13.1 **Materion Eraill** **Other Matters**

Rhif y Cais: **23C84B** Application Number

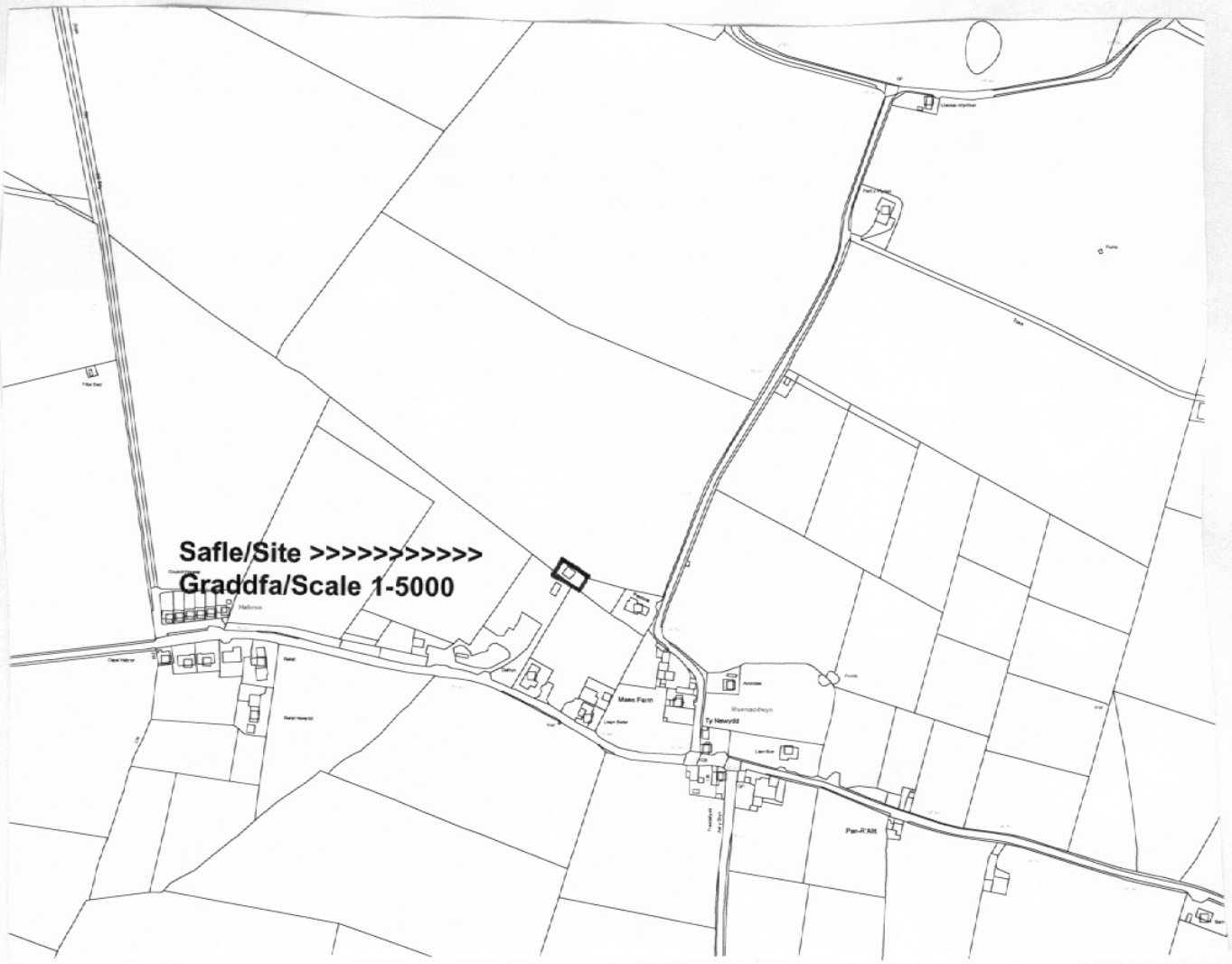
Ymgeisydd Applicant

Mr Thomas Hughes
Penrhos
Maenaddwyn
Llanerchymedd
Ynys Mon
LL71 8BD

Cais i bennu os oes angen caniatad blaenorol ar gyfer codi adeilad amaethyddol ar dir yn

Application to determine whether prior approval is required for the erection of an agricultural building on land at

Penrhos, Maenaddwyn



Pwyllgor Cynllunio: 07/09/2011

Adroddiad gan Bennaeth y Gwasanaeth Cynllunio(JBR)

Cyflwynwyd y cais am hysbysiad blaenorol gan un o weithwyr y Cyngor.

Fe benderfynwyd na fyddai angen caniatad blaenorol ar gyfer codi adeilad amaethyddol.

Adroddir y mater hwn, felly, i bwrpasau rhoi gwybodaeth yn unig.

