RE: LAND KNOWN AS HAWTIN PARK FIELDS, PONTLLANFRAITH, BLACKWOOD

COMMONS ACT 2006, SECTION 15

REGISTRATION AUTHORITY: CAERPHILLY COUNTY BOROUGH COUNCIL

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

into

AN APPLICATION TO REGISTER LAND AT HAWTIN PARK FIELDS

as a

TOWN OR VILLAGE GREEN

CONTENTS:

Introduction

1.1. I have been appointed by Caerphilly County Borough Council ("the Council"), in its capacity as Registration Authority, to consider and report on an application submitted to the Council, bearing the date 1st November 2011, for the registration as a Town or Village Green under Section 15 of the Commons Act 2006 of an area of land known as Hawtin Park Fields, on the south western edge of Pontllanfraith, within the Council's area.

1.2. I was in particular appointed to hold a Public Local Inquiry into the application, and to hear and consider evidence and submissions in support of the application, and on behalf of the Objectors to it. However I was also provided with copies of the original application and the material which had been produced in support of it [and some later, minor amendments to the application which I refer to later]; the objections duly made to it; and such further correspondence and exchanges as had taken place in writing from the parties. Save to the extent that any aspects of it may have been modified by the relevant parties in the context of the Public Inquiry, I have had regard to all of that earlier material in compiling my Report and recommendations.

2. The Applicant and Application

2.1. The Application was made by Mr Brian Owen Wilkins, of 18 Tamar Close, Pontllanfraith, on behalf of (and as Chairman of) the Bryn Residents Association. In this Report I may refer to Mr Wilkins and the Association, interchangeably, as *"the Applicant"*, unless the context requires me specifically to identify one or the other of them.

2.2. It was indicated in the Application Form that the Application was based on ***subsection (2)*** of ***Section 15*** of the ***Commons Act 2006.*** The relevant *"locality"* was indicated to be the Pontllanfraith Ward, and a relevant *"neighbourhood"* (within that locality), was postulated as including *"Crown Estate, Bryn Estate, Penllwyn Estate, Bryn Lane, Highfield Lane, Rushmere, or any neighbourhood within the locality..."* The application was supported by over 100 completed evidence questionnaires from local people, and a number of photographs.

2.3. The plan of the site which originally accompanied the Application did not meet in terms of scale the relevant regulations governing an application such as this, so a new plan, with accompanying statutory declaration dated 7th April 2011, was provided by the Applicant. It transpired that the larger scale replacement plan included within the area claimed as 'town or village' green a narrow sliver of land at its extreme northern edge, in different ownership from those comprised within the bulk of the claimed land.

2.4. Accordingly in June 2011, for the convenience of the Inquiry which I went on to hold, the Applicant amended yet further the application plan by the removal of this 'sliver'. This sensible change was not objected to by any party concerned in the

case, and thus it is the very slightly reduced 'application site' produced in that way that I consider in the remainder of this Report.

2.5. I was given to understand at the Inquiry that the size of the application site is approximately 13.6 hectares. It is thus a large area. I would observe (briefly at this stage) that at the time of the Inquiry it was an area containing a mix of scrubland, woodland and some rather overgrown fields of grassland. It is topographically varied, with a general (but by no means uniform) fall from north to south, and in some patches is wet and muddy. Any further observations about the site, and its state at various times, I shall leave to my consideration and discussion of the evidence, in later sections of this Report.

3. The Objectors

3.1. There were in the event two substantive objectors to the application. Before dealing with them, I will mention that a third company called Ashtenne (AIF) Limited were originally contacted by the Council in relation to the Application. However Ashtenne (as I understand the position) were the owners of the small 'sliver' at the north of the site which the Applicant in due course removed from the application, as explained above. Once it became apparent that this was being done, it is my understanding that Ashtenne have taken no further interest in the matter of this application.

3.2. The two substantive objectors were Hawtin plc and Filigree Trading Limited, who I believe are the owners of land constituting the application site as eventually amended. Hawtin plc was (I understand) in administration at the time of its original objection in April 2011. Perhaps because of this circumstance, having provided a (brief) reasoned objection in April 2011, Hawtin plc then produced no further evidence or submissions, and did not participate in the Inquiry which I held. I have nevertheless had regard to its original objections.

3.3. Filigree Trading Limited ("Filigree") were the active objectors at the inquiry which I held, and I understood them to be the freehold owners of the majority of the land constituting the application site. Filigree (as well as calling witnesses) produced a considerable amount of documentation in support of their objection, which I will refer to at appropriate places in this Report.

4. Directions

4.1. After the Council as Registration Authority had decided that a local Inquiry should be held into the Application (and the objections to it), and had appointed me for the purpose, I issued Directions to the parties as to procedural matters. The topics covered included the exchange before the Inquiry of additional written and documentary material such as Proofs of Evidence, case summaries, legal authorities etc. Later, on 8th December 2011, following a query which had been raised, I issued some Supplementary Directions. Since all these Directions were, broadly speaking, observed by the parties, and no issues arose from them, it is unnecessary to comment on them any further.

5. Site Visits

5.1. As I informed the parties at the Inquiry, I had the opportunity on the afternoon before the Inquiry commenced to see the site, unaccompanied, from its several main boundaries, as well as much of the surrounding area.

5.2. At the close of the Inquiry, on 20th January 2012, I made a formal site visit, accompanied by representatives of the Applicant and the Objector Filigree. In addition to going on to the site, and looking at all of it, I was again able to see such of the surroundings as the parties wished me to observe.

6. The Inquiry

6.1. The Inquiry was held in Pontllanfraith, at the Council's offices there, over four days from 17th to 20th January 2012 inclusive.

6.2. As well as submissions, oral evidence was heard from several witnesses on behalf of both main parties (the Applicant and Filigree), and subjected to cross-examination as appropriate.

6.3. With the express agreement of the parties to the inquiry, all of the oral evidence to the Inquiry was given on oath.

6.4. As well as the oral evidence, and matters specifically raised at the Inquiry, I have had regard in producing my Report to all of the written and documentary material submitted by the parties, including the material submitted in the early stages of the process, which I have referred to above. I report on the evidence, and the submissions of the parties, in the following sections of this Report.

7. THE CASE FOR THE APPLICANT – Evidence

7.1. As I have already noted in passing, the Application in this case was supported by a substantial bundle of documentation, including some 108 completed evidence questionnaires, and other supporting material including photographs.

7.2. Other written or documentary material was submitted on behalf of the Applicant in the run-up to the Inquiry, in accordance with the Directions I had issued. Some of this consisted of written statements from witnesses who would in due course give evidence at the Inquiry itself.

7.3. I have read all of this material, and also looked at and considered all the photographs, plus other documentary items with which I was provided, and have taken it all into account in forming the views which I have come to on the totality of the evidence.

7.4. However, as is to be expected, and as indeed was both mentioned in the Directions, and the subject of discussion and acknowledgement at the Inquiry itself, more

weight will inevitably be accorded (where matters are in dispute) to evidence which is given in person by a witness, on oath or affirmation, who is then subject to cross-examination and questions from me, than will be the case for mere written statements, evidence questionnaires etc, where there is no opportunity for challenge or questioning.

7.5. With all these considerations in mind, I do not think it is generally necessary for me specifically to summarise in this Report all the evidence contained in any statements, letters etc, or in particular evidence questionnaires by individuals who gave no oral evidence. In general terms they are broadly consistent with the tenor of the evidence given by the oral witnesses, and nothing stands out as being particularly worthy of having special, individual attention drawn to it in this Report.

7.6. In any event all of the written and documentary material I have referred to is available to the Registration Authority as supplementary background material to this Report, and may be referred to as necessary.

The Oral Evidence for the Applicant

What follows is not intended to be a verbatim transcript of all that was said, but rather an account of the main points addressed by each witness.

7.7. ***Mr Wayne Hopkins*** lives at 33 Solent Close, which he described as being on the Crown Lane Estate. He and his wife have lived there since 1977. The back of their garden forms one side of the lane along the eastern boundary of the application site. From their house they can see directly into the nearest field on the application site, and two other fields on the site. Therefore they have witnessed all the changes that have taken place in the last 34 years.

7.8. From the late 1980s onwards there have been as many as 20 children at any one time living in the street. Many of them, together with children from other streets, played regularly in the field behind Solent Close. On certain occasions, such as bonfire night it would be quite common to see as many as 30 parents and children enjoying the festivities. Many of the children and some parents, including Mr Hopkins, would spend time gathering dead wood and bracken from the hedgerows around the fields to build a bonfire. That material was collected from the entire area of the application site.

7.9. At no time during the preparations or during bonfire night were people challenged with regard to trespass. Similarly during snowy periods quite large crowds would gather on one of the steeper fields for tobogganing and other snow related activities. Again he was not aware that anyone had ever been challenged by anyone on behalf of the owner of the land.

7.10. During the last 34 years he had walked all the fields regularly and indeed still does so, as do many others. He often takes a bag to collect litter which has been left by others. That again is testimony to regular usage, he said. He had seen the ground

used for all sorts of pastimes, and not once has he ever been challenged with regard to trespass.

7.11. The eastern field is subject to a planning application for a housing development, he said. He sees all the activity there in the field, there are regularly people in that field. He had never been sure who owned it. When he first moved to the area it was a field cultivated by a farmer, then it degenerated and became overgrown.

7.12. When he goes walking he goes on all of the fields on the application site, and also on the lane to the south of the application site, locally known as Pixie Lane. There are well worn footpaths throughout the site, he said. In the south east corner of the site there once was a farm he thought. There has never been any problem with entry onto the site.

7.13. Mr Hopkins produced some black and white photographs taken on the site, and pointed out that one of them showed his eldest son who is now 27, so that it must have been approximately 20 years ago that the photograph was taken. His son was one of many local boys who played on the land. He explained that somewhere towards the upper part of the Lane along the eastern side of the site there was a natural spring. The situation there had been altered by the construction of a mound which made things in that vicinity become much more boggy.

7.14. He did recall hay making taking place on the land – in about 1999 he thought. But that never caused anybody to be asked to leave the fields at all. Indeed he recalled that he and his family would chat with the farmer.

7.15. *In cross-examination* Mr Hopkins explained exactly where his house is in relation to the application site. The garden of his house is above the level of the bridle path, there is about an 8 feet drop from his garden to that track. Thus he has a clear view, from his garden and the ground floor of his house, to the application site. Mr Hopkins said he was not aware that any use made of the land was illegal. He agreed however that using the site for riding motorbikes or burning cars on it would not be a lawful use. He accepted that the land had been used for some anti-social activities, for example cars being burnt out, but that was infrequent and more common on other sites in the area. He was not aware of any drug use having taken place on the land. He agreed that the hedges around the site had been breached, but some of that breaching was by contractors working on the site. By contractors he referred to the people who had created a mound for some sort of barrier around the site a good many years ago. That work by the contractor had been carried on coming down from the north as far as the top end of Solent Close. The contractor removed hedges and some big trees. Mr Hopkins had spoken to the contractor, who agreed to suspend the work for 24 hours, and then in fact no more was done.

7.16. Mr Hopkins agreed that there are hedgerows along the site boundary generally. The hedges are by no means always supported by fences inside the hedge. In several locations there are natural breaks in the hedge with no supplementary fencing.

7.17. Mr Hopkins was aware of the questionnaires which had been circulated and completed by local people, but he himself was not responsible for their circulation.

He entirely accepted that some people said they entered the land by gaps in the hedges. Those gaps had been there for as long as he could remember. The hedges had not been breached by people forcing their way through; the gaps were simply there. The land had not been maintained for many years. No fence was constructed along the back of Solent Close for example. The only fence constructed had been at the top end near the factory, and even that one had a gap in it which people went through to get to work.

7.18. He accepted that at one point, when a water main was put in, some fencing was there on the land, but it was later removed.

7.19. Mr Hopkins accepted that grazing and the taking of hay had in the past been the norm on these fields constituting the application site. He did not disagree that that had continued until about 2007. However the ground had altered since then, in fact he thought the local farmer had retired longer ago than that. Nevertheless he agreed that hay was taken on virtually the whole of the application site. The amount taken diminished over time because of the lack of maintenance, the hedges becoming overgrown etc. Mr Hopkins agreed that nothing had been taken off the land in that way since about 2008.

7.20. Mr Hopkins agreed that any farmer on the land would quite reasonably expect people on the fields in the summer time to keep to the edge of them. He accepted that one could only take hay in the summer. Nevertheless the quality of the grass was so poor in parts that one could walk over it and make no difference. Nevertheless people will walk around the perimeter of the fields when hay was being grown. However there were still well trodden footpaths passing through the centre of some of the fields.

7.21. He accepted that some pastimes could only be carried on when grass was kept low. For grass to be cultivated for hay there were about three months from spring to summer when the grass was long. In other words there was about a quarter of the year when there was growing grass in the fields which was worth cutting. But that did not preclude children from playing round the edges of those fields, said Mr Hopkins.

7.22. Mr Hopkins accepted that there are internal hedges within the site. He agreed that an aerial photograph taken in 2004 suggested that a cut of hay had been taken on much of the land that year. But he said there would still be paths through the farm, around the sides of the fields, at such times.

7.23. Along the eastern boundary, from Solent Close northwards, there was fencing, but with a gap deliberately left there for walkers to get through he thought.

7.24. He did recall that some signs were erected around the site, and appeared at the gaps into the fields in various places. The signs said no-one should trespass. He did not think that people had in fact gone into the land at that time while the signs were there. He personally did not use the land at that time, but within a short period the signs had disappeared. That was many years ago, he thought approximately 1997. The signs were about A3 size.

7.25. He accepted that some barbed wire remained from what was put on the trees around the fields while cattle were in there. He also accepted that it might be the case that some fences had been erected around the land but were then either taken down or trampled down by people who did not approve of them, but that did not apply to the boundary close to where he lives. Also to his knowledge there had never been a fence along Pixie Lane. Mr Hopkins accepted that at one point, along the southern part of the eastern boundary of the application site, local residents had actually asked for fencing to be erected to prevent scramblers from getting onto the land.

7.26. Mr Hopkins accepted that the landowners may well have erected fencing on the land but it was not around the entire site. He was not aware of fencing for example along parts of the boundary with the bridle path.

7.27. He reiterated that some signage was erected on the land, and indeed specifically remembered a post with a sign attached near the bridle path.

7.28. As for footpaths on the land, he accepted that 55 people who had completed questionnaires had said that paths crossed this land, and that 39 had said they were public footpaths. Nevertheless there are far more informal footpath routes on the land than were shown on the plan produced on behalf of the Objectors, he said. He agreed with those footpaths which had been shown on the Objectors' plan, he recognised them, but there were a lot more footpaths in fact on the ground.

7.29. Mr Hopkins agreed that the predominant use of the application land by local people is for walking from A to B, and for recreational walking. There is a well used footpath from the bridle path, towards the southern end of its boundary with the application site, leading to the industrial estate to the north. He thought that was really the one recognised footpath on the land, the one that is most obviously marked. It is a short cut for people who walk to the factory premises.

7.30. Some parts of the site are extremely boggy and not easy to walk on. Away from those areas there are a number of footpaths around the edges of the fields which tend to be used by the dog walkers. Some of those paths however do become difficult to walk on in wet weather, and there is a large marshy area with no footpaths through it. He thought the marshy area was quite a lot bigger than it was shown on the Objectors' plan of photograph locations and footpaths.

7.31. He identified the location of the photographs he had produced, including two taken in the snow in the late 1980s. One of the photographs showed a fence which had been constructed by the people who laid water mains on the land about 20 years ago. A footpath visible on the same photograph running along the eastern side of the application site is no longer walkable because it is now overgrown there. Similarly a photograph showing his sons resting after having helped cut hay in one of the fields in about 1999 shows a scene which is very different on the land nowadays.

