steps to appoint Mr James Marwick a barrister at St John's Chambers in Bristol who is an experienced chairman of such inquiries - <https://www.stjohnschambers.co.uk/profile/james-marwick>.

Once appointed Mr Marwick will provide his initial views before providing advice as to the proposed length of the Inquiry, whether a pre-inquiry meeting is required and give directions to the parties as to the procedure for the preparation for and hearing of the Inquiry.

I shall forward any information received from the Inspector to you in due course.

Kind regards

James

James Docherty  
Principal Lawyer / Uwch Gyfreithiwr  
Resources / Adnoddau  
Vale of Glamorgan Council / Cyngor Bro Morgannwg  
tel / ffôn: 01446 709781  
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## Docherty, James

---

**From:** Ham, Jocelyn  
**Sent:** 09 October 2020 17:20  
**To:** Docherty, James  
**Subject:** RE: Maes Y Ffynnon - Town and Village Green Inquiry

Dear James

In relation to availability of the Council as landowner/objector to attend an Inquiry, we are happy to fit in with the dates that the applicants have said they are available i.e. not the dates listed below up to 31 January 2021.

Also, further to the note and directions, we note that the Council's bundle should be submitted to the Registration Authority by the 09 November 2020.

We further note the date of the Pre-Inquiry Hearing.

Kind regards

Jos

Jocelyn Ham  
Senior Lawyer / Uwch Gyfreithiwr  
Legal Services / Gwasanaethau Cyfreithiol  
Vale of Glamorgan Council / Cyngor Bro Morgannwg  
tel / ffôn: 01446 709406  
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**From:** loumol@sky.com <loumol@sky.com>  
**Sent:** 09 October 2020 15:00  
**To:** Ham, Jocelyn <JHam@valeofglamorgan.gov.uk>; clerk.snbcc@hotmail.com; Docherty, James <jdocherty@valeofglamorgan.gov.uk>  
**Subject:** Re: Maes Y Ffynnon - Town and Village Green Inquiry

Good Morning

Due to the work commitments of some of the identified Witnesses we have limited availability during the timescale provided and therefore we are unable to offer any slots for December, which is further complicated by the Xmas period. I was not sure from the directions whether the enquiry could take place on a weekend, so I have assumed that it would not in relation to the dates we are unavailable. So in the weeks where we have availability can you please assume that this excludes weekends. If a weekend date was available I would need to revisit Witness availability to see if this could be accommodated.

Please see below the dates that the Witnesses for the Village Green enquiry are unavailable:

## Docherty, James

---

**From:** Ham, Jocelyn  
**Sent:** 20 October 2020 10:41  
**To:** Docherty, James  
**Subject:** Maes Y Ffynnon TVG application

Dear James

In relation to compliance with the Inspector's Notes and Directions in this matter, I write to enquire whether - given the imminent lockdown period and subject to the applicant's and Inspector's agreement - consideration could be given to extending the deadline for submission of bundles for say a further 2 weeks because I know from the Council/landowner/objector perspective it is going to be logistically and administratively difficult to prepare and gather everything together for the bundle during this time. I am fairly sure the applicant will find themselves in a similar position given the constraints the lockdown will bring.

This will push the Pre-Inquiry Hearing date on but referring to the Notes and Directions, the specific date for this was open in any event and so hopefully this will not be too much of a problem.

I look forward to hearing from you.

Kind regards

Jos

Jocelyn Ham  
Senior Lawyer / Uwch Gyfreithiwr  
Legal Services / Gwasanaethau Cyfreithiol  
Vale of Glamorgan Council / Cyngor Bro Morgannwg  
tel / ffôn: 01446 709406  
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## Docherty, James

---

**From:** Docherty, James  
**Sent:** 26 October 2020 15:00  
**To:** Ham, Jocelyn  
**Subject:** RE: Maes Y Ffynnon TVG application

**Switch-MessageId:** 2313f3ef7dc840e597d90f10eac7fcd2

Dear Jos,

Further to the e-mails below I have now spoken with the Applicants and they have agreed to the extension for the deadline of the submission of bundles until 23<sup>rd</sup> November 2020. The Inspector has approved this also and he has provided the following additional instructions:

1. Please can you provide your availability for a Pre-Inquiry Hearing in the week commencing 7<sup>th</sup> December 2020. The estimated time for the PIH is 1 hour.
2. The Inquiry shall be preliminarily set for Monday 25<sup>th</sup> January 2020 as this appears to be acceptable to all parties.