13.2 **Materion Eraill** **Other Matters**

Rhif y Cais: **41C45F** Application Number

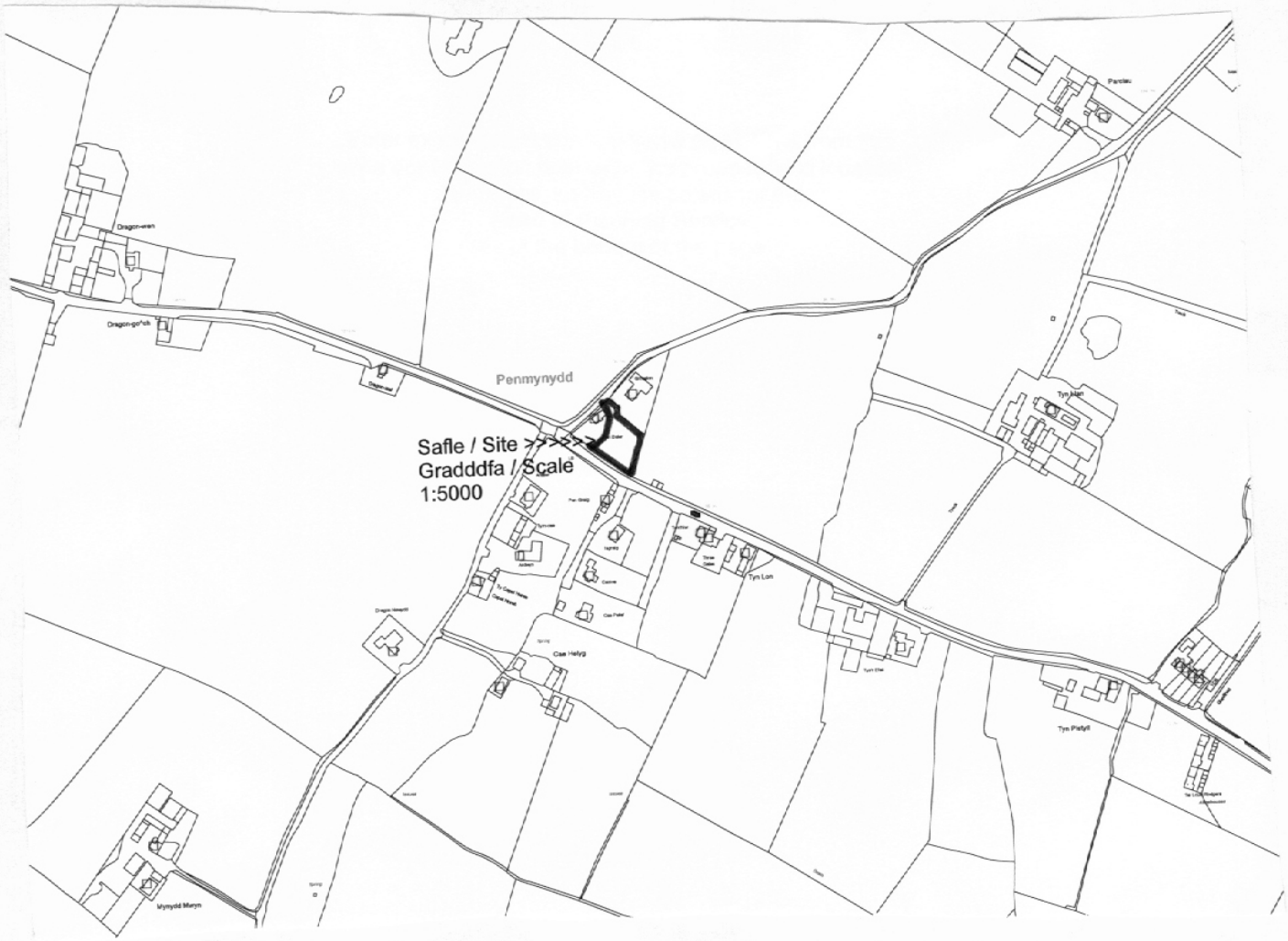
Ymgeisydd Applicant

Mr. Elfed Jones
Dalar Deg
Penmynydd
Llanfairpwll
LL61 6PL

Cais llawn ar gyfer codi ty deu lawr, addasu y fynedfa i gerbydau ynghyd a gosod sustem trin carthion ar dir ger

Full application for the erection of a two-storey dwelling, alterations to the vehicular access together with the installation of a sewage treatment plant

Dalar Deg, Penmynydd



Pwyllgor Cynllunio: 07/09/2011

Adroddiad gan Bennaeth y Gwasanaeth Cynllunio(SCR)

Argymhelliad:

Caniatau

Rheswm dros Adrodd i'r Pwyllgor:

Mae'r ymgeisydd yn gweithio l'r Cyngor ac mae'n ymwneud yn anuniongyrchol gyda'r proses gwneud gwaith.
.
Mae'r Swyddog Monitro wedi edrych yn ofalus ar y cais fel sydd ei angen o dan baragraff 4.6.10.4 o'r Cyfansoddiad.

Fe roddwyd caniatâd cynllunio llawn ym Mawrth, 2010 i godi annedd ac mae'r ymgeisydd wedi gofyn am gael gwneud newidiadau bychan i'r cynllun a gymeradwywyd.

1. Y Bwriad

Y newidiadau y bwriedir eu gwneud yw gwneud y ffenestr yn y lolfa yn fwy, o'r llawr l'r to.

2. Asesiad

Ystyrir bod newidiadau hyn yn dderbyniol ac na fyddant yn cael effiath niweidiol ar ddeiliaid yr eiddo cyfagos.

O ystyried natur gweddol fychan y newidiadau arfaethedig ni ystyrir y bydd y newidiadau hyn yn cael effaith fawr ar edrychiad nac ar natur y cynllun fel y cafodd ei gymeradwyo'n flaenorol.

13.3 **Materion Eraill** **Other Matters**

Rhif y Cais: **46C319A** Application Number

Ymgeisydd Applicant

Christine Platt
BT Payphones
4th Floor Monument Telephone Exchange
11-13 Great Tower Street
London
EC3R 5AQ

Rhybydd o fwriad i dynnu'r bwth ffôn cyhoeddus ar dir yn

Prior notification for the removal of the public telephone kiosk on land at

Lôn Porthdafarch, Trearddur Bay

Pwyllgor Cynllunio: 07/09/2011

Adroddiad gan Bennaeth y Gwasanaeth Cynllunio (NJ)

Argymhelliad:

Gwrthwynebu

Rheswm dros Adrodd i'r Pwyllgor:

Mae'r offer wedi'i leoli ar dir y Cyngor.

1. Y Safle a'r Bwriad

Mae'r safle ger traeth Porthdafarch ar y groeslon sy'n arwain o Ffordd Ynys Lawd ar hyd Ffordd Porthdafarch i mewn i Gaergybi.