7.32. Mr Hopkins accepted that that photograph of his sons, which he identified as being from about 1999, was elsewhere in the Applicant's bundle captioned as having

been taken in the summer of 2004. In reality the dates which had been given were only estimates he said.

7.33. Mr Hopkins accepted that an answer given in the questionnaire which he and his wife had completed, which suggested that there had never been any attempt by notice or fencing to discourage use being made of the land was incorrect. This was because he accepted that signs did in fact go up on the land.

7.34. Mr Hopkins explained that the old bridleway line was in fact blocked off in its northern portion, rather to the north of where he lives. It had deteriorated because the vegetation had not been cut, and the bridleway up there was very difficult to walk. He himself maintained the bridleway from the back of his house down to Bryn Lane, he said.

7.35. He accepted that a letter which he had written on the 3rd September 2008 in relation to a planning proposal on part of the land had described the site as agricultural land. That is what the land always was, said Mr Hopkins. It was agricultural at the time, basically used for hay making. He accepted that his letter had made no mention of recreational use of the land.

7.36. He personally had seen a sign on the land, but not any fencing aimed at keeping people out, and nor did anyone ever approach him to tell him not to use the land. The sign was not there for very long. Nevertheless, he personally did take heed of it while it was there, as did most other people he thought. He said that if it had been his land, and he had wanted to keep people out, he would have re-erected the fence; that is what the owners ought to have done. If the owners did not do that then he thought that people inevitably would gradually encroach on the land again.

7.37. *In re-examination* Mr Hopkins said he was not sure who it was who had normally carried out the hay making. He thought that he could recall one occasion when the ground in the field had been fertilised. That was the only such occasion he knew of. No-one ever asked him not to use the land when the grass was long before hay making.

7.38. He recalled sledging on the land in snowy periods; he definitely recalled a bonfire being held on the land. In summer dens were made in the hedgerow along the lane. That was an ideal playground for children, as was the stream on the land. People never had to stop using the land during the three months when the grass was growing taller before the hay was cut. One could walk along the well defined footpaths round the edge of the fields, he said.

7.39. In relation to certain reports from the South Wales Fire and Rescue Service of vehicle fires in the area, Mr Hopkins said that the vehicle fires which had been reported were outside the current application site.

7.40. As far as openings in hedges around the land were concerned, Mr Hopkins said that gaps would always appear if hedges are not maintained. The trees by the side of the bridleway were never cut by any authority. Residents however had cut them sometimes when they were overhanging. There was no other maintenance done

there. He personally had never witnessed people breaching hedges with any violence, the land was simply reverting to nature.

7.41. As could be seen from one of the Google aerial photographs, the land is criss-crossed with footpaths. There is also an area at the north of the land where there are deep marks which had been made by motorcycles.

7.42. As for when the signs were on the land, he could not give a date, it was quite some time ago, and the signs were taken down some time after they had been put up. It could have been before 1997 he thought, but he did not know. He personally had not seen any sign being damaged or removed. Neither had he ever seen anyone either erecting fences, or on the other hand destroying or damaging them.

7.43. He, Mr Hopkins, was not personally aware of any official rights of way across the land, but he had often seen people walking the paths across the land, for example to and from work, or for walking their dogs.

7.44. The marshy area on the land has some wildlife interest. It is not easy for dog walkers to go through the marshy area.

7.45. ***Mr Ian Humphrey*** lives at 49 Solent Close, which is the second house from the top on the left hand side. He moved to Solent Close in 1980. His first recollection of using the fields was when his parents took him, his brother and his friends for a walk there. He was only 8 years old at the time but he remembered it well. They chased butterflies through the long grass and chased each other, played all the way over to the house his parents had bought. For him that had been the start of a little boy's paradise.

7.46. He soon got to know other lads in the street and in the neighbouring streets. They played cricket, golf, badminton, football, rugby, but to him that was the boring stuff; he probably spent more than 70% of his play time in the fields of the application site, making camps, making swings, slides etc. As he grew up he got more interested in the wildlife, watching birds, finding their nests and getting up early in the spring and summer holidays to spot rabbits and foxes. He regularly had camp fires there with his friends, eating sausages and jacket potatoes.

7.47. They spent a lot of time catching frogs, newts and tadpoles in what they called the Newt Pond. He identified the Great Crested Newt on the land. The only place he now knows were those newts can be found is the Hawtin Park proposed development area.

7.48. He has grown up, doing different things, but what has never changed for him was the using of those fields. He used them for picking fruit, picking nuts, photography and more recently running to keep fit. While many people may prefer to use the local football field, he personally likes running in the place where he grew up, he sees the changes there and likes to see the wildlife.

7.49. In all the time he had used the fields he had never had a problem gaining access to them, and nor did he pass any signs saying things like Keep Out or Trespassers

Will Be Prosecuted. Nor did anyone ever tell him to get off the fields in the 31 years he has been using them.

7.50. He and his friends still talk and share many memories in the local pub. There are many people who do not use the fields now but did do so throughout their childhood.

7.51. He thought it would be a great loss if these fields were developed. They ought to be preserved. It ought to be left as nature intended. The wildlife there has educational value for children.

7.52. He personally does not have any children. He did think that he had the right to use the land when he went on it.

7.53. Workers at Johnson and Johnson on the industrial estate certainly used to walk across the field where the British Airways premises now are. Walking on the land one was only ever challenged if one went into the grounds of the factory, not anywhere on the present application site. He said that the bridleway was blocked in its northern section.

7.54. *In cross-examination* Mr Humphrey said that he had been born in 1972 and went to the Bryn School. He then left that school at age 11 and went to Senior School at Pontllanfraith until he was 16. He had been in employment mostly since then, except for 8 months unemployed. He is now self-employed in pest control, over a 25-30 mile radius.

7.55. He has a brother, and he and his brother used to gain access to the application site from their back garden, and also from other people's gardens, and via the site of a bungalow to the north of Solent Close which at one stage was not there. It was only built in the 1990s. In fact mostly he got access to the land by what is now the bungalow site.

7.56. He recalled that there had been some fencing up at the far north eastern corner of the land, but there were always breaks in it. There is also dense undergrowth at that northern, top end of the land. It was not always so however, one used to be able to get in via that area quite easily.

7.57. He accepted that a hedgerow assessment had been made on the land in November 2008, and showed a number of hedgerows which are indeed there. He accepted that one would have to go through those hedges to gain access to various parts of the land. Nevertheless there were gaps through the hedges, and he was not aware of fencing filling those gaps for the most part.

7.58. In more recent times Mr Humphrey has frequently gained access further north than the bungalow he had previously mentioned, to go running on the Penllwyn Fields which are further north. But although he does use those fields to go running, he has also used all the fields on the application site as well. When he goes out running he mostly goes back home the same way but occasionally varies his route. He has run on the application site even when the ground conditions were not ideal, for example when it is wet. He likes it because it is the area which he grew up on.

7.59. There are far more paths on the application site than shown on the plan of footpaths and photograph locations which the Objectors produced. Factory workers would use the footpath from the north west to the south east across the site, as an access route to work.

7.60. Around 1989 – 1990 he moved away for about one year, but subsequently he has been back at the same address. He had never noticed any of the posts associated with the signs which had been on the land, but he accepted that they were probably there, he just did not recall them. He certainly could not recall seeing any signs on those posts. He nevertheless accepted that Mr Hopkins did see signs on the posts on the land. He, Mr Humphrey had not seen any of the other witness statements which had been filed.

7.61. He did not recall seeing any mounds of earth which had been put in to fill in gaps in the hedgerow along the eastern bridleway boundary of the land. He did recall a ditch along the northern part of that eastern boundary however.

7.62. Around the roadside boundary of the application site, to the west, there are a lot of gaps from cars crashing into the hedge. He also knew that motorcycles had gained access to the land, but he thought that more often they gained access via the Penllwyn fields to the north and then came down into the application site.

7.63. He could not recall seeing any fencing along the boundary between the application site and Pixie Lane, but perhaps there was some there a long time ago he said. Anyway there has long been a definite gap in that southern boundary, and he was sure that motorbikes would get in there as well. He could not recall ever seeing any signage near the Pixie Lane boundary. Nor had he ever seen anyone maintaining hedges or fencing around the Pixie Lane or bridleway boundaries of the site. He was certainly never told by Mr Kedward or anyone else to get off the fields.

7.64. Mr Humphrey had produced a number of photographs, and some of them showed him as a child within one or two years of his arriving in Solent Close with his parents. They did not have a fence at the bottom of their garden, although their next-door-neighbours did. They had levelled their garden to make more of a drop from it down to the bridleway. He thought that in the late 1980s the Council had cut back the vegetation on the bridleway, but no-one had returned since to do that, and since then trees have fallen into the lane in its northern part. From the late 1980s or early 1990s the lane has not been maintained. He used to use the lane to go to the north, but later looped through the field to avoid the obstacles in the lane. He thought that the lane had probably become inaccessible sometime after the ditching works (for the pipes that were laid towards the eastern boundary of the site); he thought the ditch works had somehow created problems for the bridleway.

7.65. Mr Humphrey does have a lot of photographs of wildlife on the fields, and also video footage of butterflies there. However he had no other photographs of the land generally than the ones he had produced. There was no point in producing for the Inquiry photographs which just showed animals, with no further information about the land.

7.66. *In re-examination* Mr Humphrey said that in the photographs he had produced he could not see any layered hedges visible on the application site. He reiterated that his family do not have fencing at the bottom of their garden. He did recall some fencing up at the far northern edge of the application site, but it was not complete, there were breaks in it which were never fenced off, nothing was ever maintained there. He never saw anyone actually breaking down any fence, fences were not there in order to need to be broken down by anyone, he said.

7.67. To me Mr Humphrey said that when he was out running he would run on a pathway, because it is easier to do that. The dots shown on the plan of paths produced by the Objectors were the main paths on the land, but there are certainly other paths there. He personally did sometimes cut across fields, but he tended to stick to the paths generally when he was on the land.

7.68. ***Mr Paul Dewey*** lives at 11 Tamar Close, on the Bryn Estate in Pontllanfraith, and has done so since 1986. His garden borders Hawtin Park Fields for some 60-70 metres.

7.69. When he originally moved in, his property was divided from the Hawtin Park Fields by a picket-style fence which required replacing. Children who regularly used the fields as a meeting place tended to use his garden as a shortcut to and from the fields. He therefore decided to replace the picket fence with a 5 foot high featherboard fence, so as adequately to secure his property. That fence runs the full length of his property adjacent to Hawtin Park Fields. As he personally enjoys the fields he wanted to retain easy access to them, and so had a gate incorporated at the house end; he uses his gate regularly to provide access to the lane immediately behind his plot, and the fields beyond. During high winds some three years ago a large section of his fence was blown down. He immediately replaced that fence, so demonstrating his commitment to secure his property against intruders.

7.70. In the 25 years of using his gate onto the 'bridleway' and the land, he has never been challenged as to why he had a gate leading onto the land adjacent to his property, nor has he been challenged about being on the land itself. During a recent walk up the path (the bridleway) between his property and Hawtin Park Fields, he realised that he is not alone in having a gate leading onto the fields behind his house. Including his own, there are 10 properties with gates leading out onto the 'bridleway' towards Hawtin Park Fields, presumably for the same purpose as he uses his gate. From that he draws the conclusion that the landowners do not hold any objection to the homeowners having direct access to the fields behind their houses.

7.71. More or less behind his house there is a large opening from the bridleway into the nearest field of the application site. He regularly sees dog walkers in the fields. He himself mainly walks there, or looks at wildlife on the land. Nevertheless he does not use the whole area of the present application site, he said.

7.72. *In cross-examination* Mr Dewey said that his is the property with the longest boundary to the bridle path. He has been in his house since June 1986. However he has been in full time employment for all that time for the Department of Work

and Pensions. He started off working in Cardiff, then in Caerphilly, then Newport but then back to Cardiff. He formed the gateway from his garden and replaced the picket fence in 1986/87, very soon after he moved in. In the area behind his house there is a bank down to the bridleway; the bridleway is relatively level at that point but the ground slopes up away from it and creates a bank which is only on the housing side. He accepted however that there are small banks on the west side of the bridleway, which Mr Kedward had said were put in there. Mr Dewey accepted those banks were put in, but that did not stop people getting onto the application site. In any event, at various places, including the easy access behind his own property, the access onto the application site is level. He accepted that the banks Mr Kedward had referred to had been put in in about 1997.

7.73. Mr Dewey himself would gain access to the application site approximately from behind the southern point of his own western boundary. He had no recollection personally of seeing any earthworks being done on the land by or on behalf of the site owners.

7.74. He had seen one of the posts put in for the purpose of carrying a sign in the area behind his house, he could not dispute that signposts were put up at points of incursion into the land. He did not know when they were put up, and he personally had never seen any of the signs themselves. Nevertheless he did not dispute that Mr Hopkins had seen signs. He, Mr Dewey, had only known the site as an adult.

7.75. His recollection of having seen the posts on the land was a recollection from relatively recent times, he knows that the posts are there on the land now.

7.76. He accepted that along Pixie Lane there is a fairly dense hedgerow, but he had never seen any remnants of fencing along that boundary. As far as the boundary around the A road to the west of the land was concerned, he had only driven around there. He personally always accesses the land from a single point behind his own house. He does not travel to or from his work via the A road around the western side of the site.

7.77. From the area where he lives he had never seen any evidence of fencing being carried out on the site. He often walks up the bridleway to the point where it is blocked to the north, then he loops round and rejoins the bridleway to the north where he can walk on towards Blackwood. In the field on the application site he would tend to use the path from the access behind his house but he does not usually go up that way as far as the north end of the land.

7.78. Because he believes in following the Country Code he tends not to stray from the paths. When he goes on the land he wants to look at birds and the like. He would describe that path as a worn pathway surrounded by bracken and brambles. That path can be somewhat boggy, but he had not seen a watercourse on the land. In the area where he tends to walk, he has never seen a fence. The only fencing he had seen separates the factory site from the application land. When he is on the bridle path he veers off to the right along the bank to get to his garden gate. He could recall no remnants of barbed wire around the site near the bridleway. He had not known who owned the bridleway. In 1986 there was no mound along the

bridleway, and nor did Mr Kedward ever plug the gap through the hedgerow approximately behind his own property.

7.79. He was aware of the mounds Mr Kedward had put in, but he got the impression they were trying to disperse the earth from digging the trench on the land. That seemed to make sense. A mound 2-3feet high does not obstruct a way through the boundary line, it merely hinders access. If there ever had been a mound like that across the access point behind his house it did not in reality discourage access. He does not approve of vandals or vandalism, and certainly would not support anyone breaking down fences or damaging people's property.

7.80. If motorcycles come onto the land via the access behind his property they would not tend to stay on the application site. They would use it as an access to get through to the higher Penllwyn fields to the north, which he understood were more conducive to the use of motorbikes.

7.81. *In re-examination* Mr Dewey said he fenced his garden to deter trespassers on his own land, but some children had still nevertheless crossed through his land. His own fence had been damaged on a couple of occasions. However he never saw contractors repairing fencing on the application site.

7.82. To me Mr Dewey confirmed that he was in fact aware that some of Mr Kedward's mounds, about 2-3ft high, were there between the trees along the western side of the bridleway near his property. That material was put in along the western side of the bridle path. From recollection, a point approximately behind his property would be about the southern end of Mr Kedward's bunding. If any had ever been put in there across the well-used access way behind his property, it was very well packed down, and was never significant enough to stop people getting into the land.