I look forward to hear from you in respect of availability for the Pre-Inquiry Hearing.

Kind regards

James

James Docherty  
Principal Lawyer / Uwch Gyfreithiwr  
Resources / Adnoddau  
Vale of Glamorgan Council / Cyngor Bro Morgannwg  
tel / ffôn: 01446 709781  
mob / sym:  
e-mail / e-bost: [jdocherty@valeofglamorgan.gov.uk](mailto:jdocherty@valeofglamorgan.gov.uk)

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**From:** Ham, Jocelyn <[JHam@valeofglamorgan.gov.uk](mailto:JHam@valeofglamorgan.gov.uk)>  
**Sent:** 20 October 2020 10:41  
**To:** Docherty, James <[jdocherty@valeofglamorgan.gov.uk](mailto:jdocherty@valeofglamorgan.gov.uk)>  
**Subject:** Maes Y Ffynnon TVG application

Dear James

## Docherty, James

---

**From:** Ham, Jocelyn  
**Sent:** 26 October 2020 15:33  
**To:** Docherty, James  
**Subject:** RE: Maes Y Ffynnon TVG application

Dear James

Thanks for the email and confirming that the deadline for the submission of bundles has been extended to 23<sup>rd</sup> November 2020.

I note the other date changes/confirmations and I will get back to you on this as soon as we appoint counsel.

Regards

Jos

Jocelyn Ham  
Senior Lawyer / Uwch Gyfreithiwr  
Legal Services / Gwasanaethau Cyfreithiol  
Vale of Glamorgan Council / Cyngor Bro Morgannwg  
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---

**From:** Docherty, James <[jdocherty@valeofglamorgan.gov.uk](mailto:jdocherty@valeofglamorgan.gov.uk)>  
**Sent:** 26 October 2020 15:00  
**To:** Ham, Jocelyn <[JHam@valeofglamorgan.gov.uk](mailto:JHam@valeofglamorgan.gov.uk)>  
**Subject:** RE: Maes Y Ffynnon TVG application

Dear Jos,

Further to the e-mails below I have now spoken with the Applicants and they have agreed to the extension for the deadline of the submission of bundles until 23<sup>rd</sup> November 2020. The Inspector has approved this also and he has provided the following additional instructions:

1. Please can you provide your availability for a Pre-Inquiry Hearing in the week commencing 7<sup>th</sup> December 2020. The estimated time for the PIH is 1 hour.
2. The Inquiry shall be preliminarily set for Monday 25<sup>th</sup> January 2020 as this appears to be acceptable to all parties.

I look forward to hear from you in respect of availability for the Pre-Inquiry Hearing.

## Docherty, James

---

**From:** Ham, Jocelyn  
**Sent:** 28 October 2020 09:21  
**To:** Docherty, James  
**Subject:** RE: Maes Y Ffynnon TVG application

Dear James

Further to previous correspondence, I write to confirm the landowner's availability for the Pre-Inquiry Hearing and Inquiry.

Please note that we have instructed Michael Brett of counsel to represent the objector/landowner's case.

Kind regards

Jos

Jocelyn Ham  
Senior Lawyer / Uwch Gyfreithiwr  
Legal Services / Gwasanaethau Cyfreithiol  
Vale of Glamorgan Council / Cyngor Bro Morgannwg  
tel / ffôn: 01446 709406  
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---

**From:** Ham, Jocelyn  
**Sent:** 26 October 2020 15:33  
**To:** Docherty, James <[jdocherty@valeofglamorgan.gov.uk](mailto:jdocherty@valeofglamorgan.gov.uk)>  
**Subject:** RE: Maes Y Ffynnon TVG application

Dear James

Thanks for the email and confirming that the deadline for the submission of bundles has been extended to 23<sup>rd</sup> November 2020.

I note the other date changes/confirmations and I will get back to you on this as soon as we appoint counsel.