Ymgynghoriad yw'r cais yn ymwneud â bwriad y gweithredwr i symud bocs galwadau i'r cyhoedd oddi ar y safle. Mae'r mater yn cael ei drin fel cais am ganiatâd blaenorol. Mae'r mater wedi codi oherwydd digwyddiad fu yn y ciosg lle cafodd ei ddifrodi y tu hwnt i'r gost o'i drwsio'n economaidd. Mae cofnodion yn dangos mai dim ond unwaith y defnyddiwyd y ciosg yn y 12 mis diwethaf. Oherwydd yr ystyriaethau hyn mae'r gweithredwyr yn bwriadu ei symud oddi yno a therfynu'r gwasanaeth yn y lleoliad.

Yn unol â gweithdrefnau'r Rheoleiddwyr, mae angen i'r gweithredwr ymgynghori gyda'r awdurdod lleol ynglŷn â'i symud i ffwrdd. Rhaid i'r Awdurdod ddilyn proses o ymgynghori lleol ac ar ôl 42 dydd yn dilyn derbyn y cais (5 Medi ymlaen) rhaid iddo gyhoeddi rhybudd i nodi ei 'benderfyniad cyntaf' yn dilyn pwyso a mesur y safbwyntiau a dderbyniwyd.

Bydd cyfnod pellach o fis yn dilyn lle bydd yn rhaid i'r Awdurdod bwyso a mesur unrhyw ymatebion pellach a dderbyniwyd ar ôl cyhoeddi ei benderfyniad cyntaf. Rhaid i'r Awdurdod wedyn gyhoeddi rhybudd terfynol (o fewn 90 diwrnod i dderbyn y cais am y tro cyntaf – o leiaf erbyn 20 Hydref) yn gosod allan ei benderfyniad terfynol. Fe all y gweithredwr apelio i'r Rheoleiddiwr os yw'n anghytuno gyda'r penderfyniad terfynol.

2. Mater(ion) Allweddol

Prif Faterion y cais yw – a fydd y cynnig yn effeithio ar fwynderau'r eiddo o amgylch gan gynnwys diogelwch y cyhoedd a hefyd yr effeithiau economaidd sy'n deillio o symud y ciosg oddi yno

3. Prif Bolisïau

Cynllun Lleol Ynys Môn

Polisi 1 – Polisi Cyffredinol

Cynllun Datblygu Unedol a Stopiwyd

Polisi GP1 – Cyfarwyddyd Rheoli Datblygu

Polisi Cynllunio Cymru (Cyfrol 4)

4. Ymateb i'r Ymgynghoriad a'r Cyhoeddusrwydd

Aelod Lleol – yn hapus i'r swyddog ddelio gyda'r cais ond mae'n gobeithio y bydd un arall yn cael ei osod gan nad yw ffonau symudol yn gweithio'n dda iawn yn yr ardal.

Cyngor Cymuned - Yn gwrthwynebu symud y ciosg i ffwrdd ar y traeth hwn sydd yn un poblogaidd ond yn un peryglus hefyd gan nad yw ffonau symudol yn gweithio yma. Y rheswm mai ychydig o ddefnydd fu ar yr offer oedd oherwydd nad oedd y ffôn yn gweithio'n iawn yno.

Swyddog Morwrol - Yn gwrthwynebu symud y ciosg i ffwrdd - fe adroddodd am niwed i'r ciosg ddechrau mis Gorffennaf, gan ofyn iddo gael ei drwsio mor fuan â phosibl oherwydd ei ddefnydd fel ffôn argyfwng i'r traeth gerllaw. Mae angen cael y ffôn yno ar gyfer ennill statws Baner Las Ewropeaidd i'r traeth. Mae'r Cyngor wedi cyfrannu cyn hyn tuag at gadw'r ciosg ac wedi gwrthwynebu cynnal ymgynghoriad mewn perthynas â'r bwriad i'w symud i ffwrdd yn 2004.

Ymateb i'r Cyhoeddusrwydd

Dim wedi'i dderbyn ar adeg ysgrifennu'r adroddiad.

5. Hanes Cynllunio Perthnasol

Dim

6. Prif Ystyriaethau Cynllunio

Effaith ar fwynderau a diogelwch y cyhoedd - Mae'r traeth yn Porthdafarch yn boblogaidd iawn gyda phobl leol a thwristiaid. Er ei fod yn brysurach yng nghanol gwyliau'r haf, mae'n cael ei ddefnyddio rownd y flwyddyn. Mae nifer o anheddau o amgylch ac y mae yna barciau carafannau gwyliau yn y lle hefyd. Er ei fod yn cael ei dderbyn bod gan aelodau'r cyhoedd offer telegyfathrebu personol yn cynnwys ffonau symudol, mae ymgynghorwyr yn awgrymu nad yw ffonau symudol yn gweithio'n dda iawn yn yr ardal oherwydd nad oes signal. Tra bod hyn yn gallu achosi anghyfleustod i ddefnydd cymdeithasol pob dydd, ni fyddai symud ymaith un ciosg sydd wedi cael ei ddefnyddio ond unwaith yn y 12 mis diwethaf o anghenraid yn codi pryderon yn ymwneud â mwynderau cyffredinol.

Fodd bynnag, o ystyried y defnydd mawr iawn a wneir o'r traeth a'r potensial am ddigwyddiadau fyddai'n gofyn am, er enghraifft, ymateb gan wasanaeth argyfwng, mae symud ymaith y ciosg yn codi pryderon sylweddol o ran diogelwch cyhoeddus oherwydd efallai mai dyma'r unig ffordd o gyfathrebu fydd ar gael pan na fydd signal ffôn symudol ar gael.
Nid yw symud y ciosg arbennig hwn sy'n ymddangos fel pe bai wedi cael ei daro gan gerbyd a'i ddifrodi'n sylweddol o ganlyniad, ynddo'i hun yn fater o bryder. Y prif fater yw symud y gwasanaeth ffôn yn gyfan gwbl oddi ar y safle. Mae'r Swyddog Morwrol wedi awgrymu, er enghraifft, y gallai'r ciosg gael ei newid am fwth ac y gellid cyfyngu'r gwasanaeth i alwadau argyfwng yn unig. Byddai hyn yn lleddfu'r pryderon sy'n codi mewn perthynas â diogelwch y cyhoedd.