7.83. Mr Dewey told me he had never really been into the part of the land to the west and south of the main path running across the land from just behind his house up to the factory area to the north. Really his main activity on the land had been from that access point, part of the way up towards the factory but not the whole way up that path.

7.84. ***Mrs Kay Tiley*** said that she and her husband had lived at 8 Solent Close for almost 20 years. During that period they had spent many happy hours walking their dog in the fields of the application site. They used to chat to other dog walkers on the land, and when they were ripe they would pick nuts and blackberries there. They used to freeze the blackberries and enjoy them throughout the year.

7.85. During more recent years they have taken their four grandchildren on nature walks through the fields. They sometimes pack a picnic, and the children play and pick wild flowers. The children have been excited by the variety of plant and animal life they have seen on the land. There are rare orchids growing on the land, together with the famous pink wax cap fungi. There are other interesting plants on the land, including one on which a rare butterfly feeds.

7.86. At no time during their walks have they been challenged by anyone on behalf of the owners of the land. They have never been told they were trespassing, or asked to leave the site. There are no fences to keep people out and no signs saying that it is private land.

7.87. *In cross-examination* Mrs Tiley said that latterly she would gain access to the land near the corner of Pixie Lane and the bridle path. They used to gain access at the top of Solent Close before the bungalow was built there, and would then go down the bank. That would be for the purpose of walking with her dog and grandchildren. As for her grandchildren, there are twins who are 5½ years old and others who are 12 and 8.

7.88. The bungalow she referred to had been built while she has been living at Solent Close. She thought it was more than 15 or 16 years ago. She had not gained access at that point since the bungalow was built. Therefore most of her access is taken at the access point to the west of Tamar Close.

7.89. Mrs Tiley said there are indeed paths where they are shown on the pathways and photographs plan produced by the Objectors, but there are many more as well. She pointed out various places, for example off Pixie Lane or the main road, from which one could take access onto the paths on the land.

7.90. She could not honestly say that she had ever seen any of the posts on the land on which signs had apparently at one stage been erected. She had last been on the land during the last six months, and could not say that she had noticed any such posts. She had never seen a notice or sign on the land. Mr Hopkins may have seen a sign or signs, but she had not.

7.91. She could not remember the works that had been carried out for the mounds along the eastern boundary which Mr Kedward had described. She had thought that natural sinkage of the bridleway lane had caused natural banking along its sides. She always went into the land at points where there are not any mounds.

7.92. Typically on a walk she would go into the land at the point she had described behind Tamar Close, and head towards the Hawtin Park Estate. She would not get as far up as the exit into the factory estate, but would then go across the fields to the west, through the hedgerow running down the centre of the field. The children would tend to lead her to that part of the land. From there you can cross over into the other fields. Then you can walk across to the south west to other fields. She would follow the path until it reaches the stream and go into the fields through a natural gap. They would typically go around near the hedgerow. There is a gap in the hedge with stepping stones across the stream. Sometimes she might leave the site by the factory road if the children wanted to see the big lorries.

7.93. She acknowledged that at the western end of Pixie Lane there had been some sort of an entrance into the site which had been blocked, but she did not know when that had happened.

7.94. She remembered grass being cut on the land for hay quite regularly. That happened when there was enough grass to make it worthwhile. She did not

remember cattle on the land. When hay was growing on the land she would not go across through the crop, she would not attempt to destroy the endeavours of the farmer, but one could walk around the circumference of the field she said.

7.95. She does not overlook the fields from her house, so would not know if the main path across the land was regularly used by factory workers. Where the footpaths are on the land it is fine to walk on. Otherwise in places it is inaccessible, although there are other paths where it is possible to walk. Parts of the land are boggy. Nevertheless she can manage to get about on the land, and with the correct footwear one is okay walking on the land. Nowadays there is no management of the land and the grass is heavily overgrown.

7.96. To me Mrs Tiley said that she visits the site more frequently during the summer than in other seasons, and that in the previous summer she had been there about once or twice a month.

7.97. ***Mr Simon Wall*** lives at 16 Tamar Close which is adjacent to the application site. He and his wife had lived there for over 20 years and his daughters were born and brought up there. During that time they have all used the land for various recreational uses. The children when younger played there, and often collected wild flowers or autumn leaves etc., for school work. In recent years, from 1995, he had walked his dogs there almost on a daily basis.

7.98. He had never been aware of any restrictions or notices, and had not been prohibited from free access to the land. He had always regarded the land as common. The only time he had been aware of non-recreational use was when the long summer grass was cut for hay in the summer. He thought the hay had not been cut since about 2007. He had never been approached or denied access, even during the harvest time. The land had not been enclosed or fenced to his knowledge.

7.99. Regular use of the land is obvious from the evidence of well worn pathways that encircle and criss-cross the fields. He has witnessed many and various recreational uses of the area, including cycling, horse riding, camping, kite flying, fruit picking (especially blackberries), training or flying birds of prey, but mostly dog walking.

7.100. Dog walkers he said probably make up the highest percentage of land users. He himself and his family have walked over 70 different dogs there during the last four years, as a fosterer for an animal rescue centre which re-homes unwanted and stray dogs which would otherwise have been destroyed. If access to this land is denied the residents of the area will lose a valuable local recreational asset. Mr Wall produced a number of photographs showing the land, with the dogs and sometimes himself walking on it.

7.101. He said that his photographs were all taken on the fields, showing the established pathways on the land. In one of the photographs Mr Wilkins could be seen on the land with his dog. When walking his dogs on the open land only recently had he been challenged. A workman on the fields beyond the northern part of the site had challenged him. However it was a very cordial exchange, and not in fact on the application site. On the site itself he had chatted with the haymakers, and there was never any question that he should not be where he was.

7.102. *In cross-examination* Mr Wall acknowledged that Tamar Close is a cul-de-sac, and that he is on the side of the close which is further away from the application land. He explained that there were two or three points where he would typically gain access onto the application land; he does vary his walks. Typically, entering via the access that is off the bridle track behind Tamar Close, he would turn onto the application site and walk the worn paths on the land. He could recall seeing a post on the land near the bridle path, but he could not recall when it was erected, he thought it was before his time in the area. He came to Tamar Close in 1991.

7.103. He started regularly using the fields when he got a dog in 1995. He was not aware of having seen a post actually put up on the land during the time that he had used it. Near a point about half way along Pixie Lane he could recall seeing a rusty square post. He had occasionally in the past entered the land from the far western end of Pixie Lane. If he went in at that point he would be going westwards onto the land. There are pathways that encircle the fields there. For example, if one starts at the western end of Pixie Lane and then heads roughly west to the point where hedge lines converge, there is then a gap in the hedge into a field to the north near where one of his photographs was taken. There is then a path in that field, which runs north-east to the exit near the summit or highest point on the land. Then the path continues back down to the main path across the land.

7.104. Mr Wall had never seen any sign on the land since 1995. Nor could he recall seeing the earth bunds going northwards up the bridleway being put in. In fact he very seldom walks up the so-called bridleway, and is not familiar with it. When he gains access to the land he does not have to climb or scramble; he simply walks in through an open gap.

7.105. Mr Wall accepted that the grass on the fields used to be harvested for hay in summer. It would be typically harvested in good dry weather in July or August. So historically for three or four months these fields were used for growing or cutting hay. When the grass was growing one would use the pathways around the field in just the same way as one normally did, he said. Historically they only cut the grass from the prime central part of the fields, and he would walk on the paths that went through those grassy areas. The grass, when cut, would take about two or three days. He would still use the pathways at those times because no drying hay would typically be left on the paths. He accepted that one of the aerial photographs which had been produced on behalf of the Objectors showed a situation where hay had clearly been taken from the fields.

7.106. *In re-examination* Mr Wall explained where the tractors used for haymaking would typically get into the fields, and confirmed that the aerial photograph mentioned previously represented the situation after the hay had been cut and removed from the fields. Nevertheless he could not see tractor tracks in that photograph.

7.107. To me Mr Wall said that he followed the worn paths on the site at all times, regardless of the state of the hay crop.

7.108. ***Mr David William Exall*** lives at 60 Crown Lane, almost opposite the junction with Pixie Lane. He said he uses the area of the application site daily by walking his

dog. One of his hobbies also is sketching and water colour painting, for which he regards the trees, fields and hedgerows on the application site as useful subjects which vary interestingly during the four seasons.

7.109. He enjoys walking in the area, seeing other people dog walking, picking wild fruit in season, watching wildlife, including birds. He is not a *"twitcher"* but takes an interest on things on the land. There are foxes on the land usually in the late evenings, and recently there have been rabbits.

7.110. There are many wild flowers, especially since the grass stopped being cut some years ago, the floral displays have increased. Mr Exall does not wish to see this area of land developed. He produced some photographs taken on the land, or on the bridleway running up the east side of the application site.

7.111. He said he had used the application site fields while living here for the last 12 years; previously he lived on the Bryn Estate. He used this area for walks also when his children were young. He did not like the Bryn playing field at the time.

7.112. He would see other people using the application fields daily; some use it just to walk up to the Hawtin Park Industrial Estate, but not as many now as before since Johnson & Johnson had closed their factory.

7.113. Boys do sometimes camp overnight on the field. He himself had never stopped using the field during the times when the hay was being cut. He has known this area since he was a boy.

7.114. The bridle path was a short cut of some value, and indeed in times past he had come down it with a car. He had been told that it was an old drovers' road. When the fence went in for the British Airways factory a lot of subsoil was pushed into the lane, and now it is not possible to walk it in its northern part.

7.115. Motorcycles cause quite a bit of bother on the site, and quad bikes also get onto it sometimes.

7.116. The bridle road gradually climbs up to the north from the south, and water rushes down it at times. He himself needs to unblock a drain there at times.

7.117. *In cross-examination* Mr Exall said that he would typically get onto the application site from the bridle path, either towards its southern end a little to the north of Pixie Lane, or considerably further north towards the northern edge of the site. At the point where he accesses the land to the north he has to pick his dog up as one has to climb up about 2½ or 3 feet in order to get into the land. He does not go any further up the lane to the northern end as it is too boggy or muddy. The bridleway has been blocked further north for some time. From that northern access point he would walk towards the top corner of the land, towards the factory area, and then southwards down the western fields where there is an established well trodden pathway. He only uses the well trodden pathways. His dog is old.

7.118. He had seen a metal post near the entrance to the land a little to the north of Pixie Lane. That was put up before he came back to the area some 12 years ago. Prior

to that he had been away from some 2-3 years in west Wales, and then before that he lived on the Bryn Estate fairly nearby. So he was away for part of 1997, the whole of 1998 and then 1999 and came back to his present house in 2000.

7.119. He himself never saw the mounds of earth which Mr Kedward had described along the western side of the bridle path being put in.

7.120. Mr Exall acknowledged that in the questionnaire he himself had filled in he had said that while he did not know who was the owner of the land on the application site, the land was farmland. Indeed he recalled that when he was a boy there was a farm opposite to where he lives now, and the land certainly was farmland; indeed he has always regarded this as farmland. In his questionnaire he had also answered that up until 2 years ago a local farmer had cut the grass for hay. The grass was indeed cut for hay; it was not especially good or tall grass that grew on the land, and it only grew to 18 inches or so before it was cut. Nowadays the land is neglected and vegetation grows on it to 4 or 5 feet high.

7.121. Mr Exall said that he would never have interfered with the farmer cutting the hay on the land, nevertheless the area cut for hay was getting smaller and smaller year by year. He agreed that one of the Google aerial photographs produced at the Inquiry clearly showed the areas which had been cut for hay.

7.122. Part of the land on the eastern side at the north, close to the bridle lane, is very wet, too wet to walk on without wearing wellington boots. Mr Exall thought that a lot of water drained into that area from the factory area.

7.123. ***Mrs Glenys Irene Evans*** lives at 6 Solent Close with her husband. They moved to that address from Newport in 2007. After they had settled in their new home they started to explore and got to know the local area much better. While they were out walking they noticed that there was an abundance of blackberries in many hedgerows. On their next visit they brought containers and started to pick the blackberries, and further on they noticed a large open gap leading into what they thought was common land, because there were no signs or fences to show otherwise – this was in fact part of the application site. They went in and no-one asked why they were there. Once they were there they found many more blackberry picking opportunities, and even though it was near a main road it remained very peaceful. There are also a large variety of birds and butterflies to be seen on the site. They did not at first realise how large an area it was; it would be most unfortunate if this land were to be lost for development.

7.124. She accepted that she and her husband had not used the field a great deal, and indeed they had not been in the area for all that long (although she and her husband were in fact born in the local area). They did go blackberrying the previous September on the site she said.

7.125. They have looked into the site quite frequently but sometimes had unsuitable footwear on to go into it. Their blackberrying was along the lane mainly. There are many paths on the site and she uses one of them quite regularly. There have never been any signs that she has seen on the land.

7.126. *In cross-examination* Mrs Evans explained that the point where she and her husband had gone into the land was off the main road along the southern boundary; they went directly in at that point because that was where there were some blackberry picking to be seen. There were blackberries on both sides of the track entering the land at that point. Then there was a pathway which went round in a curve like a half-moon and led out into Pixie Lane. That was last September.

7.127. It was only at that one point that she had ever entered onto the land of the application site.

7.128. *In re-examination* Mrs Evans said that her neighbour had told her many times how large the total area of the application site was, but she could not see a great deal as everything was fairly overgrown on the part of the land that she had been onto.

7.129. ***Mr Brian Owen Wilkins***, who had made the Application as Chairman of the Bryn Residents Association, has lived at 18 Tamar Close since 2000. He explained the overall size of Pontllanfraith and the various subsidiary settlements which make it up.

7.130. He said that Hawtin Park Fields is a piece of land which has been largely ignored for several years, and before that was only used for grazing and hay production. Anyone who was or is an owner of that land had not bothered to fence it or make any serious effort to contain the land.

7.131. Several years ago the Ecology Department of the Council had designated the site as a Site of Importance for Nature Conservation due to its large variety of flora and fauna. Today it could be in danger of becoming overgrown and unusable, although ironically the way it is becoming overgrown in fact encourages even more wildlife. Nevertheless he acknowledged that the land needed to be managed and tidied up.

7.132. Even as it is, it is a valuable resource for the local community which offers a quiet space to walk, pick fruit, camp or do any of the things that people enjoy doing in the fresh air. It is also a vital sanctuary for the wildlife which lives there.

7.133. Very little real effort has ever been made to secure this land. He himself had used it for over 13 years, having initially started when he used to collect his grandson from the Bryn Primary School, and then collect his dog from the house, and they proceeded to walk the dog around the full area, picking various berries according to the season. He would show his grandson the different trees and how the leaves and seeds developed. Even though his grandson has now grown up and gone to other schools, Mr Wilkins still continues to use the land several times a week, often seeing others there, either walking dogs or with children, and even youngsters camping as one of the photographs shows. In all that time he has never been challenged or seen anyone challenged as to why they are there.

7.134. He himself was not aware of any trouble on the land that has caused the involvement of police, local councillors and the like. Nevertheless he acknowledged that there had been illegal motorbike and quad bike activity on the land, which he though itself indicated the slackness of the security on the site.

7.135. Mr Wilkins reiterated that he himself used the field three or four times a week. He fosters and rescues dogs in association with Mr Wall who had given evidence. They walk those dogs daily. There are so many paths around the fields that you can walk around for at least an hour. He is also involved with Neighbourhood Watch in the area. He would not dare to go on the field if he thought it was doing anything wrong. Everything there is so open; there are no gates or signs. All he knew in a general sense was that the land owner was known as *"Hawtin Park"*, or sometimes the land was just called Johnson's fields.