Regards

Jos

Jocelyn Ham  
Senior Lawyer / Uwch Gyfreithiwr  
Legal Services / Gwasanaethau Cyfreithiol  
Vale of Glamorgan Council / Cyngor Bro Morgannwg

## Docherty, James

---

**From:** Docherty, James  
**Sent:** 06 November 2020 13:15  
**To:** Ham, Jocelyn  
**Subject:** RE: Maes Y Ffynnon TVG application  
**Attachments:** Amended - Note and Directions (Maes Y Ffynnon TVG Application).doc

**Switch-MessageId:** 13ed29da6bcc478ca35bf1022c4dd528

Dear Jos,

Thank you for your e-mail below.

I have had confirmation from the Applicant that they only have availability for the Pre-Inquiry Hearing on Monday 7<sup>th</sup> December and Friday 11<sup>th</sup> December. Given I presume your availability is all week I shall discuss with the Inspector with intention of setting the PIH for 7<sup>th</sup> December.

The Applicant has confirmed availability for 25<sup>th</sup> January so I will also discuss with the Inspector confirming that this date can now be formalised.

For your information please see attached an updated version of the original directions to identify that Maes Y Ffynnon is actually located in Bonvilston and not St Nicholas.

Kind regards

James

James Docherty  
Principal Lawyer / Uwch Gyfreithiwr  
Resources / Adnoddau  
Vale of Glamorgan Council / Cyngor Bro Morgannwg  
tel / ffôn: 01446 709781  
mob / sym:  
e-mail / e-bost: [jdocherty@valeofglamorgan.gov.uk](mailto:jdocherty@valeofglamorgan.gov.uk)

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Correspondence is welcomed in Welsh or English / Croesewir Gohebiaeth yn y Gymraeg neu yn Saesneg.

**From:** Ham, Jocelyn <JHam@valeofglamorgan.gov.uk>  
**Sent:** 28 October 2020 09:21  
**To:** Docherty, James <jdocherty@valeofglamorgan.gov.uk>  
**Subject:** RE: Maes Y Ffynnon TVG application

## Docherty, James

---

**From:** Ham, Jocelyn  
**Sent:** 11 November 2020 17:45  
**To:** Docherty, James  
**Subject:** Town and Village Green Application - Maes Y Ffynnon, Bonvilston

Hi James

I am aware that the TVG application in this matter is dated 22 May 2019 and marked received by the Registration Authority on the 23 May 2019 but was this the first version of the application submitted or were the applicants given an opportunity to rectify any technical faults with a previous application?

I just note that one of the exhibits is re-dated (originally dated 17 April 2019) and therefore, I assume the application was in fact submitted earlier and correctly, they were given an opportunity remedy any technical defects on the face of the application.

Please are you able to confirm the date an application was first received?

Regards

Jos

Jocelyn Ham  
Senior Lawyer / Uwch Gyfreithiwr  
Legal Services / Gwasanaethau Cyfreithiol  
Vale of Glamorgan Council / Cyngor Bro Morgannwg  
tel / ffôn: 01446 709406  
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## Docherty, James

---

**From:** Ham, Jocelyn  
**Sent:** 17 November 2020 16:03  
**To:** Docherty, James  
**Subject:** RE: Maes Y Ffynnon TVG application

Hi James

Apologies if I have missed this but is the Pre-Inquiry Hearing definitely going ahead on Monday 7 December?

Jos

Jocelyn Ham  
Senior Lawyer / Uwch Gyfreithiwr  
Legal Services / Gwasanaethau Cyfreithiol  
Vale of Glamorgan Council / Cyngor Bro Morgannwg  
tel / ffôn: 01446 709406  
mob / sym:  
e-mail / e-bost: [JHam@valeofglamorgan.gov.uk](mailto:JHam@valeofglamorgan.gov.uk)

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---

**From:** Docherty, James <[jdocherty@valeofglamorgan.gov.uk](mailto:jdocherty@valeofglamorgan.gov.uk)>  
**Sent:** 06 November 2020 13:15  
**To:** Ham, Jocelyn <[JHam@valeofglamorgan.gov.uk](mailto:JHam@valeofglamorgan.gov.uk)>  
**Subject:** RE: Maes Y Ffynnon TVG application

Dear Jos,

Thank you for your e-mail below.

I have had confirmation from the Applicant that they only have availability for the Pre-Inquiry Hearing on Monday 7<sup>th</sup> December and Friday 11<sup>th</sup> December. Given I presume your availability is all week I shall discuss with the Inspector with intention of setting the PIH for 7<sup>th</sup> December.