Effeithiau Economaidd - Mae'r traeth wedi mwynhau statws traeth Baner Las Ewropeaidd am nifer o flynyddoedd ac un o anghenion y statws hwnnw yw bod ffôn ar gael. Byddai dileu'r gwasanaeth yn golygu na fyddai'r safle yn gallu cyfarfod â meini prawf llym y dyfarniad. Mae'r ardal, fel ag y mae'r Ynys gyfan, yn dibynnu i raddau helaeth ar ddiwydiant twristiaeth am ei ffyniant economaidd. Byddai colli'r statws Baner Las oherwydd colli gwasanaeth ffôn yn cael effaith niweidiol sylweddol ar yr economi leol. Unwaith yn rhagor, rydym ar ddeall y byddai cyfleuster gwneud galwadau argyfwng yn unig yn bodloni gofynion y Faner Las.

7. Casgliad

Mae colli'r gwasanaeth ffôn fel sy'n cael ei awgrymu yn debygol o achosi nifer o bryderon ynglŷn â diogelwch y cyhoedd ac y mae'n debygol o gael effaith niweidiol sylweddol ar yr economi leol. Fe awgrymwyd, fodd bynnag, y gallai newid yr offer sydd wedi ei ddifrodi am offer ar gyfer gwneud galwadau argyfwng yn unig yn gyfaddawd addas.

Argymhellir, felly, mai penderfyniad cyntaf yr Awdurdod fyddai un o wrthwynebiad i symud y gwasanaeth ffôn o'r lleoliad hwn (dim o anghenraid gyda symud y ciosg arbennig hwn) oherwydd y pryderon a bwysleisiwyd yn yr adroddiad hwn ond y dylid cynnig y sefyllfa o gyfaddawd i'r gweithredwyr i'w hystyried.

8. Argymhelliad

Gwrthwynebu

(01) Mae'r signal ffôn symudol yn yr ardal yn annigonol ac yn annibynadwy ac fe allai symud y gwasanaeth ffôn o'r safle hwn achosi pryderon ynglŷn â diogelwch y cyhoedd a hefyd beri risg annerbyniol i'r cyhoedd be bai argyfwng yn codi.

(02) Rhoddwyd statws Baner Las Ewropeaidd i'r traeth a chanlyniad dileu'r gwasanaeth ffôn oddi ar y safle, mae'n debyg, fyddai colli'r statws hwnnw fyddai yn ei dro yn debygol o niweidio ffyniant economaidd yr ardal.

9. Polisïau Perthnasol Eraill

Dim

10. Ymatebion Eraill Di-Faterol a Godwyd

Dim

13.4 Materion Eraill / Other Matters

CYNGOR SIR YNYS MÔN	
CYFARFOD:	PWYLLGOR CYNLLUNIO A GORCHMYNION
DYDDIAD:	7 MEDI 2011
TEITL YR ADRODDIAD:	CAIS I GOFRESTRU GRÎN PENTREF: PORTH Y WRACH, PORTHAETHWY
ADRODDIAD GAN:	ALAN CARR (ar ran y Rheolwr Gwasanaethau Cyfreithiol)
PWRPAS YR ADRODDIAD:	I WNEUD PENDERFYNIAD AR Y CAIS

1. Ar 19 Ionawr 2004 fe dderbyniwyd cais gan Mr. R. F. Evans (yr Ymgeisydd) o Min Dwr, Ffordd y Traeth, Porthaethwy i gofrestru tir ym Mhorth y Wrach, Porthaethwy fel grin pentref neu dref yn unol ag adran 13 Deddf Cofrestru Tir Comin 1965. Mae cynllun o safle'r cais (wedi'i ymylu'n goch) ynghlwm wrth yr adroddiad hwn. Mae'r cyfan o'r tir sydd yn safle i'r cais ym mherchnogaeth y Cyngor hwn.

2. Rhoddwyd rhybudd o'r cais yn unol â'r rheoliadau statudol perthnasol yn Chwefror 2005. Cyflwynwyd gwrthwynebiad i'r cais i'r Awdurdod Cofrestru gan y Cyngor fel perchennog y tir. Oherwydd y gwrthdaro posibl mewn buddiannau yn codi o rolau'r Cyngor fel Awdurdod Cofrestru a pherchennog y tir, fe roddodd Adain Gwasanaethau Eiddo'r Cyngor gyfarwyddiadau i gyfreithwyr annibynnol weithredu dros y Cyngor fel "gwrthwynebydd" ac roedd Adain Gyfreithiol y Cyngor wedyn yn gallu gweithredu ar ran y Cyngor fel Awdurdod Cofrestru

3. Wedi i'r cyfnod rhybuddio statudol ddod i ben (yn unol â'r camau arferol) fe gafodd yr Awdurdod Cofrestru gyngor Bargyfreithiwr i sefydlu a oedd achos wedi'i wneud, ar yr olwg gyntaf, o blaid yr ymgeisydd ac i gael gwybod a fyddai ymchwiliad anstatudol yn briodol er mwyn gallu clywed a phrofi'r holl dystiolaeth o blaid ac yn erbyn y cais. Cyngor y Bargyfreithiwr oedd bod achos prima facie wedi'i wneud ac y byddai ymchwiliad cyhoeddus yn briodol yn yr amgylchiadau.

4. Am wahanol resymau nid aethpwyd ymlaen gyda'r cais ymhellach hyd 2010 pryd y gwnaed trefniadau i gynnal yr ymchwiliad a argymhellwyd. Fe benodwyd Arolygydd annibynnol (Mr. Jeremy Pike, Bargyfreithiwr) i gynnal yr ymchwiliad ac wedi hynny i wneud argymhelliad i'r Awdurdod Cofrestru wedi iddo wrando ac ystyried yr holl dystiolaeth fyddai wedi'i chyflwyno. Cynhaliwyd yr ymchwiliad ar 22-24 Mawrth 2011 ac mae adroddiad Mr. Pike i'w weld ynghlwm.