7.136. He had heard of a planning application on the land in about June 2008, and he eventually found out who owned the land after that. He and others went onto the internet but still had difficulty finding out who the owner was, in fact he asked the local MP to find out. It was eventually discovered that the owner was Filigree Trading Limited.

7.137. At the time he did not know that land like this could be registered as a town or village green. The Bryn Residents' Association was created to fight the planning application on the land. Nevertheless as soon as he became aware that it was possible to make an application for village green registration he made the application. The management of the land had not, as far as he was aware, changed since Filigree took over as owners.

7.138. *In cross-examination* Mr Wilkins acknowledged that the area that had been designated by the Council a 'Site of Importance for Nature Conservation' was considerably larger than just the application site. It includes the whole application site but also other land to the north. Nevertheless Mr Wilkins felt that if the plans for development on part of the application site went ahead, the site's importance for nature conservation would be destroyed. There had been several meetings with various officers of the Council aimed at dissuading the Council from approving any development on the land. It was not true that this village green application had been made just because he and others had not succeeded in deleting the residential allocation of this land in the planning context.

7.139. Mr Wilkins acknowledged that a letter he had written, dated 29th September 2008, in connection with the planning application for development on some of the site, had not mentioned public recreational use of this land at all. He said that at the time local people's concern had been to protect the land and to point out the practical effects of any development.

7.140. Mr Wikins, having already heard Mr Parry's evidence to the Inquiry, now accepted that meetings with the police had taken place in relation to problems on the land, although he had not known that fact before. He had not been able to get any information from the police about this. He, Mr Wilkins, accepted and believed every word that Mr Parry had given in evidence, including everything Mr Parry had said about fencing and stock-proofing the land. Mr Wilkins himself had only been in the area since 2000 and had only noticed a few surviving strands of barbed wire. He was sure that when posts and wire went up some people would take it as a challenge. He personally however would prefer to heed a fence if he sees one himself.

7.141. Mr Wilkins acknowledged that in a letter of 2nd June 2011, which he had written in response to the objections to his village green application, he had observed that there were no available police records to support the suggestion that there had been trespass on this land, and that there had been no civil injunction to support that. What Mr Wilkins meant by that was that he believed the owners of the land, if they were serious about defending their land, should have taken legal proceedings for that purpose. Yet the police had only ever caught two people in the area with motorbikes, in fact one of them had been on this site and one of them on the other open land further to the north. If the owners had been serious about wanting to keep people out they should have fenced people out.

7.142. Mr Wilkins accepted that along the Pixie Lane boundary of the land there was an extensive hedgerow, but hedgerows are not the same as fencing. He accepted that there is post and wire supplementary fencing along the boundary with the A road around the south and west of the site. There are places where there are no longer any posts or wire, but in some places he accepted that there is evidence of wire. He did not know if posts had been removed from such locations. He had seen one section of hedgerow burnt out, however he thought that was because of a motor car accident. There was also an occasion when Western Power had wanted access at one point and drove their vehicles into the hedgerow. He saw one of their vehicles parked there.

7.143. Mr Wilkins accepted that there was photographic evidence to show that at one point where access could be taken off Pixie Lane there was a gap between two posts. Mr Wilkins had nevertheless not seen actual fencing near that location; there is a regularly used path into the land at that point, which is close to the eastern end of a private garden to the north of Pixie Lane.

7.144. Mr Wilkins did not see the mounds of earth being put in along the western edge of the bridle path because he was not living there at that time. He accepts what Mr Parry said in his evidence about wire being there at one time along by the bridleway. Most of Mr Wilkins' own historic evidence came from other residents.

7.145. Mr Wilkins believed that one of the metal posts on the land which had been put in to carry a sign had in fact been removed last year by a scrap dealer. As far as footpaths were concerned, Mr Wilkins recognised the footpaths shown on the plan produced on behalf of the Objectors; that plan did show footpaths which exist, but there are other footpaths as well.

7.146. Mr Wilkins has lived in the area since 2000, but has used the application site field since about 1997 when he was living on another estate nearby, so he has been occasionally using the land since 1997. That included the period when he was fetching his grandson from school.

7.147. Mr Wilkins just uses the well worn footpaths on the land, although there are far more footpaths, well worn ones, than those shown on the Objectors' plan. He acknowledged that in his own evidence questionnaire he had said that nowadays he only uses the land about once a month, although previously he had used it every day. As it happens now, at the time of the Inquiry, he was using the land more

frequently again, and uses it every day with the dogs. It is a responsibility to walk them.

7.148. Mr Wilkins acknowledged that the Bryn Sports Field is a public open space as well as a sports field, and is fairly close to the estate on which he lives, but it is not an area with interesting wildlife in the same way that the application land is.

7.149. *In re-examination* Mr Wilkins said that people do use the Site of Importance for Nature Conservation area in order to study rare species and take photographs of them. He thought that those activities in themselves were lawful sports and pastimes. They mainly take place in the northern part of the land he said.

8. SUBMISSIONS FOR THE APPLICANT

8.1. In opening submissions for the Applicant it was indicated that Mr Wilkins is the chairperson and co-ordinator of the Bryn Residents' Association. The size and nature of the application land was indicated, and it was pointed out that there were two parts of it which were Sites of Interest for Nature Conservation, the Crown Meadows and Crown Marshes parts of the land which had been designated by Caerphilly Council.

8.2. The Applicant requests the registration of the land as a Village Green because it has been used as such for over 20 years. That use had been uninterrupted and still continues. That public use of the land should have been made known to the new owners Filigree Trading Limited when the land was purchased by them in 2005.

8.3. The topography and ecology of the land does not preclude it from being registered as a village green, even if it does not look like one or have features in common with the traditional concept of a village green. The fact that it does not look like a village green does not prevent it from having been used as one for 20 years.

8.4. The Applicant's case is that the residents have been engaged in lawful sports and pastimes on the land over the whole of the requisite period. Some of the activities such as dog walking have led to the establishment of well worn footpaths. Indeed some of the planning reports in relation to the land have shown that the paths on the land are well established. Some other activities require people to stray from the paths to observe the rare flora and fauna on the land. There is ample evidence of lawful activities on this land. A piece of land may qualify for village green status even if parts of it are not walked on extensively or at all. In this case there are some areas of limited accessibility owing to dense growth of vegetation and marshy ground, and there are also seasonal changes to the landscape. The Applicant's case is that as much recreational use as can be made has been made over the relevant period, and that the different types of landscape on the site are used for different purposes.

8.5. There is no doubt that this use of the land carried on still at the date of the application, and that it has been carried out as of right, without force and without permission, but in a way that would demonstrate to a reasonable land owner that users were asserting a right to use the land. Local residents have walked openly on

the land thinking they had a perfect right to do so. They walked at times when a reasonable landowner who knew of their actions and wanted to prevent them could have done so. People walk dogs in the morning and after work, and children play there after school in the summer and during the school holidays. Their activities can be heard as well as seen on a daily basis. There was nothing secretive about the use of this land. No physical force was necessary.

8.6. There is no question of local people ever having been given permission to use the land by the landowners. The land has never been closed off for maintenance. Notices were never put up, and no resident has had sight of the landlord. The land has had many owners and by their lack of enforcement they would appear to have been tolerant of harmless public use for informal recreational purposes.

8.7. The land is crossed by unfenced footpaths, and there is open general public access to the land. There is natural tree growth, and some of that may have been layered hedges many years ago, but for at least 20 years there has been nothing to stop members of the public from straying onto the land.

8.8. Any fencing on this land has deteriorated so much with age as to be ineffective. Severely rusted posts do not demonstrate a landlord doing everything in their means to contest the recreational use of the land. Even if there is illegal biking on the land, that does not preclude the lawful activities which were taking place there. Although parts of the application site may have been used for hay making for a few years, such haymaking did not interfere with the informal public recreational use of the land. Children often played in the field while the hay was being cut, without being prevented from doing so. It was clear that there had been use of the land by a significant number of local inhabitants. This was much more than occasional use by trespassers, as the number of questionnaires produced clearly demonstrated.

8.9. *In closing* Mrs Arnold for the Applicant said that it is the Applicant's case that the site satisfies the statutory definition in the ***Commons Act*** in its entirety. Those on the Applicant's side understand that what they seek to do is effectively to change the nature of the ownership of the land here. What they are doing is asserting the rights of the local people, and effectively seeking to take away some of the owner's rights. But the local people are good people with good intentions, who honestly believe that they should have the right to use this land for future generations. If the application is not successful then justice will still have been served through the evidence having been heard at this Inquiry. If on the other hand the local people really have used the land, and the landlords or owners of the land have not bothered to resist them, then the land has been used by local people as of right and they should be entitled to get their rights.

8.10. This application is not being brought as a means of obstructing the planning process. Local people had never known that land like this could become a village green. As soon as they found out they started the process leading to the application, and it was a huge learning curve. Many local people had used the land for much or even all of their lifetimes and were able to give good evidence about what had happened there over the relevant years. They wished to preserve the benefits of what they have had for the people who come after. The activities which local people have indulged in on the land amount to lawful sports and pastimes.

For example Mr Hopkins gave evidence that he walks on the land and enjoys the wildlife there. He also explained that when his son was young he had played on the fields; he had said that he and his family saw others enjoying the land from the vantage point of their house in Solent Close. These activities varied with the seasons: in summer children camped, and in autumn they gathered wood for a bonfire which was held on the field. In the winter they went sledging when there was snow. Dog walking on the land is a lawful sport and pastime, and many others have been indulged in.

8.11. Mrs Arnold reiterated that a piece of land can qualify for registration as a village green even if parts of it are not walked on extensively or at all. However in this case there are very limited areas of inaccessibility due to dense growth or boggy ground. The Applicant's case is that as much recreational use as can be made of the land has been made of it over the relevant period.

8.12. There is a whole list of activities indulged in by local people on the land, as the questionnaires demonstrate. The activities include running, for example by Mr Humphrey, in spite of the inhospitable terrain. Even Mr Parry said that many people walked their dogs on the land. The number of people who have used the land is certainly a significant number.

8.13. Of those people who gave evidence to the Inquiry in person, all the witnesses have used the land for these various sports and pastimes during the 20 year period, or at least the parts of it during which they have been resident in the vicinity. There has been a continuous use of the land by the people who gave evidence. Many of the witnesses who were not able to give evidence about the whole 20 year period were nevertheless able to give evidence of their use during a significant proportion of that period. Some of the witnesses, it was accepted, had given evidence that they stick to unofficial footpaths, while others like Mrs Tiley wander over the application site more generally, wherever her grandchildren want to go to see the birds and the butterflies. The witnesses to the Inquiry all concurred that there are many more paths on the site than shown on the plan which had been produced on behalf of the Objectors.

8.14. The Applicant's picture of significant recreational use all over the application site is plausible, given the ready accessibility of the land, its convenience for the inhabitants of the neighbourhood, and the diverse environment it offers. Even though some of the land is boggy, dog walkers with the right footwear venture there as was clear from the evidence.

8.15. It should not be held against the Applicant that the application site is large. Provided the evidence shows use by a significant number of inhabitants of the neighbourhood that is sufficient. The Applicant contends that it does, and that the statutory definition is satisfied; there is no requirement for any particular density of user from time to time or at all times. Nevertheless Mrs Arnold said that she understood it was within my discretion to reduce the size of the application site if I considered it appropriate to do that.

8.16. The application site can be broken down into separate areas. Nevertheless it is a unified whole, and it is possible to move freely between the different areas using,

but not necessarily sticking to, the minor paths or tracks on the land. Mr Parry, a witness for the Objectors, had said that there are many more paths on the land than are shown on the Objectors' map. Mr Parry also described those paths as well worn. It is certainly possible to wander from field to field on the land through gaps in the hedges.

8.17. As for locality and neighbourhood, there is a strong sense of community in the area, the Islwyn Ward is clearly definable on the map and is the electoral Ward for the Welsh Government. The Applicant believes that this land has been used by a significant number of people from this locality. The Applicant therefore would ask that consideration be given to the locality being reduced to the Islwyn Ward from the larger Parliamentary Pontllanfraith Ward. The Islwyn Ward is clearly defined on the map. The fact that some people from outside that area have used the land should not count against the application. Indeed some of them were people who had been brought up in the area returning home with their own children, and it cannot be detrimental to the Applicant's case that they also want to enjoy those fields as they had done in their youth. The same is equally true of friends and neighbours who have moved away. This all relates to belonging to an area, community and roots.

8.18. Mrs Arnold acknowledged that one of the Applicant's witnesses, Mr Hopkins, had said that he had seen the signs erected on the land. Both he and Mrs Thomas, one of the Objectors' witnesses, concurred that the signs had disappeared almost immediately. However the erection and short lived presence of these signs did not render the use of the land not as of right. As a matter of fact it has been indisputably established that they were removed within a very short period, probably within a couple of days, and were never replaced. It was not possible to determine whether they were large or eye-catching enough to be seen from the access approach. The majority of the Applicant's witnesses had not even seen the posts which were apparently erected for the purpose of carrying these signs. In any event notices were not placed at every entrance to the application site. Anyone entering at any other point, even when the signs were in place, could not have been aware of them, and anyone entering at those points after their disappearance would also not have been aware of them.

8.19. Anyone who did see the posts could not have been expected by any reasonable land owner to have interpreted them as being or intended to be prohibitory of all access, or of lawful sports and pastimes. It was quite clear that the signs, even if erected, disappeared quickly and were never replaced.

8.20. As for the question of gaps in the fences or hedges through which access was obtained, the assumption has been made by the Objectors that local residents have cut wire or destroyed fences and have removed notices. But no-one saw this happen, such things could have been done to release trapped animals for example.

8.21. The mound along the eastern boundary of the application site presented no obstacle to pedestrian access. It is not at all difficult to surmount. There is no evidence to suggest that it was of a scale which prevented people from stepping over it without difficulty, even when the soil was first placed there by Mr Kedward as a way of utilising earth that had been removed from a trench in the northern part of the site.

Such evidence as there was suggested that it was no more than two or three feet high, with a low angle of repose, and it would have been an easy, gentle walk to cross it. The construction of a mound of natural soil among mature trees conveyed no message to pedestrians that they were unwelcome on the application site. Even after the construction of the mound pedestrian access remained freely available along all the other footpaths. The work did not constitute an interruption of recreational use.

8.22. As for the question of stock proof fencing around the land, Mr Parry had said that cattle would get out, and they certainly did, so the word *"stock proof"* clearly needs qualifying.

8.23. Local people in their use of the land had taken care of it, for example witnesses had said that they pick up litter on the land, and adults have warned off children who are undermining the roots of trees on the land. It was accepted on behalf of the Applicant that the ecological interest of the land is not a matter relevant to the criteria under the ***Commons Act*** but it is nevertheless important. Mr Wilkins had said that people want to go onto the land because of its ecological interest. However as to the management of the land the ecological interest is very important. The only reason that the land is so bio-diverse is that it is not actively managed. If the land had been actively managed it would not provide the cover it does for animals, insects, vegetation and the like.

8.24. It was the Applicant's understanding that the present owners of the land Filigree had bought the land in 2006. At that time it was the responsibility of the previous owners Hawtin to tell Filigree of the extensive use of the land by local residents. It was up to Filigree to find out whether such use was taking place or not, and they did nothing about it. Yet Mr Kedward had explained in his evidence that back in the early 1990s one of the Directors or Hawtin had expressed his frustration at the extent of illegal access onto the land. That same gentleman, a Mr Dovey, was also a Director of Filigree. He would have known of the historical access being gained onto the land by local people. Any landlord could be reasonably expected, if he wanted to exclude people, to have taken the opportunity of a change of ownership to do something about the situation, for example putting up notices saying that the land had changed hands, that it had been acquired for building, and it could have been ensured that no-one any longer would have had access to it. The objection that the site is too big to fence is difficult to comprehend. £5.5 million had been paid for the land, by repute; with planning permission the land would probably be worth a lot more than that, so the cost of fencing it all round would be relatively insignificant in that context.