The Applicant has confirmed availability for 25<sup>th</sup> January so I will also discuss with the Inspector confirming that this date can now be formalised.

For your information please see attached an updated version of the original directions to identify that Maes Y Ffynnon is actually located in Bonvilston and not St Nicholas.

Kind regards

James

James Docherty

## Docherty, James

---

**From:** Ham, Jocelyn  
**Sent:** 17 November 2020 16:04  
**To:** Docherty, James  
**Subject:** RE: Maes Y Ffynnon TVG application

And what time will it be?

Jos

Jocelyn Ham  
Senior Lawyer / Uwch Gyfreithiwr  
Legal Services / Gwasanaethau Cyfreithiol  
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---

**From:** Ham, Jocelyn  
**Sent:** 17 November 2020 16:03  
**To:** Docherty, James <[jdocherty@valeofglamorgan.gov.uk](mailto:jdocherty@valeofglamorgan.gov.uk)>  
**Subject:** RE: Maes Y Ffynnon TVG application

Hi James

Apologies if I have missed this but is the Pre-Inquiry Hearing definitely going ahead on Monday 7 December?

Jos

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## Docherty, James

---

**From:** Ham, Jocelyn  
**Sent:** 18 November 2020 12:16  
**To:** Docherty, James  
**Subject:** Town and Village Green Application - Maes Y Ffynnon, Bonvilston

**Importance:** High

Dear James

We are in the process of putting together the objector's bundle for the 23 November 2020.

Firstly, please can you confirm that we have until the end of office hours on Monday to submit the bundle. The reason I ask is that Mike Ingram, who will provide a statement in support of the Council's case is on leave. He may be back on Friday but failing that we can get his statement finalised on Monday. Is this acceptable?

Secondly, please will you confirm that time of the Pre-Inquiry Hearing on the 07 December 2020 is 10 am

Lastly, the Council case is reliant in part on information held at the Glamorgan Records Office. These are Housing and Planning Committee minutes from the 1950s. The GRO has been closed and remains closed making getting the information required difficult. Normally someone would go in to search the records themselves, copy them etc.. We know the information required exists because I have found the indexes etc. on line on the GRO website.

I accept ordinarily evidence submitted after the deadline on 23 November would not be considered by the Inspector but given the circumstances (re the pandemic) could we ask that a further opportunity be given to submit evidence once we get hold of it. Please would you ask the Inspector if this is acceptable? I am not suggesting that the information be left to the Public Inquiry, I think we should have it before the PIH and of course as soon as we have it, it will be disclosed/circulated. If you could get back to me on this as soon as possible, it would be appreciated because if it is not possible, then we may have to slightly adjust our approach.

Kind regards

Jos

Jocelyn Ham  
Senior Lawyer / Uwch Gyfreithiwr  
Legal Services / Gwasanaethau Cyfreithiol  
Vale of Glamorgan Council / Cyngor Bro Morgannwg  
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## Docherty, James

---

**From:** Docherty, James  
**Sent:** 19 November 2020 12:33  
**To:** Ham, Jocelyn  
**Subject:** RE: Town and Village Green Application - Maes Y Ffynnon, Bonvilston

**Switch-MessageId:** 276ac20e958244e398c0c07867b810f1

Dear Jos,

Further to your e-mail below the date for submission of bundles was close of play on Monday. I have passed your e-mail on to the Inspector for consideration of the other matters set out below.

I have also received further correspondence from the Applicant as follows:

"I am concerned that the circumstances we find ourselves in due to the pandemic, could compromise the hearing and put us at a disadvantage, due to restrictions on engagement with residents and other parties. Some more elderly witnesses cannot access digital technology and could not be supported by others due to their vulnerability and social distancing restrictions. We are also struggling to meet and engage with the St Nicholas and Bonvilston Community Council due to the impact that Covid-19 has had on their ability to undertake meetings, for us to attend and some members do not have access to digital technology. These circumstances also make engaging potential legal representation extremely challenging, as due to restrictions we are unable to group together in person, or digitally as joint applicants MYFRA and the Community Council, to gain approval of how we spend our finances. Both organisations require for any matters around making financial decisions, that the attendance is quorate at meetings and that is not possible at present.