5. Argymhelliad yr Arolygydd yw y dylid gwrthod y cais. Dygir sylw'r Pwyllgor yn arbennig at gasgliadau Mr. Pike ym mharagraff 67 ei adroddiad lle mae'n delio gyda phob un o'r meini prawf ar gyfer penderfynu ar gais i gofrestru tir fel grîn pentref. Barn Mr. Pike yw bod y dystiolaeth yn methu a bodloni gofynion y meini prawf hynny ar ddwy agwedd bwysig.

6. Yn gyntaf daw i farn feintiol nad oedd digon o dystiolaeth bod trigolion lleol yn defnyddio safle'r cais am gyfnod "llawn" yr 20 mlynedd perthnasol i wneud y defnydd hwnnw yn un "sylweddol". Ym mharagraffau 26, 43 a 44 o'i adroddiad mae Mr. Pike yn mynegi amheuon ynglŷn â gwerth y dystiolaeth a gyflwynwyd ar ffurf holiaduron ac yn egluro ei resymau am yr amheuon hynny. Mae'r adroddiad yn nodi hefyd bod y dystiolaeth lafar o'r defnydd am y cyfnod llawn o 20 mlynedd yn ansylweddol. Cyfeirir y Pwyllgor yn arbennig at baragraff 54 yn adroddiad Mr. Pike ar y pwynt hwn. Fel y mae Mr. Pike yn ei nodi ym mharagraff 53 ei adroddiad mae'r baich o brofi bod y defnydd o'r tir yn "sylweddol" yn gorwedd gyda'r Ymgeisydd ac yn yr achos hwn byddai'n anodd anghytuno gyda Mr. Pike bod yr ymgeisydd wedi methu profi hynny.

7. At hyn mae Mr. Pike yn dod i gasgliad ansoddol yn codi o dystiolaeth y defnyddiwr h.y. bod llawer o'r defnydd hwnnw yn un o fath na fyddai wedi ei gwneud yn amlwg i berchennog tir rhesymol bod hawl i ailgreu yn cael ei mwynhau a'i hawlio oherwydd bod y defnydd a ddisgrifir gan dystion i raddau helaeth yn ymddangos fel pe bai'n ymwneud â gweithgareddau busnes ac addysgol y tystion hynny ac eraill.

8. Er mwyn i gais fod yn un llwyddiannus rhaid iddo, yn ôl y gyfraith fodloni pob un o'r profion y cyfeirir atynt yn adroddiad yr Arolygwr. Yn yr achos hwn mae'r cais yn methu â bodloni'r profion hynny mewn dwy agwedd bwysig fel y nodir hynny ym mharagraffau 6 a 7 uchod.

ARGYMHELLIAD

Oherwydd y rhesymau a nodir ym mharagraff 6 a 7 yr adroddiad hwn ac yn yr Adroddiad gan Mr. Pike, bod y cais i gofrestru Porth y Wrach fel grîn tref neu bentref yn cael ei wrthod.

LAND KNOWN AS PORTH-Y-WRACH

MENAI BRIDGE, ANGLESEY

Application number [2/2004]

REPORT

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to the Isle of Anglesey County Council

in its capacity as registration authority

for the purposes of the Commons Registration Act 1965

Recommendation: that the Application should be REJECTED.

Introduction

1. On 19 January 2004 Mr Robert Francis Evans, of Min Dwr, Beach Road, Menai Bridge ('the Applicant') applied to the Isle of Anglesey County Council ('IACC') under section 13 of the Commons Registration Act 1965 ('the 1965 Act') to register land known as Porth Y Wrach, Menai Bridge, Anglesey (hereafter 'the Application Land' or 'the Land') as a new town or village green. The Land is owned by IACC, and in its capacity as a public authority landowner IACC ('the Objector') objected to the Application.

2. I was instructed by IACC in its capacity as Registration Authority for the purposes of the 1965 Act to hold a non-statutory public inquiry into the Application and any objection to it, and to provide a Report to the Registration Authority with a recommendation as to whether or not the Application Land should be entered in the register of greens and commons.

3. I held a public inquiry at the Memorial Hall, Water Street, Menai Bridge on 22-24 March 2011. The Applicant Mr Evans presented the case in support of the Application. The Objector, IACC, was represented at the public inquiry by Ms Morag Ellis, Queen's Counsel.

4. The 1965 Act provides, in so far as is relevant:

> "13. Regulations under this Act shall provide for the amendment of the registers maintained under this Act where—
>
> ...
>
> (b)any land becomes common land or a town or village green...
>
> …
>
> 22. (1A) ..."town or village green" means land which has been allotted by or under any Act for the exercise or recreation of the inhabitants of any locality or on which the inhabitants of any locality have a customary right to indulge in lawful sports and pastimes or which falls within subsection (1A) of this section.
>
> (1A)Land falls within this subsection if it is land on which for not less than twenty years a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged in lawful sports and pastimes as of right, and either—
>
> (a)continue to do so, or

(b)have ceased to do so for not more than such period as may be prescribed, or determined in accordance with prescribed provisions."

5. It is necessary for the Applicant to demonstrate that 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 Application Land for a period of at least 20 years, and continued to do so at the date of the Application. Each and every one of the relevant requirements of section 15 must be satisfied by the Applicant. If any one of them is not satisfied, the Application must be rejected.

6. This Report summarises the evidence and submissions made by both Applicant and Objectors, and then addresses each of the requirements of the 1965 Act, in order to reach a conclusion as to whether or not the Application Land meets the statutory definition of a green and should or should not be registered.