8.25. There is a certain amount of myth and folklore relating to the history of this land and the surrounding area. The present application is not based on that folklore, but based on the systematic, consistent and continuous use of the land for many forms of recreation for the previous 20 years and which was still continuing today. The application ought to be allowed and the site registered as Town or Village Green.

9. THE EVIDENCE FOR THE OBJECTORS

(again there was more evidential material presented in writing, but it did not appear to me to raise issues requiring specific summarising in this Report)

9.1. ***Mr Thomas Alfred Kedward*** said that he had worked at the Hawtin Park Industrial Estate since 1969. That work had been for a number of firms and in a number of different capacities. Nevertheless he had had continuous employment there for almost 42 years.

9.2. He was initially employed by Johnson & Johnson Limited who he believed purchased the site in 1967 and who produced mother and baby products. He was employed as a maintenance engineer, and as such looked after and maintained site facilities including the site boundaries. It was at that time that the residential developments adjacent to the site were being developed.

9.3. In or around 1983 the site was then sold to Norfleet Properties (Holdings) Limited, which was a subsidiary of Hawtin plc. During Norfleet's occupation various buildings on site would be rented out or sold to other companies, but it was always Norfleet and ultimately Hawtin who retained ownership of the site.

9.4. In 1985 Mr Kedward's job role changed and he took over the management of the site as a whole. However it was not until 1989 that he became directly employed by Hawtin. As site manager his day to day duties included the general running of the site, assisting various utility companies who needed access to the site, and ensuring the boundary of the site was maintained.

9.5. In or around 2003 part of the overall site was sold by Hawtin to Helical Bar Limited. Mr Kedward was then transferred from Norfleet to Ashdown Philips and Partners, who were a property maintenance company owned by Helical Bar. The land bought by Helical Bar however did not include the fields that now form the application site. Nevertheless Mr Kedward still kept an eye out for trespassers onto the site, especially those on motorbikes, and he would call the police as he always had done.

9.6. In June 2011 Helical Bar then sold their land to a firm called Postgrove Properties Partnership, and Mr Kedward's employment was transferred to them. He still works for them as facilities manager.

9.7. Throughout his time at the site the various landowners and occupiers have had a continuous battle to prevent unauthorised access. Such unauthorised access has been in many forms, but mainly by vehicles, motorcyclists and the odd pedestrian, in many cases causing damage to the site. While on some occasions he has seen local people using the site to walk their dogs, and occasionally fruit picking, it is mainly used for riding motorcycles and bicycles by local youths. Over the years a large number of cars have been left and burnt out on the site. He was personally aware that the site owners over the years had gone through considerable time and expense to try to limit such access to the land.

9.8. Mr Kedward explained the nature of the various boundaries of the site. In particular he pointed out that the eastern boundary of the site abuts an ancient

bridle path which is readily accessible by the public. He, Mr Kedward, had always been responsible for the upkeep of the hedgerows along the site boundary, and given the length and size of that boundary the site owners would also hire outside labourers or landscaping firms to assist. For example contractors always did the hedge work. In addition to the hedgerows there were areas of the site where hay could be grown, and outside people would be hired to make hay in order to maintain the site.

9.9. Mr Kedward recalled an occasion when Hawtin received a complaint from a resident who lived in one of the houses backing onto the site boundary, that branches were overhanging into her garden. A firm of landscapers on behalf of the site owners were instructed to attend in order to cut the overhanging branches concerned.

9.10. A further example of Hawtin exercising control over their overall site was through the renting of fields for local residents to keep horses. These local people would be charged for such use, and the internal fields would often be fenced and maintained for that purpose. However the fields where the horses were kept were not part of the land which this present application is concerned with.

9.11. It was along the bridle path that the majority of unauthorised access occurred. In spite of that bridle path having raised sides there were still areas where motorbikes and cars could gain access to the land.

9.12. By the mid 1990s the Directors of Hawtin, particularly Mr Dovey, grew increasingly frustrated at the continued unauthorised access to the site. Given the size and terrain of the site it was very difficult to approach anyone on a motorbike, and often dangerous. Mr Kedward recalled one incident where he tried to approach a trespasser on a motorbike, whose response was to turn the bike around and spray mud and stone all over him. Because of this Hawtin bought Mr Kedward a 4 x 4 vehicle which made crossing the site in good time a lot easier and safer.

9.13. Whenever Mr Kedward saw motorbikes on the site he would call the police. However it would invariably take them some time to arrive, and by that time the trespassers had sometimes left. Mr Kedward did remember attending a meeting at the Council offices with the police and some local people. A police officer had wished to start a moto-cross club on the northern field, not part of the present application site, but that suggestion was turned down.

9.14. Given that the land the trespassers were using was owned by Hawtin, any accident that occurred on the site could possibly have given rise to a claim against them. In view of the nature of some of the use by trespassers the likelihood of such an accident was considerable. So that was an equally important reason for Hawtin trying to ensure the site had secure boundaries.

9.15. By 1997 Hawtin was still experiencing problems with unauthorised access on the site, along the bridle path particularly, and so a decision was made to dig a trench along the northern part of the eastern edge of the site, and to use the resulting earth to create a mound along the bridle path to try and further prevent access to the site.

A plant hire firm were used, and the mound is still clearly evident on the site and visible in some of the photographs.

9.16. In addition to that mound, fencing was erected along the mound, again in an effort to prevent access to the site along the boundary. Wooden fence posts and square mesh fencing was used, as the trench alone was not preventing motorbikes from accessing the site, although it did limit access by cars. That fence was about 5 feet tall. There were also steel posts sunk into the ground, with white signs stating that the site was privately owned and that no access was allowed. Those posts were placed at the most common points of access, and where visible tracks could be found into the site. Mr Kedward produced a photograph of such a post.

9.17. Mr Kedward had noticed that in some of the evidence questionnaires completed by the Applicants, reference was made to there being mounds of earth used to prevent them from accessing the site. He believed that those references were to the earth mounds that he had mentioned. However the signs and fencing were soon forcibly removed or torn down by the trespassers in order to gain access to the site. The signposts were shot at with air rifles, and at one point the wire mesh fencing was being taken down as quickly as it was being erected. In the light of that it was decided to erect a wooden palisade fence, as it was hoped that this would prove to be a more sturdy defence. However that too was torn down soon after its erection. Attempts were also made to extend the existing hawthorn bushes along the bridleway boundary; however these shrubs again were removed soon after their planting by third parties without the consent of Hawtin.

9.18. In about 1997 Mr Kedward recalled one day when Mr Dovey (a Director of Hawtin) could be seen talking to people who were on the site. Mr Dovey then came to Mr Kedward and was angry that these people had been trespassing on the site. He returned later that day with an envelope containing several hundred letters advising people who entered the site that they were trespassing and liable to prosecution. Mr Dovey instructed Mr Kedward to approach anybody seen on the site who should not be there, and give them one of these letters. Despite Mr Kedward now having the 4 x 4 vehicle it was in fact very difficult to approach trespassers, particularly those on motorbikes, in order to hand out the letters. However Mr Kedward estimated that he handed out between 30 and 40 of those letters over a three to six month period. Even when he was able to hand over such a letter he was often met with verbal abuse, and the recipient would invariably throw the letter onto the floor.

9.19. Unfortunately all the spare letters that Mr Kedward had were kept in a filing cabinet which was disposed of about two years prior to the Inquiry, so he could not provide a copy.

9.20. On numerous occasions over the years Mr Kedward had phoned Blackwood police when he had seen trespassers on the site. However he realised that this would rank quite low on the police's priority list, and so it would take up to an hour for the police to arrive on the site, by which time the trespassers had invariably gone. The issue of trespassing on the site was known to the local community as well as the police. Mr Kedward attended numerous meetings in the 1990s which were attended by local residents, council members and the police, where access to the

site was discussed, and it was made clear that under no circumstances was any access to the site allowed and that such access would constitute a trespass.

9.21. Mr Kedward continues to reside in the area, and is aware that to this day there exists a problem with local youths on motorbikes, and he regularly sees both police helicopters and cars in pursuit of those motorbikes.

9.22. During the late 1990s and early in 2000 the site was frequented by local youngsters taking drugs, and this was again mainly down around the area of the bridle path. This was obviously a very serious problem, and the police would be contacted whenever such users were seen. Mr Kedward confirmed that there were no public rights of way over the site. Indeed he had seen certified plans from the former Bedwas & Machen Council which showed that around 1967 all rights of way that may have previously existed across the site were extinguished by Order. Mr Kedward produced a copy of that Order dating from 1967.

9.23. *In cross-examination* Mr Kedward confirmed that his employer now is Postgrove Property Partnership, not Filigree the Objector. So Mr Kedward was at the Inquiry as a member of the public. He also confirmed that there are no buildings on the present application site. Mr Kedward's current job means that he looks after everything to the left i.e. the north of the access road onto the industrial estate. He has not looked after the present application site since 2004. The firm Helical Bar never owned the present application site.

9.24. As for the burned out cars on the site, the current application site has only had a burnt out car on it on one occasion that Mr Kedward could recall. Mr Kedward acknowledged that in much of his evidence he was talking about the wider and larger site which would then have been owned by his employers at the relevant date, and not just about the village green application site. For example the motorbikers on the land went everywhere, not just on the application site. He gave up approaching those trespassing motorcyclists in the end, and just called in the police. The police certainly gave incident numbers for many of those occasions. Such were the circumstances that Mr Kedward almost never got the change to take down the number of the offending motorcycle.

9.25. Mr Kedward confirmed that horses had never been kept on this present application site. The posts for signs had been erected in the mid to late 1990s. Mr Kedward never saw anyone destroying those posts. The ditch was dug in order to prevent vehicles coming on the site.

9.26. Mr Kedward did sometimes approach dog walkers on the site and warn them that they were trespassing, but he gave it up because it was a waste of time. Nevertheless he confirmed that he had indeed attended several meetings with police, councillors and a couple of local residents who lived over on the Bryn, about the problems which used to occur on the site.

9.27. *In re-examination* Mr Kedward explained which part of the eastern boundary of the land had been subject to the mounding about which he had earlier given evidence. The fencing work along that boundary was done after the mound had been constructed. The fencing took a few days and was done by fencing

contractors. The mounding had really been done to fill up the gaps in the hedges, to a height of about 2 or 3 feet.

9.28. ***Mr Keith James Chichester*** is a qualified Town Planner and his firm is based in Cardiff. He is aware that the site is currently owned by Filigree Trading Limited. However he himself had been involved with the site in some form or another since 2005, on instruction of previous site owners. He had now been instructed by Filigree to prepare an application for outline permission for commercial and residential development on the site in accordance with adopted development plan allocations. The Council had resolved to grant outline planning consent on that application. He had carried out a survey of the land forming the application site, and produced numerous photographs and several plans. He explained where all the photographs had been taken, and the more significant aspects of what could be seen in them.

9.29. Mr Chichester said that he had visited the site approximately 20 times, independently and with colleagues and specialist consultants. He is fully conversant with the site and its surroundings. During his visits he has only encountered people on the site on a very limited number of occasions. He had twice seen motorcycles travelling northwards towards the open area to the north of the site, and on two or three occasions he had seen individuals walking through the site in a north to south direction.

9.30. While he did observe a number of apparent routes through the site, the majority appeared to him to have been created by motorcycles and cars forming deep ruts in the ground, in the form of a limited number of linear routes, the most evident being north to south diagonally across the site from the southern end of the bridleway to the junction of the northern and north eastern boundaries.

9.31. The site is generally agricultural in appearance, with banks of linear mature trees running along a north-south axis through the site, and along the field boundaries. While undertaking his survey Mr Chichester noted that the bridleway that ran alongside the eastern boundary of the site was blocked and impassable at the northern end. He also noticed evidence of use of the open land lying to the north of the site, with numerous well marked available footpaths which connected to the adjacent housing being evident on the ground, and indeed on aerial photographs. He produced aerial photographs which he understood to have been taken during 2001, 2004 and 2006. These photographs he thought confirmed both the agricultural appearance of the application site, and in the case of the 2004 photograph confirmed that grass and hay on the site had been harvested.

9.32. He had understood that the previous regular grass cutting for hay on the land had ceased in around 2003 or 2004, following a number of instances of local children setting fire to the grass after it was cut. However he himself had been asked in 2011 by a local farmer whether she could cut the grass on the site. While it did not prove practicable for the grass to be harvested in 2011, the site owner Filigree had agreed to the grass being harvested in 2012 and onwards, until the agreed development proposals on the site are implemented.

9.33. From discussions Mr Chichester is aware that there had been consistent problems for the previous owners of the land who were trying to prevent unauthorised access to the site, particularly by local youths riding motorcycles and cars dangerously across the land. He, Mr Chichester, had been told that local residents were very concerned about these problems and had worked with the site owners and local police to try and prevent further unauthorised access.

9.34. He had also been advised by Mr Kedward and directors of the former landowners that they had constantly tried to secure the boundaries by plugging gaps in the fencing, particularly along the southern boundary with the A4049; by erecting posts to support site notices at points where there were regular instances of trespass. Those notices had also confirmed that the land was in private ownership and access was prohibited. Mr Chichester's survey had confirmed the continued presence of fencing along the southern boundary, and of the posts which had been erected to support signage along both the eastern and southern boundaries. His photographic evidence also confirmed that there was clear evidence of posts and wire fencing having been erected to try to prevent access to the site.

9.35. *In cross-examination* Mr Chichester said that all his visits to the land had been on weekdays within normal working hours. He thought he had made 6 or 7 visits over the last 5 years in particular. He gave further explanation of the locations at which numerous of his photographs had been taken. Many of his photographs showed there was fencing in place which had been put there in an attempt to plug the gaps in the hedges around the land, he said.

9.36. *In re-examination* Mr Chichester said that some of the photographic evidence did tend to support his view that there had been forced access onto the land. For example, some photographs show trees which had been broken or stripped of branches.

9.37. Nevertheless Mr Chichester did not dispute that there were places at which there had been regularly used access points. That was why Mr Kedward had put posts in such locations, for the purpose of carrying a notice. Indeed the one near the southern end of the bridleway along the eastern boundary is still there in good condition.

9.38. Mr Chichester had visited the site between 2005 and 2012 on a fairly regular basis. He had walked the site boundaries before, but December 2011 was the first time he had made a close study of the boundaries and fencing, and he took most of the photographs which had been produced. Previously he had been more concerned with retaining trees on the site in association with the development proposals. Those development proposals envisaged retaining as many trees as possible, and indeed hedgerows.

9.39. ***Mr David Robert Parry*** lives at Bryn Ysgofan Farm House, Gellihaf. He and his wife moved to their property in 1980, it is behind and to the north of the Hawtin Park Industrial Estate. He is a retired headmaster, having worked at a school in Ystrad Mynach until 2004.

9.40. Mr Parry knows that since his occupation of his house the ownership of the land to the south has changed several times. When he arrived Johnson & Johnson Limited were the owners of the overall site, but soon after that the site was sold to a company in the Hawtin plc group.

9.41. When his daughter was younger he used to rent some land from Hawtin in order for her to keep a horse; that land was also to the north of the present industrial estate. The fields were very close to their house so they were ideal for keeping a horse. He approached the directors of Hawtin, particularly Mr Dovey, on numerous occasions asking to purchase that field, but it was not until recently that he was actually able to acquire it.