In light of the above, can I request a review of these dates, as I feel we are being put at an unfair disadvantage under extreme circumstances during unprecedented times. I believe a more appropriate date for the hearing would be in the spring, as it is likely that restrictive conditions will continue until the roll out of a vaccine and some form of normality has been restored."

This has also been passed to the Inspector for comment and further directions. Given the deadline for submission of bundles is Monday I would expect to be able to provide a further update to you by the close of play tomorrow.

Kind regards

James Docherty  
Principal Lawyer / Uwch Gyfreithiwr  
Resources / Adnoddau  
Vale of Glamorgan Council / Cyngor Bro Morgannwg  
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mob / sym:  
e-mail / e-bost: [jdocherty@valeofglamorgan.gov.uk](mailto:jdocherty@valeofglamorgan.gov.uk)

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## Docherty, James

---

**From:** Docherty, James  
**Sent:** 24 November 2020 10:42  
**To:** Ham, Jocelyn  
**Subject:** RE: Town and Village Green Application - Maes Y Ffynnon, Bonvilston

**Switch-MessageId:** e2a03b56135d43bd9d439d2196343bd4

Dear Jos,

Further to our correspondence last week and also the additional request from the Applicant, I have spoken with the Inspector and he has proposed the following:

I heed the concerns of both the Applicant and the Objector. In the circumstances, it seems sensible for the exchange of any evidence to be put back to 11th January 2021 with the PIH on 7th December 2020 vacated and 25th January 2021 utilised for a PIH rather than the Inquiry. At the PIH, we can assess whether or not the Inquiry is suitable to proceed remotely or whether or not it should proceed in person. The parties will have the opportunity to make submissions on such matters at the PIH. I would not propose re-listing the Inquiry until such matters have been considered at the PIH. I would hope that any issues with the preparation of evidence have been resolved in time for 11th January 2021 but if they have not I will deal with the admission of any further evidence or documentation at the PIH. I would also hope that the inquiry will be able to proceed sometime in the window of March to April 2021, and parties should be prepared to deal with the relisting of the Inquiry at the PIH in January 2021.

As set out above we are now looking to have evidence submitted by 11<sup>th</sup> January 2021 with a pre-inquiry hearing to take place on 25<sup>th</sup> January 2021 to assess where the parties are at and whether it is possible to set a date for the full inquiry and/or whether the issues with evidence have been resolved.

If you have any further queries please do not hesitate to get in touch.

Kind regards

James

James Docherty  
Principal Lawyer / Uwch Gyfreithiwr  
Resources / Adnoddau  
Vale of Glamorgan Council / Cyngor Bro Morgannwg  
tel / ffôn: 01446 709781  
mob / sym:  
e-mail / e-bost: [jdocherty@valeofglamorgan.gov.uk](mailto:jdocherty@valeofglamorgan.gov.uk)

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## Docherty, James

---

**From:** Ham, Jocelyn  
**Sent:** 24 November 2020 10:48  
**To:** Docherty, James  
**Subject:** RE: Town and Village Green Application - Maes Y Ffynnon, Bonvilston

Dear James

Thank you for the email. I note the Inspector's comments and the position in relation to the timetable.

Kind regards

Jos

Jocelyn Ham  
Senior Lawyer / Uwch Gyfreithiwr  
Legal Services / Gwasanaethau Cyfreithiol  
Vale of Glamorgan Council / Cyngor Bro Morgannwg  
tel / ffôn: 01446 709406  
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---

**From:** Docherty, James <[jdocherty@valeofglamorgan.gov.uk](mailto:jdocherty@valeofglamorgan.gov.uk)>  
**Sent:** 24 November 2020 10:42  
**To:** Ham, Jocelyn <[JHam@valeofglamorgan.gov.uk](mailto:JHam@valeofglamorgan.gov.uk)>  
**Subject:** RE: Town and Village Green Application - Maes Y Ffynnon, Bonvilston

Dear Jos,

Further to our correspondence last week and also the additional request from the Applicant, I have spoken with the Inspector and he has proposed the following:

I heed the concerns of both the Applicant and the Objector. In the circumstances, it seems sensible for the exchange of any evidence to be put back to 11th January 2021 with the PIH on 7th December 2020 vacated and 25th January 2021 utilised for a PIH rather than the Inquiry. At the PIH, we can assess whether or not the Inquiry is suitable to proceed remotely or whether or not it should proceed in person. The parties will have the opportunity to make submissions on such matters at the PIH. I would not propose re-listing the Inquiry until such matters have been considered at the PIH. I would hope that any issues with the preparation of evidence have been resolved in time for 11th January 2021 but if they have not I will deal with the admission of any further evidence or documentation at the PIH. I would also hope that the inquiry will be able to proceed sometime in the window of March to April 2021, and parties should be prepared to deal with the relisting of the Inquiry at the PIH in January 2021.