7. The parties compiled paginated bundles for use at the public inquiry, containing the written evidence and other documentation upon which they wished to rely. The full names and addresses of the witnesses are recorded on their witness statements or evidence questionnaires, within the bundle, unless otherwise indicated in this Report. I have taken into account all of the evidence, both oral and written, adduced by the parties, although I have necessarily given greater weight to the evidence of those witnesses who appeared to give oral evidence at the public inquiry. Where it is necessary in this report to refer to any particular document I give a reference to the relevant page of the relevant bundle (the Applicant's Bundle is referred to as AB/[page number]; the Objector's Bundle is referred to as OB/[page number]).

The Application Land

8. I inspected the Application land on 22 March 2011 in the presence of the Applicant and a representative of the Objector.

9. The Application Land is shown edged in red on the plan accompanying the Application. A more detailed plan is found at AB8. The Land is the area above mean high water mark at Porth-Y-Wrach, a natural cove orientated towards the east, on the southern coast of the Isle of Anglesey, within the area of the town of Menai Bridge. I was told during the public inquiry that the Land was formerly the landing place of ferries which transported traffic across the Menai Straits. The route of the ferries linked the main road on Anglesey from Holyhead, to the main road to London at Bangor on the mainland. Because of the range of the tides, at low tide there is a considerable area of foreshore exposed below the Application Land. The northern and southern portions of the Land are divided by a concrete slipway which ran from Water Street down the foreshore to approximately mean low tide. The southern portion of the Land comprises an area of beach, whilst the northern side comprises mainly a raised concrete plinth on which benches and a small formal public garden are sited. I understand that the works to erect the concrete plinth had taken place in the period since 2004; prior to those works the northern portion of the Land was less tidy in appearance, and as I understand the evidence that area comprised a concrete slab or plinth on which the bases of second world war era Nissen huts, long-since demolished, were visible (see the photograph at AB23, taken by Dr Jones in 1986). The northern portion of the Land is bounded by the wall of the adjacent

property; the western boundary of the Land is Water Street; and the southern portion of the Land lies beneath a low cliff. Above the cliff, to the south, is an area of open space, laid out as a public garden and maintained by IACC.

Matters in dispute, and not in dispute

17. The Application contended that the Application Land had been used by a significant number of inhabitants of a locality or neighbourhood within a locality, for lawful sports and pastimes, as of right, for a 20 year period ending on the date of the Application. The relevant locality, or alternatively neighbourhood within a locality, was said to be Menai Bridge. That locality is shown described by the red line on the plan at AB9, and is accepted by the Objector as a relevant locality known to the law (Ms Ellis' Closing Submissions paragraph 5.4). The relevant 20 year period for the purposes of the Application began in January 1984, and ended in January 2004 when the Application was made.

18. By reference to, in particular, the Objector's Closing Submissions, the main issues in dispute between the parties were as follows:

- whether there was use (for lawful sports and pastimes) by a *significant* number of inhabitants of the locality, for the *whole* of the 20 years;

- whether use of a portion of the Land was not 'as of right' because the public enjoyed an existing right to recreate on it; and

- whether use by local inhabitants was in any event sufficient to bring home to a reasonable landowner that a right to recreate was being enjoyed and claimed.

THE EVIDENCE

21. Below I summarise the evidence of the witnesses who gave oral testimony at the public inquiry. I have not, for obvious reasons, attempted to recount each and every point of the evidence which I heard, but I do recount the principal points, relevant to the main issues in dispute, in the evidence of each witness.

The Applicant's Evidence

- *Robert Francis Evans*

22. Mr Evans, who completed the Application Form at AB3, had been using the Land since the mid 1960s, when he was a teenager. He had dug bait, fished, and played on the Land. In the 1970s he kept a boat moored on the Menai Straits, and he stored a dinghy on the Land itself. There were perhaps half a dozen others who did the same. He was aware of some permanent benches/seating on the Land since he had known it. Generally local people would come to the Land to pass the time, eat their lunch, read newspapers, and so on. In the 1980s as a resident of Menai Bridge he had a boat moored offshore and would come ashore at the Application Land. Mr Evans left the Menai Bridge area in 1985/86, and returned to live as a resident in the town from 1999. Between 2005 and 2006 Mr Evans had been employed as the

piermaster in Menai Bridge by IACC, although that was outside the relevant 20 years for the purposes of the Application. Mr Evans accepted the suggestion by Ms Ellis that he was not shown on the electoral register before 2004, but asserted that he was living in Menai Bridge and paying rates between 2000 and 2004. He did not keep a dinghy on the Land after 1986, but when he had done so the dinghy, which was about 12ft in length, would be pulled up to the low stone wall, to the west of and parallel with the concrete slipway, near the area open to the Beach Road.

23. Mr Evans had often walked past the Land. There were always people on the Land, he thought. Whilst there would be visitors to the area on the Land he thought that the majority of people were locals.

24. Several generations of Mr Evans' family had operated ferry boats between the Application Land and Bangor, until the Menai Bridge was built and the ferry business died away. It was a feature of Mr Evans' evidence, and the case he put to other witnesses, that in the past there had been some sort of slipway or jetty or other structure on the Land, which was also shown as a feature on old Ordnance Survey maps, for the purposes of the ferries. This structure appeared to be visible on old photographs of the Land which I saw. Whilst I accept Mr Evans' evidence that this structure or these structures had been present on the Land in the past, it did not seem to me to have any bearing on the question of whether the Land had been used as a town or village green between 1984 and 2004.

25. The Applicant's bundle comprised a number of evidence questionnaires, but only a handful of people attended the public inquiry to give evidence in support of the Application. When asked by Ms Ellis about these questionnaires Mr Evans explained that he himself was not calling anyone as a witness, and whether people came to give evidence was a matter for them. He was simply putting forward the evidence questionnaires which had been provided to him by local residents. Those questionnaires had been given to people to fill out, if they wished, when Mr Evans met them in the pub, or saw them on the Application Land. There were approximately 100 copies of the questionnaire made and distributed. He was not sure how many had actually been returned. He said that he did possess other completed questionnaires which had not been included in the Applicant's bundle, and offered to show those to the Objector should they wish. That offer was not taken up, as far as I understand it.