9.42. In addition to keeping the horse he would also make hay on the land; again given the proximity of the site of the land to his house it was ideal for him to be able to make hay so close by to feed his daughter's horse.

9.43. His daughter had her horse until 1995, thus the period he was talking about was 1985 – 1995. That was when he was taking the hay. It was around the early 1990s, he thought, when Mr Dovey put up notices around the whole area in Hawtin's ownership saying *"Keep Off"*. However those notices disappeared almost as soon as they were put up, and the fences erected did not last either, especially on the Penllwyn area which is to the north of the present application site.

9.44. Mr Parry is aware that local residents have used the overall Hawtin land, i.e. the present application site and the other land further to the north, for numerous purposes such as walking, fruit picking and dog walking, as he himself would often do, but he was also aware of the steps taken by Hawtin to try to prevent such access. These steps included two strand barbed wire which was erected around the entire perimeter, and the erection of the signs. Indeed Mr James, the tenant farmer before Johnson & Johnson took over, still maintained the boundaries around the whole land while he, Mr Parry, took hay.

9.45. From 1985 to around 2005 Mr Parry was Secretary of the local Gellihaf Residents' Association, and the use of the open land on the site by scrambler motorbikes was a real problem for both Hawtin and the local residents. Meetings would regularly be held where this issue was discussed, and letters would be written to the local police regarding these activities. Some preventive measures were taken. There was also a problem on the Penllwyn land in particular with burnt out cars.

9.46. There is a very old bridle path that runs along the site boundary that abuts the residential area to the east. To his own knowledge it was along that boundary that Hawtin tried to build a mound of earth to prevent motorbikes and cars gaining unauthorised access to the present application site. A fence was erected along that boundary as well. However that fence was ripped down as quickly as it could be put up. He believed that had happened in about 1995.

9.47. There were also problems with vandals and thieves on the overall site, particularly in the industrial units closest to his own house. While these areas do not concern the present application, this does show the extent of the problem Hawtin had in trying to keep people off the site.

9.48. Mr Parry went on to explain that his haymaking activities did include the fields on the present application site, apart from the boggy triangle in the very corner of Pixie Lane and Crown Lane. The hay growing season commences in the spring.

9.49. The previous tenant farmer had very few cattle on the land by then, so the grass continued to grow. Mr Parry had only to pay a very modest amount to take the hay from the land. The haymaking was usually at the start of the summer holidays. He had to mow it, turn it and then bale it. He would sell some hay; a neighbour who did the baling would also take some, and then he would have some left for the horse. He gave this up eventually after his daughter went to university. The hay from the land was good hay. The fields were still quite clean at that time, with very little rubbish or litter on them.

9.50. It had not been necessary to do ground work on the fields or fertilise them. They just took the hay every year. He personally would not be on the field all year round. The normal growing season starts in the spring or at the end of a mild winter, and then carries on until summer. Gradually as the field was left the field boundaries encroached in so that the useful area for hay got progressively smaller. He and those assisting with the haymaking were never impeded or hindered in the taking of the hay. They never had any problems with it being disturbed or thrown around.

9.51. A lot of the time people would just walk the paths around the boundaries of the fields. One could not take hay where the paths were, the grass did not grow on the footpaths.

9.52. Prior to the haymaking period the land was used by the farmer to graze cattle until about the early 1990s, although it was difficult to be specific about the date. When the land was grazed with cattle on it it was stock proof and indeed it would have to be. Cattle escape would have been quite a serious problem, although Mr Parry could not say that it never happened. Mr James the farmer went on until about the mid 1990s, Mr Parry thought.

9.53. Mr Parry gave up his involvement in taking the hay prior to the year 2000. Hay may have been taken by other parties after 2000, and indeed it appeared from one of the aerial photographs that it was being taken in 2004. Mr Parry had not visited the land recently.

9.54. He recalled that there were more paths on the land than shown on the plan produced by Mr Chichester for the objectors. Indeed there were many different paths on the land. Especially there were more on the western part of the land than Mr Chichester's plan showed. Those were routes used by people walking dogs. People working on Hawtin Park also regularly used footpath routes to cross the land.

9.55. Mr Parry recalled that there were posts for notices around the land, although he did not necessarily remember all of the individual posts which Mr Chichester had identified on his plan. The posts he, Mr Parry, recalled were more on the northern part of the land. He could not recall whether the notices were fixed to those

particular posts, but there certainly were notices fixed to posts. Mr Parry had thought that they were fixed to metal posts. However within a few weeks the notices had gone by force, as had happened with the fencing. Mr Parry remembered the mounds of earth being created, and indeed remembered who the contractor was who had inserted those mounds. The earthworks had taken a few days to implement.

9.56. Then a Mr Mike Parsons had erected a barbed wire fence along the same boundary in around 1995. That fence had two strands of barbed wire. He, Mr Parry, had seen the aftermath of people ripping that fence out. It seemed as though the arrival of the fence had stimulated a reaction, because the fence blocked regularly used routes; it was almost as if the fence was seen as a challenge, the wire was cut and removed and the posts were taken out too. They had been on the left hand side of the lane going up. The fencing had been on the western side of the hedge all along the bridleway. After that fencing attempt in about 1995 Mr Parry did not recall any later attempts to replace or maintain the fencing. It would be true to observe that the previous farmer who farmed the land had not done a great deal to maintain the boundary either.

9.57. The scrambler bike problem Mr Parry acknowledged was largely in the other land to the north of the present application site, but not entirely. Motorbikes were a particular problem on weekends and on Sundays. The Gellihaf Residents' Association had made representations to the police and local authorities. Indeed there had at one time been talk of trying to set aside a part of the northern land for motorcyclists. Basically it was hoped that somewhere could be provided to send them to and get them off the land that they should not be on.

9.58. Mr Parry knows Mr Tom Kedward. He, Mr Kedward, had been involved with this application site, and Mr Parry knew that. Nevertheless Mr Kedward had not particularly discussed with Mr Parry any issues he had with managing the application site. When Mr Parry met Mr Kedward they would talk about business, or the renting of the fields for the hay. At the time of the fencing, Mr Parry's understanding was that Mr Kedward had been much more concerned with running a busy factory estate. Hawtin had had other security guards who were more concerned with maintaining the boundaries, Mr Parry thought.

9.59. *In cross-examination* Mr Parry said that he had never kept horses or cattle on the present application site. However he knew Goronwy James who had kept cattle on the land. Cattle used to get into the more northern land before the British Airways factory was built. There were gates up there. After British Airways came and other units on the industrial estate were occupied the direct route of entry for cattle was blocked. Mr Parry recalled that a gentleman who lived in a house on Pixie Lane used to ride a Hunter on the land in the early days.

9.60. When British Airways put in fencing around their factory, that was high security fencing, although that was vandalised too. Some chain link fencing was vandalised which British Airways never put back.

9.61. To cut the hay which Mr Parry used to take, depending on the weather, it would usually take no more than one week. People would still walk around the fields

when the hay cutting was going on. Mr Parry accepted that some camps were built on the land by teenagers and that there was some evidence of youngsters playing on the land. One would see youngsters on the land in the summer. After the fencing went, Mr Parry himself would access the fields to walk his dog. Nevertheless he would report anything wrong that he saw to Mr Kedward or to the security guards. For example he once saw some children who had stolen some computers from the council.

9.62. Hawtin never actively discouraged him from walking on the field and he never felt he should not be there.

9.63. It was the trench in the north-eastern corner of the present application site that had made the biggest difference. Prior to that cars were being regularly driven down and set on fire. The trench did not stop the motorcycle trespass, but it did practically solve the car issue. Youngsters did try to get cars down the lane and he remembered one such incident.

9.64. Mr Parry personally did not see any of the fencing being pulled down. Nevertheless he knew that Mr Parsons had fenced right round the land, including right round his own property, which was somewhat intimidating. He recalled having discussed it with Mr Kedward at the time. Mr Dovey had wanted the whole of the land belonging to Hawtin fenced round, having been angered by the extent of trespass on the land at the time.

9.65. While Mr Parry was secretary of the Gellihaf Residents' Association from 1985, the main issue discussed was normally motorbike and car incursion on the Hawtin land. He, Mr Parry, personally remembered notices being put up at the northern end of the land.

9.66. When Mr Parry and the Association had had correspondence with the police and local authorities, that concerned both the northern land and the present application site. Mr Parry moved to this area in 1980, and had never seen the hedges maintained after that.

9.67. *In re-examination* Mr Parry said that when he had stated that there had been no hedge maintenance on the land he had meant no traditional cutting and layering. However along the hedge lines there are fence posts, and wire that had been maintained on the outer boundary. Nevertheless there had been gaps through that where vehicles had driven into it.

9.68. ***Mrs Jennifer Susan Thomas*** lives at Caerllwyn Ganol Farm, Mynyddislwyn, which is about 1 mile to the south east of the application site. She is the sole director of JS Lee Limited, a company which undertakes landscaping and conservation works ranging from cutting of grass and hedges to large scale landscape works. Prior to the company being incorporated in 1997 the business ran as a partnership between herself and her husband. The partnership was started around 1980. Today the company carries out work across Wales and England and employs around 30 staff.

9.69. In or around 1990 Hawtin plc employed Mrs Thomas and her husband to maintain the grounds at Hawtin Park Industrial Estate. The land they worked on included the present application site. Given their landscaping background they were hired to make hay on the land and maintain the hedges that followed the boundary of the site. Hawtin were experiencing problems at the time with local youths gaining unauthorised access from the local housing estates and setting fire to the hay. As well as the area covered by the present application site her business also did landscaping work on the industrial estate and the Penllwyn area to the north as well.

9.70. In order to combat the risk of fires they struck up a relationship with one of the local youths called Dorian Davies, who would stop the other locals setting fire to the hay. Dorian Davies now works for Mrs Thomas's firm on a full time basis.

9.71. Mrs Thomas was aware that in spite of the hedges around the site people would gain access to the site through the hedge via holes or gaps that they would make. Mr Kedward would ask them to block such holes, but as soon as they did it the holes would be unblocked. Mr Kedward would usually take them to the gaps in order to show them to them. They started doing this work in about 1990, and carried on until the land was sold by Hawtin in around 2006. They were called on numerous times to block holes in the hedges. They usually put wire up, which was then cut. The wire would be pig wire, which is wire with square meshing, or plain wire. It would be cut, and then they would use similar material again. Along the Pixie Lane boundary one could use barbed wire behind the hedge, because it was not up against the highway.

9.72. Mr Kedward was their main point of contact while they worked on the site. Although they were hired by Hawtin for some of the works they carried out, they initially paid for the hay that they made on the site, given that it had a resale value. However as time went on paying for the hay became less commercially viable, and given that it was on the site in any event and needed to be taken, it was agreed that they could take what they made. Mrs Thomas produced invoices for works undertaken on the site. However these only related to the last few years because the company's computer system had changed and she did not have copies of invoices raised before the new system was installed.

9.73. In addition to the problem she had mentioned of local youths setting fire to the hay she was aware that Hawtin had also had problems with other unauthorised access on the site in the form of motorbikes and cars. She understood that access was often obtained onto the site via the bridle path that abuts the eastern boundary. She could recall assisting Mr Kedward, specifically planting further hawthorn bushes to prevent access to the site, but those bushes would be dug up soon after the planting. She personally had not planted the hawthorn bushes, but she sent some of the young men who worked for them to plant them, and it was they who had told her that the bushes were then uprooted and taken. They had been asked to put in hedging material along there because it was thought to be more sympathetic than wire. It was intended to be along the boundaries of the site, but she could not remember exactly where the hawthorn bushes were planted.

9.74. She was aware of the mounding that had been put in along the bridle path, and of the fencing that was put in in association with that mounding. However she knew that that fencing was taken down as quickly as it could be erected. She was also aware that Hawtin had erected signs notifying people that the land was private and that access was not allowed, but they too were ripped down shortly after their erection.

9.75. While the trench and the mound did limit cars accessing the site, the motorbikes were still able to get through. Their continued use of the fields where Mr and Mrs Thomas sought to make hay limited their ability to do that, as it could be dangerous to work there. They stopped making hay in around 2000 or 2001 she thought, but would still attend the site to undertake other works.

9.76. The exercise of putting in the signs was something that her firm had been responsible for. Her firm put in the posts, although she could not remember exactly when that was, as it was before the start of the invoices she was able to produce, so it would have been before 2004. They were instructed by Mr Kedward to put the posts in, and then the signs on them. She personally did not put the posts in but she ordered them and the signs and had them put in. The posts were steel posts set in concrete, which was thought to be the strongest. The signs said something like *"Private – Keep Out"*. They were properly printed signs which Mrs Thomas's firm had bought in. The signs would have been drilled and bolted onto the posts. They were up to road sign standard so as not to rot away easily. Mrs Thomas had recently seen that a couple of the posts were still present on the land, but there were no signs on them. Indeed the signs did not last very long. She did not know how long, but certainly not that long. It was Mr Kedward who told her that the signs had been ripped down. While her firm were working on the land she would speak to Mr Kedward about once a fortnight, sometimes more, in relation to any work that they were doing. However her firm did not do the mounding work, that was done by another contractor. She saw the results of that work at a later date. Earlier than the mounding there was a trench dug, and her firm had fenced along that trench. She believed that that was up at the northern end of the present site, although she had not actually seen it herself. Although her firm erected the fence alongside the trench she did not believe it had stayed there for that long.

9.77. She also thought that her firm had done some of the work blocking gaps along the bridle path with pig wire or barbed wire.

9.78. In her view Hawtin had done all they could to prevent unauthorised access to the site. However given the size of the site and the persistent and illegal actions of some local residents, all their efforts were in vain. Steps were always taken to inform the surrounding residents and anyone else who tried to gain access that they were essentially trespassing and should not be there.

9.79. *In cross-examination* Mrs Thomas said that the client would contact her firm, and then they would issue instructions to the relevant workers. She herself was regularly on site in the early days. They would then invoice after work was done, and be paid usually within 30 days. They would send their invoices to their customers by post. The copy invoices Mrs Thomas had been able to produce dated

from 2004 onwards. Those were just a selection of invoices from 2004 – 2009. They would relate to general landscaping work around the site, i.e. what was owned by Hawtin at the time, not just the present application site.

9.80. The Pixie Lane hedges would been cut in autumn while birds were not nesting. An invoice showing work in September 2004 could have been for such hedge cutting, she thought. Her firm was normally paid in respect of some work each month. However the practice was not for the invoices to specify the particular work that was done.

9.81. Mrs Thomas accepted however that all of the invoices she had produced copies of were to Helical Bar Limited, and Helical Bar never owned the land constituting the present application site. However her firm had certainly cut the Pixie Lane hedges before that land was sold. Nevertheless the Helical Bar invoices would not cover Pixie Lane work. Indeed she accepted these invoices would not relate to the application land. That meant she had not been able to find any invoices covering the application site itself.

9.82. Mrs Thomas accepted that there had never been any heavy industry on the present application site. However her firm had removed a burnt out car from the site. She knows that British Airways never had any involvement with the present application site. The access problems she had referred to affected the whole area which had belonged to Hawtin, not just the application site. She herself had seen people on the application site illegally.

9.83. As for the erection of the signs, she could not remember which particular year that work had been done. Four signs were put up. Her firm did not replace them after they were removed, and she did not know if Mr Kedward had done so.

9.84. It had been part of her firm's work to cut the roadside hedges around the site. They would also cut what they could up the bridleway although that was rather difficult to achieve.