## Docherty, James

---

**From:** Ham, Jocelyn  
**Sent:** 18 January 2021 16:30  
**To:** Docherty, James  
**Subject:** Application to register land as new TVG - Land at Maes Y Ffynnon Bonvilston  
**Attachments:** Maes y Ffynnon Index to Bundle.pdf; 1. Maes y Ffynnon\_SKELETON\_FINAL.pdf; 2. Notice of Objection - Land at Maes Y Ffynnon Bonvilston.pdf; Maes Y Ffynnon TVG Application ; 4. Witness Statement Jocelyn Ham.pdf; 5. Witness statement for Mike Ingram.pdf; 6. Official Copy (Register) - CYM410667.pdf; 6. Official Copy (Title Plan) - CYM410667.pdf; 7. Conveyance dated 11 July 1949.pdf; 8. Conveyance dated 9 January 1956.pdf

Dear James

Please see the attached Objector's bundle (Part 1).

I will arrange for a hard copy in triplicate to be prepared as soon as I can access printer and copier.

Kind regards

Jocelyn

Jocelyn Ham  
Senior Lawyer / Uwch Gyfreithiwr  
Legal Services / Gwasanaethau Cyfreithiol  
Vale of Glamorgan Council / Cyngor Bro Morgannwg  
tel / ffôn: 01446 709406  
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## Docherty, James

---

**From:** Ham, Jocelyn  
**Sent:** 18 January 2021 16:53  
**To:** Docherty, James  
**Subject:** Application to register land as new TVG - Land at Maes Y Ffynnon Bonvilston  
**Attachments:** 9. RDC-C-1-81, 24 Jan 1955.jpg; 9. RDC-C-1-81, 25 Jan 1954.jpg; 9. RDC-C-1-81, 28 Sep 1953.jpg; 9. GCC bon 4.jpg; 10. Plan showing extent of adopted highway.pdf; 11. Condition 1-5 maes-y-ffynnon .pdf; 12. Final Maes y Fynnon DAS.pdf; Oxfordshire County Council and Others, Ex Parte Sunningwell Parish Council, R v\_ [1999] UKHL 28; [2000] 1 AC 335; [1999] 3 ALL ER 385; [1999] 3 WLR 160 (24th June, 1999).htm; Barkas.pdf; Oxfordshire.pdf; New Haven Port.pdf; Lancashire.pdf

James

Part 2.

Regards

Jos

Jocelyn Ham  
Senior Lawyer / Uwch Gyfreithiwr  
Legal Services / Gwasanaethau Cyfreithiol  
Vale of Glamorgan Council / Cyngor Bro Morgannwg  
tel / ffôn: 01446 709406  
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## Docherty, James

---

**From:** Docherty, James  
**Sent:** 19 January 2021 11:40  
**To:** Ham, Jocelyn  
**Subject:** RE: Application to register land as new TVG - Land at Maes Y Ffynnon Bonvilston  
**Switch-MessageId:** 2869321a66084cc3a2391cfab992fb39

Dear Jos,

Thank you for the e-mails below and the attachments included therein. I can confirm that I have also received the Applicant's bundles and will be going into the office today to make preparations for issuing copies to each of the relevant parties.