26. Mr Evans did not accept that he had given anyone any "assistance" in completing the questionnaires. The standard-form questionnaire included a list of sports and pastimes which people could tick (or delete) to indicate that such activities had or had not taken place on the Land. Mr Evans said that the list was based upon activities he had seen on the Land, but accepted that his own evidence did not refer to all of them. He then modified his evidence to explain that the list comprised activities which people "might" have seen on the Land. Mr Evans agreed that the message given to many of those who took the questionnaires away to complete was that they should "fill in the form, to keep things as they are" on the Land. Mr Evans told me that whilst he could have simply asked people to identify the activities they had taken part in or seen on the Land, "it was quicker and less tedious" to provide a range of activities which the witnesses could then tick or delete as appropriate. He pointed out that some witnesses had referred on their questionnaires to additional activities, and that they had not simply accepted his suggestions. I accept that Mr Evans undertook this process in good faith and that he had not set out to suggest evidence to witnesses which they otherwise would not have given. Nonetheless I have treated the questionnaires with considerable caution, because it was apparent from Mr Evans' evidence, and that of other witnesses that some activities which were given a tick on their questionnaires were not in fact activities which he or other witnesses had themselves participated in, or seen upon, the Land.

27. Of the more recent photographs in the Applicant's Bundle, Mr Evans explained that AB176 was a photograph of a typical "raft run" day (an annual charity event which took place in the

Straits adjacent to Menai Bridge) but he could not be sure if it was taken before or after 2004, being the end of the relevant 20 year period. The photograph at AB177 was likely to have been taken after 2004, because the signs shown in the photograph were not in place before 2004. Concerning the raft race, Mr Evans did not accept that the race had been "permitted" by IACC. He did accept that both inhabitants of the locality, and people from outside the locality, had taken part in the raft race.

Garth Griffiths (AB10)

28. Mr Griffiths, a resident of Menai Bridge, had used the Land for the whole of the relevant period. He had walked his dog and watched birds on the Land, as well as using it for boating purposes. He had also sat and passed the time of day, read his newspaper and had his lunch on the Land. He used the Land daily. He saw other people on the Land using it for similar purposes, especially in the summer. Some of them he recognised as residents of Menai Bridge.

29. Mr Griffiths had been Secretary of the Raft Run organisation. He was involved in the organisation, although not as Secretary, from 2001-2004. He had written to IACC in 2002, 2003 and April 2004 concerning the forthcoming raft race/raft run; he had not received a reply to his letters, although IACC employees such as Mr Mothersole had telephoned him to discuss the details of the event. He did not recall permission having been given to him, in these telephone conversations, for the raft race to use the Application Land, and he did not consider that the event needed permission from IACC. The entry numbers for the raft race would usually be in the order of 40 rafts, each of which were crewed by 7 or 8 people. Some entrants were Menai Bridge residents; others were not. In answer to questions from Ms Ellis, Mr Griffiths said that IACC had been informed of the raft race out of courtesy, and that no more than an informal chat had taken place between himself and Mr Mothersole. He did not consider that he was asking permission for the event to take place, because he didn't think permission was needed; he couldn't say whether IACC would have perceived it as a request for permission.

30. During the relevant 20 year period Mr Griffiths was employed as a Marine engineer. He accepted that he held a mooring licence from IACC, for leisure purposes, and that his pattern of use of the Land had not changed since 1984/85. Sometimes he accessed his mooring spot in the Straits by launching a boat from the Application Land, but it was not the only place he would launch from. He agreed that he had on numerous occasions used the Land for the purposes of his business, launching his customers' boats into the sea. That use was regular and frequent. It could sometimes be a daily use, but at other times it would be less frequent than once a week. It depended upon the season and business demand. He agreed that it would be very difficult for an observer to tell any difference between his use of the Land for leisure boating, and his use for business purposes.

31. Mr Evans had provided Mr Griffiths with a questionnaire to compete, and had told him to "put down what you know". His recollection was that children would play around the seating area. Fishing would take place at the bottom end of the slipway on either side of the slipway; the same was true of birdwatching. Drawing and painting would take place near the seating area, as would picnicking. Dog walking took place all over the Land and below the Land when the tide was out. He had also seen skateboarding, when it was popular with children and teenagers. Mr Griffiths told me that activities such as diving, which took place in the water off the Application Land, would require people to prepare and change into their wetsuits and so forth on the Land. People who kept boats on or near the Land, for leisure purposes, would scrape the hull and paint their boat on the Land.

Robert Wood

32. Mr Wood had lived at Fron Farm, Menai Bridge since 2001. Among other things he was an Instructor with the British Sub-Aqua Club, and organised dives for the Bangor University diving club. He explained that the Application Land was very important to divers in the local area, as a natural sheltered spot which enabled people to dive all year round. The Land was used as a place to launch the dive boat, and people prepared themselves and their equipment on the Land. In 2004, at the end of the relevant period, Mr Wood thought that there might be 30 or so residents of the locality who were members of the diving club, including students who lived within Menai Bridge during university term time. He had never had permission from anyone to use the Land for diving purposes.

33. In answer to questions from Ms Ellis Mr Wood explained that divers would sit on the edge of the Application Land, at high tide mark, whilst preparing to dive, and that some safety practices or drills took place within the Application Land.

Dr Cecil Jones

34. Dr Jones was a resident of Menai Bridge, and had used the Land for the whole of the relevant period. He was a lecturer at Bangor University, indeed he was now a research fellow at the School of Ocean Sciences, and he had studied the marine environment of the Menai Straits since the early 1970s, the importance of which in national terms he described to me. He would not say that his use of the Land to gain access to the sea, in particular as a diver, was "regular". His first evidence questionnaire stated that he walked on the Land and watched birds there at least once a month. His first questionnaire did not indicate that any other activities, save for boat launching and marine study, took place on the Land. In oral evidence he added that he had taken photographs on the Land, and that he had supervised his children playing on the Land. Dr Jones has been involved in the organisation of the raft race, and he showed me various examples of programmes produced for races which had been held between 1985 and 1991.