9.85. ***Mr Gareth David George Roberts*** is a solicitor employed by Acuity Legal Limited, whose address is in Cardiff. Subject to the supervision of his principals he has day to day conduct of the present proceedings on behalf of the Objector Filigree Trading Limited. He produced an extensive bundle of documentation, some of which related to attempts to ascertain from Gwent Police, the Council itself, and South Wales Fire and Rescue Service, information in relation to events and occurrences on the site. It would be correct to observe that his attempts to obtain information were not highly productive. Mr Roberts also produced documentation in relation to the Town and Country Planning background of the land concerned, including a copy of the Local Development Plan for the area.

9.86. Mr Roberts was not cross-examined on behalf of the Applicant, and I did not ask him any questions.

10. SUBMISSIONS FOR THE OBJECTORS

10.1. Written opening comments and submissions on behalf of the Objector Filigree Trading Limited were provided before the Inquiry. They were not delivered orally at the Inquiry, but that does not reduce their potential importance, and I have read them with care. Nevertheless full closing submissions were also made by Counsel on behalf of the Objector Filigree at the end of the Inquiry, and in the light of that circumstance it is in my judgment not necessary for me in my Report now to set out a summary of the original opening submissions produced before the Inquiry itself. Accordingly I now summarise the closing submissions made on behalf of Filigree Trading Limited.

10.2. Although *"neighbourhood"* is a deliberately imprecise term, the Applicant nevertheless has to demonstrate that a significant number of the inhabitants of a neighbourhood (identified by them) have used the area sought to be registered as a town or village green continually throughout the relevant period.

10.3. The original application suggested that the relevant neighbourhood was a vast area shown on map A accompanying the application. At the Inquiry the Applicant had sought to change this to a much smaller area, the Islwyn Ward. That not only recognised the limitations of showing legally and evidentially the use by a significant number of people from the previously identified neighbourhood, but the fact that the use made of the application site has in reality been by a small number of people who live in a small number of streets immediately east of the application land.

10.4. No live evidence came from anyone other than people from a small number of streets to the east of the site.

10.5. The Objectors do not suggest that the evidence questionnaires should be ignored; they do form part of the evidence. However it does not follow that there was other cogent evidence out there that was not called. The Applicant should have called all the relevant evidence insofar as it was not repetitive or monotonous.

10.6. The conclusion had to be that a significant number of users had not been shown. The people who have been called as witnesses have been preoccupied by the retention of the land for nature conservation, as opposed to its history of use for lawful sports and pastimes. The demographic of the evidence called was in reality that of an ageing populace who may have used the land in a more diverse way, and with their children, when they were younger. However in the period under consideration the use of the land appears to have been predominantly walking with or without dogs, almost always walking along well defined routes and from point to point.

10.7. The Objectors accept that the registration authority is entitled to register only that part of the area covered by the plan which the Applicants have proved to be in use for the necessary period for the necessary purpose. There is certainly no basis for claiming that even if one part of an arbitrarily defined application site satisfies the statutory test the whole application site must thus become a village green.

10.8. It is clear, and will be even clearer on the site visit, that the areas sought to be registered here are very geographically diverse, and many areas are simply not passable. In general, taken as a whole, the use of the application site is not analogous with the circumstances recorded in the ***Oxfordshire (Trap Grounds)*** case. Looking at the application site as a whole the use shown does not meet the statutory test.

10.9. The Objector is not aware of any other village green application of anything like this size anywhere in Wales, except for one instance in Pembrokeshire where it was sought to register an area of 36 hectares; that application failed.

10.10. The present application site is much larger than the sites involved in the ***Sunningwell, Beresford,*** and ***Trap Grounds*** cases, which were respectively 4 hectares, 5 hectares and 3.6 hectares. The present application site is some 13.6 hectares, i.e. three or four times larger than those sites. It is simply not acceptable in the context of such a large site to make sweeping assertions of use across such a large and varied area of land.

10.11. The ***Oxfordshire (Trap Grounds)*** case did not justify the view that because there may have been a number of footpaths crossing the present site it was acceptable to register the whole site as a village green. The ***Trap Grounds*** decision should not be taken as suggesting that in general inaccessible areas can be classified as a village green even if they are not criss-crossed by paths and clearings, or that it necessarily follows that because open land is criss-crossed by footpaths that land is a village green.

10.12. Certainly just because a route is taken from point A to point B, and that route is proved to be across the application land, it does not follow that such linear access across the site amounts to qualifying recreational user, or that the whole site should be regarded as a town or village green.

10.13. While informal activities such as dog walking may count as relevant activities, it is important to distinguish between use which would suggest to a reasonable landowner that the users believe they were exercising a public right of way, and use which would suggest to him that the users believed they were exercising a right to indulge in lawful sports and pastimes on his land generally.

10.14. The existence of rights of way and village green rights are not necessarily mutually incompatible. However the situation in this case is analogous to that in the ***Laing*** case. Dog walking (which forms most of the evidence of user) is not of itself evidence of a right to wander at will over the entire site. The use has to be by the inhabitants of the locality, and not by their animals wandering off. Otherwise every footpath near a village in the country would become a village green of indeterminate size by virtue of dogs straying.

10.15. The clear body of evidence in this case relates to dog walking. That comes both from the oral evidence led by the Applicant, and from the evidence questionnaires. Of those who answered the relevant question, 55 of them thought that there were formal or informal rights of way across the land and of those 55, 39 thought that there were in fact public rights of way.

10.16. That is clearly not use as of right of the land as a whole, if the use is of or analogous to use of a public right of way. This is a very important issue, in that a landowner may be content for local inhabitants to cross his land along a defined route or routes, but would vigorously contest the issue if such a crossing were the platform on which it was to be suggested that there was a right to roam across the whole of the land over which the route existed.

10.17. In this case however, it is not just that there were well worn footpaths being used by dog walkers. There was also very clear evidence of use of the well worn footpaths by a significant number of unidentified people for access and egress to the factory site. That evidence tended to suggest that the predominant use of the land was for walking on defined footpaths, and that the actual route shows that those are the desire lines that have indeed created the footpaths.

10.18. Moreover it is clear on the evidence that the application site has been subject to low-level agricultural use for virtually the whole of the application period. Mr Parry's evidence was that until about 1992 the land was used for grazing cattle. One would expect that at that time the land was reasonably stock proof, and that was confirmed by Mr Parry. It is inconceivable that while it was an animal compound it had been visited by anyone other than the very intrepid. Further they would have had to breach the compound consisting of the stock proof fencing in order to go onto the land, and that would not be use as of right.

10.19. Grazing then ceased and the land was used for hay production by Mr Parry and the Thomases up until about 2007 – 2008.

10.20. Mr Hopkins and other witnesses said that they would walk or run round the outside of the fields while the hay was taken; the position on the evidence overall must be that the farmer taking the hay was not impeded in his endeavours. Indeed Mrs Arnold's own evidence questionnaire had recounted that she had been told by the farmer to keep to the edges of the fields on the site, and to keep out of the way of the tractor while silage was being cut in one or more of the fields.

10.21. It follows that when hay was being taken there was necessarily at the very least an interruption of the exercise of any use of the land for sports and pastimes.

10.22. The expression *"as of right"* is generally accepted as meaning not by force nor by stealth nor by the licence of the owner. The subjective view of the person exercising the right is irrelevant. In this case it is a substantial part of the Objector's argument that any use made of the land was not as of right but was contentious. That issue had been recently considered by the High Court at first instance in the case of ***Betterment Properties***.

10.23. In this case Mr Hopkins had accepted that he had seen the signage, and had desisted from using the site for some while, and his evidence suggested that others had done likewise. There was also evidence from several witnesses that posts for the prohibitory signs had been sunk in concrete in order to give them some permanence, and that the signs erected on those posts were metallic and quite

clearly prohibitory and intended to last. The landowner in such a case has only to take such preventive measures as are proportionate to the use in question.

10.24. In this case there is clear evidence of active management of hedgerow and boundary fencing, and of the site generally. There had been clear evidence from Mr Parry, Mr Kedward and Mrs Thomas. Mrs Thomas identified the boundaries she and her firm maintained. She also took on the hay making on the site. Large parts of the land were used for and were under cultivation for many years, and indeed stock was kept on the site until about 1992, and the land was then stock proof. There was ample evidence of fencing, re-fencing and the repairing of gaps, evidence of which can be seen on site. There was other evidence of the involvement of the police and fire service in the prevention of trespassing and criminal activity, and the engagement of the local community in that task. Evidence showed the creation by the landowners of obstacles to prevent incursions: Mr Kedward's mounds for example. Mr Dewey had not accepted that that was an obstruction, but the clear intent was to plug those gaps from incursion.

10.25. Other evidence suggested the breaching of ancient hedgerows and man-made fences by cutting, burning, and driving vehicles through. The landowners posted prohibitory notices where fences and hedgerows were breached, and those posts are still there even if the notices have gone. There was also Mr Kedward's evidence of handing out prohibitory letters to trespassers, and there is no reason to disbelieve his evidence about that. He had also given evidence about chasing trespassers off the site. Indeed Mr Kedward had been congratulated by Mrs Arnold for trying to prevent motorised intruders.

10.26. What approach then should be taken to this evidence? The correct approach should be the same as that taken by the Court in the ***Betterment*** case. Taking that approach, the evidence very cogently showed that any use of this application site had been by its nature contentious over a significant period of time.

10.27. The Applicant contends that an injunction should have been obtained by the landowners, or that fences must have been kept up at all costs. Those submissions are wholly untenable for practical purposes. That approach should be turned round against the Applicant's case. Effectively what Mr Wilkins is saying is that unless and until an injunction is taken out, and all the fences and hedgerows plugged, the local residents are determined to carry on using the land regardless of whether they actually have any right to do so. The Objector submits that the user by local people of this land has clearly been contentious, and for that reason quite apart from the other points raised, the village green application should be refused and the land not registered.

10.28. Counsel for the Objectors also produced a useful summary of the live evidence which had been given at the Inquiry. This has been of assistance to me in preparing my Report, but it being a summary of evidence I have already considered in summary form, it is not necessary for me in this Report to set it out again either in full or in further summary. He also provided another useful summary pointing to references in the completed evidence questionnaires to the topics of 'Linear access', Fencing/Signage etc, and Entry onto the land

11. DISCUSSION AND RECOMMENDATION

11.1. The Application in this case was made under ***Subsection (2)*** of ***Section 15*** of the ***Commons Act 2006***. That 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."*

The Application in its original form was dated 1st November 2010, and its receipt was acknowledged by the Council on 3rd November 2010. As noted in Section 2 of this Report, the application was in effect amended by the substitution of a clearer larger scale plan of the land to which it relates, which accompanied a new Statutory Declaration by Mr Wilkins for the Applicant, dated 7th April 2011.

11.2. As also noted in Section 2 above, the Applicant later on (with a further Statutory Declaration dated 17th June 2011) produced a further revised plan of the claimed land, which showed an area very slightly reduced (at the north-east extremity) from that shown in the plan of April 2011.

11.3. The *"time of the application"* is clearly of importance in a case of this kind, because it is from that date or time that the *"period of at least 20 years"* must be measured backwards for the statutory test to be satisfied. Clearly the application was originally made to the Council as Registration Authority on a date between 1st November 2010 and its acknowledgement on 3rd November.

11.4. Fortunately I am able to say at this stage that nothing at all arose in any of the evidence or submissions from the parties, whether written or oral, to suggest that any different conclusion would be reached if one took the *"time of the application"* to be 1st November 2010, or 7th April 2011, or even 17th June 2011, for the purpose of measuring back the 'period of at least 20 years'. Nothing in the evidence at all suggested that there was any change of circumstances on the land between November 1990 and April or June 1991 which would have any bearing on the conclusion to be reached.

11.5. It is therefore, in my view, sufficient for me and the Council to consider a period going back at least to the start of November 1990, and finishing on whatever date between November 2010 and April (or even June) 2011 might be regarded as most appropriately the *"time of the application"* in its eventual form.

The Facts

11.6. In this particular case there was a fair amount of dispute about the facts, notably about the nature and extent of any use by local people of the application land for *"lawful sports and pastimes"*, the time period over which any such use has really taken place, and whether such use has been *"as of right"* in the sense of not being 'by force' (e.g. through the ignoring of signs or the breaking down of fences).

11.7. It is necessary therefore to reach a judgment, on the balance of probability, on significant elements of the evidence which has been given. In doing so it is inevitable that (as was discussed during the oral sessions of the Inquiry) more weight will be given to the evidence of 'live' witnesses who have been subject to cross-examination and questions from me, than it necessarily will be to written material in completed evidence questionnaires, letters, etc., where the statements contained have not been subject to questioning by any opposing party (or me).

11.8. I should say at this point that I do not think that the nature of the evidence given to me necessitates my setting out in my Report at this point a series of 'Findings of Fact'. Rather, what I propose to do, before setting out my overall conclusion, is to consider individually various particular aspects of the statutory test under ***Section15(2)*** of the ***2006 Act***, and to assess how my conclusions (on the balance of probabilities) on the facts in this case relate to those aspects. It should not however be assumed that the facts I mention under one heading are only relevant to that heading. I have taken into account the totality of the underlying facts in reaching my conclusions under all the headings, and (of course) in reaching my overall conclusion as well.

"Locality"

11.9. On the original application form it was suggested that the relevant 'locality' is the Pontllanfraith Ward, and a plan ('Map A') showed what were said to be the boundaries of that ward. Perusal of the Ordnance Survey mapping of the area, and discussion which took place between myself and the parties at the Inquiry, appeared to suggest that the boundaries of that ward are on the face of it the same as those of the 'Community' of Pontllanfraith (the equivalent of a Civil Parish in England, and formerly in Wales). The parties gave me to understand that Pontllanfraith does not in fact have a Community Council. Whether that is right or not, Pontllanfraith is clearly a division of the County Borough of Caerphilly known to the law.

11.10. In my view a 'Community' area (or civil parish in England) is a more appropriate 'locality' for the purpose of the commons legislation than the more ephemeral and short-term concept of an electoral ward (albeit in this case the ward and Community area seem to have the same boundaries). Almost all the claimed users of the application land came from within Pontllanfraith, albeit that the application site itself lies immediately outside (but next to) the Community boundary.

11.11. I disagree with the Objectors' apparent view that the Community area of Pontllanfraith is too 'vast' to be a 'locality'. It seems perfectly normal to me, and is clearly the relevant 'locality' for the purposes of a ***Commons Act*** claim, in my opinion.

"Neighbourhood within a locality"

11.12. I have considerable sympathy for lay applicants, without the benefit of specialist legal advice, who have to grapple, without much guidance on the official application form, with the question of what might be the most appropriate *"locality"* or *"neighbourhood"* to identify for the purposes of a 'town or village

green' application. These terms have been the subject of a good deal of judicial comment. However, even if all that comment were readily available to applicants, it would not, in my opinion, leave them with a particularly clear understanding of what is required.

11.13. However the law does appear to be clear that even if an applicant gets a suggested 'neighbourhood' (or even locality) wrong in his application form, the Registration Authority (and an Inspector in my position, acting on their behalf) is entitled to form a view, on the evidence, as to what the 'correct' locality or neighbourhood should be.

11.14. I should mention at this point that Counsel for the Objectors addressed me in relation to 'neighbourhood' and 'locality' by reference to a passage from the first instance High Court judgment in ***Paddico v Kirklees Metropolitan Borough Council*** [2011] EWHC 1606 (Ch). I am aware that that decision has been recently overturned in the Court of Appeal, but for reasons which have no bearing at all on this present case of Hawtin Park Fields. It is not in my view necessary for me to make any further reference to either of the ***Paddico*** decisions in this Report (and nor was it in my view necessary for me to invite further, post-inquiry, submissions from the parties on this topic).