Kind regards

James

James Docherty  
Principal Lawyer / Uwch Gyfreithiwr  
Resources / Adnoddau  
Vale of Glamorgan Council / Cyngor Bro Morgannwg  
tel / ffôn: 01446 709781  
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**From:** Ham, Jocelyn <[JHam@valeofglamorgan.gov.uk](mailto:JHam@valeofglamorgan.gov.uk)>  
**Sent:** 18 January 2021 16:53  
**To:** Docherty, James <[jdocherty@valeofglamorgan.gov.uk](mailto:jdocherty@valeofglamorgan.gov.uk)>  
**Subject:** Application to register land as new TVG - Land at Maes Y Ffynnon Bonvilston

James

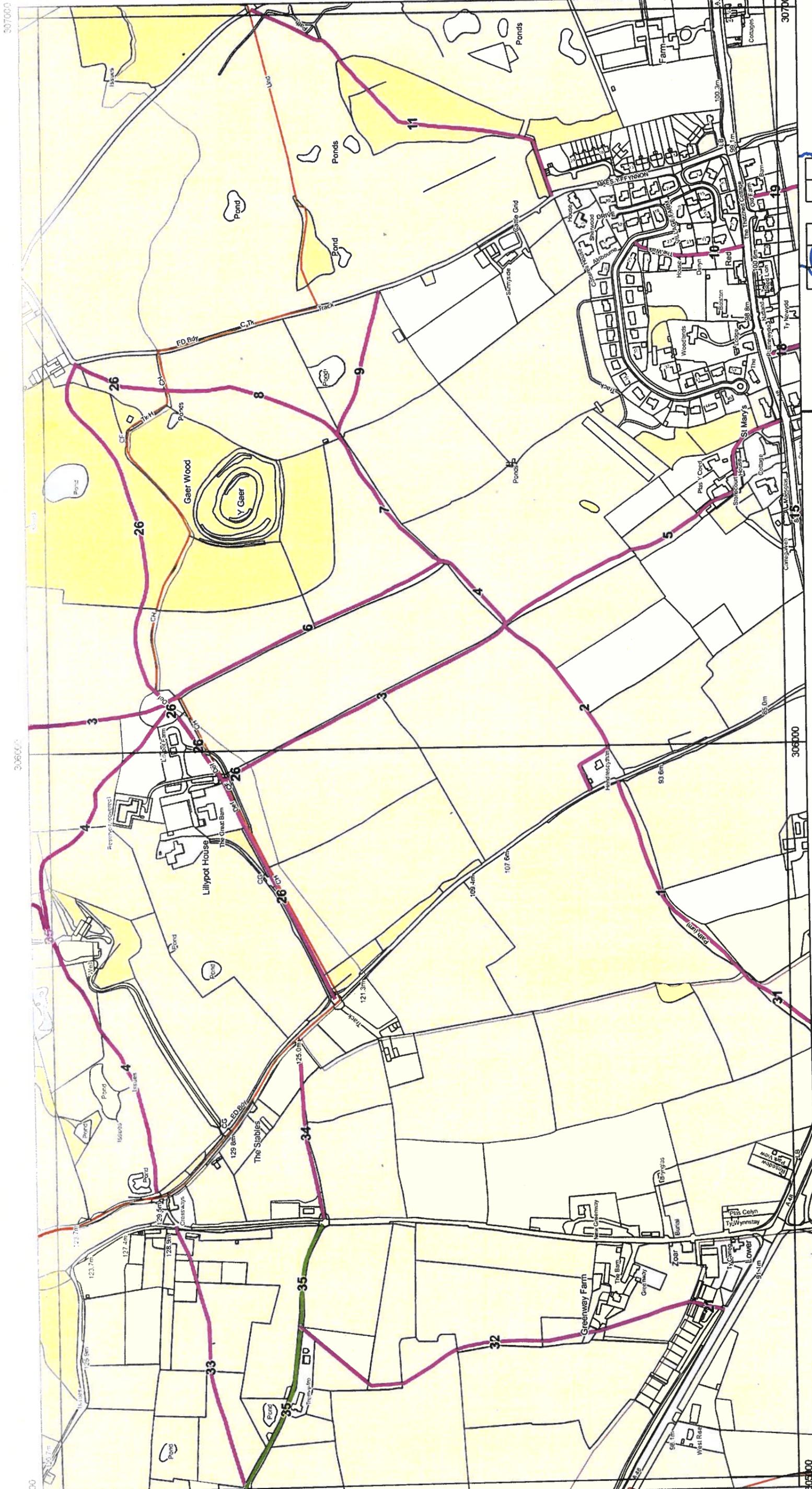
Part 2.

Regards

Jos

## Parish Bonvilston

| <b>Path No</b> | <b>Statement</b>   | <b>Length (Metres)</b> | <b>Width (Metres)</b> | <b>Status</b> |
|----------------|--|------------------------|-----------------------|---------------|
| 10             | Commences at the junction with the A48 at the eastern boundary of the Red Lion Inn and proceeds northwards to meet the county road between No.'s 23 and 25 Village Farm  | 150                    | Undefined             | Footpath      |
| 11             | Commences at low fence on the Maesyffynnon Lane and proceeds in an easterly direction across a field to wooden rails in hedge. Turns in a northerly direction through a gap in hedge across a field to wooden rails in hedge. Continues across further field (ploughed) to terminate at the junction of the County roads leading to Pendoylan and Peterston-Super-Ely.         | 521                    | Undefined             | Footpath      |
| 13             | Commences at a stone stile opposite "Ty-Groes" on the Cowbridge Road where stone steps lead down to a ploughed field which is crossed in a southerly direction to a gap in a hedge. Turns south east across ploughed field to terminate at the Parish boundary.  | 247                    | Undefined             | Footpath      |
| 14             | Commences at a stone stile on the Llanccarfan Road approximately 229 metres south of Cowbridge Road. It proceeds due west across rough pasture field through a gap in the hedge into a ploughed field where it terminates at the Parish boundary near the termination of footpath 13.  | 247                    | Undefined             | Footpath      |
| 15             | Commences at a stone stile by the Reading Room on the A48 and proceeds southwards across fields, to terminate approximately 100m north of Tyn-y-Coed at its junction with Public Footpaths Nos. 16 and 17.   | 821                    | Undefined             | Footpath      |
| 16             | Footpath commences at a gate underneath powerlines. The path proceeds in a northeastward direction down into the valley for 75 metres and across a bridge over Nant Llanccarfan. The path continues eastwards out of the valley for approximately 50 metres to terminate at its junction with footpaths Nos. 15 and 17 at a gate immediately north of the overhead powerlines. | 125                    | Undefined             | Footpath      |
| 17             | Commences at the junction of Public Footpaths No.s 15 and 16 Bonvilston approximately 100m north of Ty'n-y-Coed Farm and proceeds north-eastwards across several fields, then northwards to terminate at the junction of Public Footpaths Nos. 18 and 19 Bonvilston, in Pant-y-Ffynnon Copse.  | 787                    | Undefined             | Footpath      |
| 18             | Commences at junction of footpaths 17 and 19 and proceeds northwards through copse to stone stile set in the first hedge. It continues along hedge of pasture field to a wicket gate at the side of a field gate leading into a metalled private drive-way, and terminating at an iron field gate or entrance gate east of "Ty-Mawr" on the Cowbridge Road.                    | 265                    | Undefined             | Footpath      |



**The Definitive Map of Public Rights of Way for The Vale of Glamorgan.  
 Relevant Date: 15 March 2016**

**Map Swyddogol o Hawliau Tramwy Cyhoeddus Bro Morgannwg.  
 Dyddiad Perthnasol: 15 Mawrth 2016**

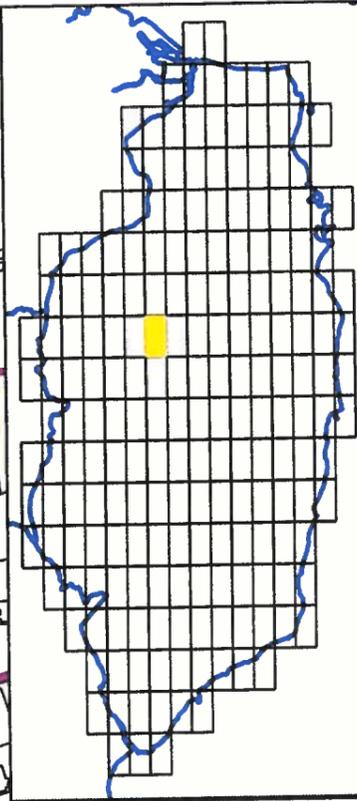
Scale / Graddfa: 1:5,000

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**Legend**

- Footpath
- Bridleway
- Restricted Byway
- Byway Open to All Traffic
- Community Boundary
- County Boundary



Sheet Number / Rhif Dalen: 77