11.15. In this particular case the original application form postulated a rather lengthily expressed 'neighbourhood' (or 'neighbourhoods') within the Pontllanfraith Ward, as quoted in my paragraph 2.2 above. By the time of the Inquiry, as I understood it, the Applicant's case was that the relevant 'neighbourhood' could best be expressed by the area of the Islwyn Ward for the purpose of Welsh Assembly elections, and a map of that ward was produced. I should say at this point that I was told that the Pontllanfraith Ward (coterminous with the Community area) is a ward for UK Parliamentary elections, and also (and this seems to be the case from the map produced) that the Islwyn (Assembly) Ward is entirely within the Pontllanfraith Community area (and parliamentary ward).

11.16. The Islwyn Ward seems to include a significant area of open countryside in its southern portions, but as far as the built-up part, where people actually live, is concerned, it seems to me to include that part of western Pontllanfraith from which the claimed users of the application site appear (from the evidence questionnaires) predominantly to come. It is my view, and my advice to the Council as Registration Authority, that there is no legal difficulty in regarding the built up part of the Islwyn Ward, within Pontllanfraith, as the relevant 'neighbourhood'. It seemed to me to have a reasonably cohesive character and (from the evidence given to me) a sense of community in the area. On any sensible view it can be regarded as a 'neighbourhood' within Pontllanfraith, in my opinion.

"A significant number of the inhabitants"

11.17. I am not at this point considering the wide question whether the evidence, taken as a whole, supports the view that local people, in reasonable numbers, have been using the surface of the application site generally, for the requisite period, 'as of right', for lawful sports and pastimes. I am merely addressing the more specific question whether the Applicant's evidential material, including the submitted

evidence questionnaires, supports the view that a significant number of inhabitants ***claim*** to have used the land, or to have seen others doing so.

11.18. It seems to me to be clear beyond peradventure that a significant number of the inhabitants of the suggested 'neighbourhood' do make such claims. The Applicant's case was criticised on behalf of the Objectors on the basis that not very many 'live' witnesses were called to give evidence. In my view that in itself was not a valid criticism, and if the totality of the evidence supported the view that all the other statutory criteria were met, the application would not in my opinion fail on the 'significant numbers' ground.

"Lawful sports and pastimes on the land"

11.19. This subheading covers several of the most important issues which arise in this case. The Applicant certainly ***asserts*** a widespread use for 'lawful sports and pastimes' for the requisite period. However, after very careful consideration of all the evidence, including in particular (but not only) that of those who came and gave 'live' evidence, on oath, and were cross-questioned, I have come to a different view as to what the balance of the evidence shows.

11.20. I was particularly struck by the way that most of the Applicant's 'live' witnesses in the event stated or agreed that their (and others') use of the land essentially involved walking (with or without dogs), or sometimes running or jogging, on 'well-worn tracks' or paths on the land. The witnesses in general were punctilious in asserting that when the fields on the site were cropped for hay (as most of them clearly were for significant parts of the relevant 20 year period), they (the local people) would not trample the growing grass, but would stick to those well-worn tracks, in some cases across but more often around the edges of the fields. These 'well-worn tracks', in their current manifestation, were very obvious at the time of my site visit.

11.21. Even witnesses who spoke of doing other things on the land, such as looking at wildlife or picking blackberries, generally acknowledged that they did those things from the well-worn paths. I also noted the fact that several of the oral witnesses had clearly not even visited large parts of the application site, but tended habitually to visit only particular paths or tracks on specific parts of the overall site. However this was not in my opinion a case where the evidence justified a decision to register ***part*** of the application land as 'town or village green'. I do not believe the statutory criteria were convincingly met on any part or parts of the land within the application.

11.22. I acknowledge that there was some reference in the evidence to things like children playing (although this was sometimes referred to as being in the bushes alongside tracks, notably the old 'bridleway'), occasionally camping, or having a bonfire, or sledging if there was snow. However the evidence for this sort of wider use of the whole surface of the land was in my view nowhere near to being convincing, on the balance of probabilities, that sufficient use was made, over the whole relevant period, of the general surface of the land to convey to a reasonably observant landowner that a right for local inhabitants to use the land as a whole was being

asserted. It was much more akin to the kind of sporadic trespass that is typical on agricultural or other open land around the edge of settlements.

11.23. I should explain that my understanding of the law is (and I so advise the Council as Registration Authority) that use of linear footpaths or tracks does ***not*** in itself provide a basis for concluding that there was a general use of the land through which those paths pass for 'lawful sports and pastimes'. I do not believe, on the evidence I received, that the land here was of a similar nature to that discussed in the well-known ***Oxfordshire v Oxford City Council*** case [2006] 2 AC 674; UKHL 25 (the *"Trap Grounds"* case). In that case it was accepted that an area of scrubland, with impenetrable thickets of bushes, trees, etc, might be registered as a whole as 'town or village green', even though (becusae of the nature of the vegetation) the use by local people was necessarily limited to the tracks, glades and clearings among the scrub. In my view the evidence in this case did not justify the conclusion that this was an analogous case.

11.24. I should perhaps at this point stress that my conclusions under this sub-heading are not my only conclusions adverse to the Applicant's case, so what I have said in the preceding paragraphs should be read subject to what I also conclude under 'As of right' and 'At least 20 years' below.

11.25. Clearly I acknowledge that it might follow from the conclusions I have reached above that there could be claims to register some or all of the 'well-worn tracks' on the land as public footpaths under the highways and rights of way legislation. However such matters are not before me for consideration.

11.26. One observation I would make, however, is that it was a matter of some surprise to me that the 'old bridleway' along the eastern edge of the present application site was not on any definitive map or otherwise recognised as a public right of way. It seemed overwhelmingly clear from the totality of the evidence I heard that this has been a publicly used route of some antiquity, which may well have been an ancient *"Drovers' road"*. It runs along a long-established parish (latterly 'community') boundary, and was I believe for a while the county boundary between Mid-Glamorgan and Gwent, although I believe that the suggestion (which arose in discussion at the Inquiry) that it might have been part of the ancient county boundary between the historic counties of Glamorgan and Monmouth was wrong. In any event I do recommend to the Council in its capacity as Highway Authority that it should look into the question whether that route should be properly recorded or registered as some kind of public right of way.

11.27. I should not leave the sub-heading of 'lawful sports and pastimes' without noting that I heard a certain amount of evidence relating to what might be described as incidents of '***unlawful*** pastimes', partly on this land, but (apparently) much more so on other open land to the north-east. I have in mind the references to cars being driven on to open land and 'torched', and motorbikes and quad-bikes coming onto the land (sometimes involving breaking through fences or hedges). There were also some references to youths coming on to the land (but not necessarily off the tracks) to take drugs. Clearly none of this in itself can contribute to a case for recognising a history of 'lawful sports and pastimes' on the land (but neither does it necessarily count against it as such).

11.28. Another point I ought to mention under this sub-heading is that in my judgment this case does not raise the sort of issue which persuaded the Supreme Court in the case of ***R (Lewis) v Redcar and Cleveland Borough Council*** [2010] UKSC 11 to decide that registration as 'town or village green' was appropriate in that case. The '***Redcar***' case concerned seaside golf links which had been used both by golfers (licensed – i.e. permitted) by the landowner, and the local inhabitants enjoying 'lawful sports and pastimes', without permission, on the open land. There was 'give and take' between the two categories of user, such that local people would typically get out of the way if a golfer shouted *"Fore"*, or something like that. In other words, local people would 'defer' to the golfers rather than spoil their game. That habit of 'deferring', or 'give and take', in that way did not prevent registration under the ***Commons Act***, the Supreme Court said, provided that the use by local people otherwise met the statutory criteria.

11.29. This case is not like that, in my judgment. It is true that local people would (generally) not interfere with the hay-making, or the growing crop. But as I have found above, they would most typically use the land more as a place on which there were a number of usable footpaths, rather than as an open area over which they were generally asserting rights against the landowner.

"As of right"

11.30. The expression 'As of right' in the statute is generally taken to require regular use without force, without secrecy and without permission. There are no real issues in this present case about local people getting in ***secretly***, e.g. at night, or going on the land ***with*** the owners' permission.

11.31. 'Not by force' requires that people did not break their way in through fences and maintained hedges, but also that they did not do so in defiance of prohibitory signs. This is very much a live issue in the present case, because there was clear and convincing evidence from several witnesses for the Objectors that at times during the relevant 20 year period quite strenuous efforts were made on behalf of the owners to keep 'trespassers' off this land.

11.32. I find credible the evidence of Mr Kedward, which was corroborated by several other witnesses, that during the 1990s, there was for some time something of a 'battle' between the landowners and trespassers here, with the former attempting by fencing and other means to keep the trespassers out. I also accept that these efforts were by no means wholly successful, as fences, or fence or hedge repairs, were repeatedly broken down. Mr Kedward's evidence (again corroborated by others) was also convincing to the effect that in the mid 1990s, probably about 1997, a more concerted effort was made to keep trespassers out, involving much new fencing, the insertion of bunding (albeit of no great height) down much of the western side of the 'bridleway', and the erection of properly made up 'Keep Out' signs on substantial posts, firmly set in the ground, at the points where entry was typically being gained onto the land.

11.33. It also seems clear from the evidence that those fences were later vandalised or cut, and that the signs were first shot at with air rifles and the like, and then torn off

their posts. But they were not so ephemeral that no-one in the local community noticed them.

11.34. For example, Mr Wayne Hopkins (one of the Applicant's witnesses) acknowledged in his evidence that the prohibitory signs did go up, and said that he and most other people did take heed of them at the time, although the signs 'were not there that long'.

11.35. The issue of what to make of landowners' efforts to deter trespass by signs and fences, when those items are subsequently vandalised and removed, is one that has exercised the courts on a number of occasions. I note that the question of fencing (or hoardings) around a site put forward as a 'village green' was briefly considered by the High Court in the case of ***McLaren v Kubiak*** [2007] EWHC 1065 (Ch), a report of which was put before me on behalf of the Applicant.

11.36. However this topic was much more fully considered and addressed more recently (again in the High Court) in the case of ***Betterment Properties Ltd v Dorset County Council*** [2010] EWHC 3045 (Ch), to which I was referred on behalf of the Objectors. I am aware that since the close of the Inquiry the High Court decision in ***Betterment Properties*** has been upheld in the Court of Appeal – [2012] EWCA Civ 250 – essentially on the same grounds. In the light of this last point I do not believe it is necessary for me or the Registration Authority to invite further submissions from the parties in the light of the Court of Appeal decision.

11.37. Having considered carefully the judgment of the High Court in ***Betterment Properties*** (now upheld), and applied what can be gleaned from it to the evidence and circumstances of the present case, I have come to the following view. I find on the balance of probabilities that for a significant part of the 1990s the landowners did make repeated efforts to keep 'trespassers' out of this land, and that a particularly marked effort, with signs as well as new fencing, was made, probably around 1997. I also find that the signs and fencing were generally effective, at least for a period, in keeping people out – most people 'took heed'. I believe that during that period the efforts of the landowners were at least 'proportionate' to the perceived problem, in other words they could not reasonably be expected to have done more than they did. Thus, in my view, for at least a considerable period in the 1990s, any use made of the land by local people ought to be seen as 'contentious' and not 'as of right', to the extent that it took place.

11.38. I have little doubt however, on the evidence, that for much of the last decade of the relevant period any general effort to keep people off the land entirely has fallen away, and I can entirely accept that, in consequence, for a good many years now, local people will have been able at least to gain access onto this land without obviously doing so 'by force' or in breach of a prohibition.

11.39. Nevertheless my overall conclusion under this sub-heading is that the Applicant has not on the balance of the evidence established its case that local people have been accessing this land for the full requisite 20 year period, 'as of right'.

11.40. This finding is *additional* to the judgment I have already expressed that the evidence does not in any event establish a convincing case that local people have

really been generally using the whole surface of the application land, as opposed to using the well-worn paths or tracks, even during those parts of the 20 years when they have been openly walking on to the land without any challenge.

"For a period of at least 20 years"

11.41. I am entirely persuaded on the evidence that there has been some form of reasonably regular trespassing onto parts of this land for at least 20 years, but as indicated above, the evidence is not in my judgment convincing that that use has either been sufficiently of the 'extensive' kind (as opposed to 'footpath-type' use) to warrant registration under the ***Commons Act***, or that any use or trespass on the land has been 'as of right', in the sense of 'without force', for the full period.

11.42. This view that the evidence does not establish the requisite user for 'at least 20 years' to the time of the application applies with equal force whether one were to take the time of the application as being 1st, 2nd or 3rd November 2010, or the date in April 2011 when a plan of the requisite scale was provided to accompany the application, or indeed the date in June 2011 when that plan was slightly amended.

Conclusion and Recommendation

11.43. Accordingly my conclusion and recommendation to the Council as Registration Authority is that ***no part*** of the application site here should be added to the Register of Town or Village Greens under ***Section 15*** of the ***Commons Act 2006***.

ALUN ALESBURY
4th April 2012

2-3 Gray's Inn Square
London WC1R 5JH

APPENDIX I – APPEARANCES AT THE INQUIRY

FOR THE APPLICANT (Bryn Residents' Association)

Mrs Ann Arnold [of 22 Tamar Close]

She called –

Mr Wayne Hopkins, of 33 Solent Close
Mr Ian Humphrey, of 49 Solent Close
Mr Paul Dewey, of 11 Tamar Close
Mrs Kay Tiley, of 8 Solent Close
Mr Simon Wall, of 16 Tamar Close
Mr David Exall, of 60 Crown Lane
Mrs Glenys Evans, of 6 Solent Close
Mr Brian Wilkins (Chairman of Applicant), of 18 Tamar Close

FOR THE OBJECTOR (Filigree Trading Ltd)

Mr R K Sahonte, of Counsel
- instructed by Acuity Legal Ltd,
  3 Assembly Square, Britannia Quay
  Cardiff Bay, Cardiff CF10 4PL

He called –

Mr Thomas Kedward, of Markham, near Blackwood
Mr Keith Chichester, C2J Architects & Planners, Cardiff
Mr David Parry, of Bryn Ysgofan Farm House, Gellihaf
Mrs Jenifer Thomas, of Caerllwyn Ganol Farm, Mynyddislwyn
Mr Gareth Roberts, Solicitor, Acuity Legal Ltd, Cardiff

APPENDIX II

LIST OF NEW DOCUMENTS PRODUCED IN EVIDENCE TO THE INQUIRY

NB. This (intentionally brief) list does not include the original application and supporting documentation (or the amendments made prior to the Inquiry), the original objections, or any material or correspondence submitted by the Parties prior to the issue of Directions for the Inquiry. Nor does it include the material produced in the Bundles of Documents provided for the purpose of the Inquiry on behalf of both the Applicant and the Objectors. These were both sufficiently indexed, and provided to the Registration Authority (and me) as complete Bundles. It is not proposed to repeat the contents of those Indices.

By the Applicant

New set of photographs produced by Mr Wilkins, 18/1/12
Note of Mrs Arnold's Closing Submission

By the Objectors

Larger scale map identifying Mr Chichester's photograph positions and (some) paths on site
CD containing Mr Chichester's photographs
'Summary of the Live Evidence'
Note of evidence as to 'Linear Access', Fencing/Signage, and Entry
Note of Closing Submissions

By the Registration Authority

Report on Village Green application at Bryn Fields, Blackwood, 30th November 2000.
Report on Village Green application at 'Cascade', 8th April 2003.