35. Dr Jones had also prepared on the Application Land for dives in the sea, and he described sorting marine specimens on the slipway, although he confirmed during cross-examination that he did so outside the area of the Application Land. In the 1980s the water quality of the Straits had been very poor, like a sewer, and there was a sign on the Land warning people not to play in the water for that reason. After 1994 the water quality improved, but it was not until 2004 that, for example, mussels began to be cultivated in the water. Dr Jones' evidence included an aerial photograph taken by him in 1984, which showed the northern portion of the land with the concrete slab and old Nissen hut foundations (as I understood them to be). On that area one boat is visible, and there are several boats pulled up on the foreshore below. Only a small area of the southern portion of the Land can be seen on the photograph, and there appears to be at least one, if not two, boats pulled up on the southern area.

36. In response to questions from Ms Ellis, Dr Jones explained that although the sea water could smell very unpleasant when polluted with sewage, people still went into the water to pursue watersports such as sailing and canoeing. He accepted that when he dived from the Land that was as part of his employment as an academic, and that someone observing his diving activity would not be able to tell whether it was for the purpose of work, study or leisure. Birdwatching would take place from the area where there are now benches, as did painting, and he knew of at least one local painter (Mrs Wilson) whom he saw on the Land. He had walked his dog on the Land perhaps once or twice a week; sometimes he would walk past the Land and be aware of what was going on. As far as more general 'community; uses were concerned Dr Jones was aware of the raft race, and the regatta. Dr Jones said that only some of the other people he saw on the Land were known to him as residents of Menai Bridge.

37. Dr Jones said he always assumed that there was a public right of way over the slipway, and part of the reason he supported the village green application was that he didn't want to see charges applied to use of the slipway, a matter which IACC had been contemplating. Concerning his second evidence questionnaire, which suggested that a wider range of activities had taken place on the Land than his first questionnaire, Dr Jones said that he thought it "not improbable" that the wider range of activities had occurred on the Land, although he did not have direct knowledge of them. He said that he "probably witnessed" most of those activities on the Land "on a random basis".

38. I had no reason to doubt Dr Jones as a witness but I did find his evidence slightly confusing. It was not clear how regularly he did visit the Land – visits twice a week, to which he attested, appeared to conflict with his oral statement that his use was not "regular". Neither was it clear which of the activities referred to in his second evidence questionnaire he had actually seen on the Land.

Hugo Breen Turner (AB64)

39. Mr Breen Turner lived at Y Bonc, a house which overlooked the Application Land. He had used the Application Land for more than 20 years, although he had only lived permanently in the locality since 2000 (he had moved away from Menai Bridge in 1982). He said that he had seen from his house, which had a direct view of the Land, all of the activities listed on the questionnaire. His sons and their friends had in recent years ridden BMX bikes and skateboards on the Land. There were sometimes as many as 15 children. He said that despite Dr Jones' evidence as to the state of the water in the 1980s, he had swum in the Straits off the Land. His mother, and another Menai Bridge resident David Chambers, had sketched on the Land. There was a lot of general boating and sailing activity, and his children – who were young teenagers between 2000 and 2004 - and other children had swum there since 2000. When he had lived elsewhere before 2000, he visited his mother and family in Menai Bridge and he had seen various activities taking place on the Land.

Dorothy May Wilson

40. Mrs Wilson lived at 7 New Street, Menai Bridge from 1984 to 2004. Throughout that period she taught at a secondary school in the town. Her two sons were young teenagers in 1984, and they had boats on the Land. She said that the Land was a general meeting place for children and parents, on a daily basis, and that the children swam and played in or next to the water. Her sons now visit her with their children, and take them to the Land to play. She showed me a photograph of a small group of children and adults on the Land, including herself, and she said that the age of one of the children in the photograph meant that it was taken around 1986. Parents would be on the Land to supervise their children playing, and there might be as many as 10 children at any one time. She also described the children fishing and collecting bait and crabs, but those activities had taken place on the foreshore below (outside) the Application Land. As older teenagers and young men her children, before they moved away from home, had continued to keep boats on the Land. Swimming would take place not only in summer but all throughout the year, she said in answer to questions from Ms Ellis.

41. Mrs Wilson said that within the area of the Application Land she had seen children playing games, playing with balls and frisbees, and skimming stones. She sketched and drew on the Land, as would her children on occasions. Her husband was also an artist who had used the Land. She described some of her school students going on to the Land to paint and draw, but confirmed that was part of their education. Mrs Wilson told me that at least three other local artists – Gwyn Hughes, John Hedley and David Chambers – used the Land for that pastime.

42. Mrs Wilson had run a youth sailing and canoeing club – the Menai Bridge Town Youth Sailing and Canoeing Club - which was run as part of the school, but which involved other children who were not school pupils. The club purchased canoes in 1984 and kept them at a property called Min-y-don, on the opposite side of Water Lane from the Land. That property belonged to IACC and the canoes were stored there with the Council's permission. The canoes were launched from the Application Land. The club met at least twice a week.

My impression of the Applicant's evidence

43. As noted above I have felt it necessary to treat the evidence questionnaires with considerable caution. It was apparent from Mr Evans' evidence, and that of other witnesses, that some activities which were given a tick on their questionnaires were not in fact activities which they themselves had participated in or had seen on the Land. Dr Jones' questionnaire, for example, included the standard form paragraph 4 which said that the Land was "extensively used" by a significant number of residents on a regular basis for a "range of sports and pastimes including the following", and then Dr Jones had ticked "boat launching" and "marine study", but nothing else. He had then included a wider range of activities on his second questionnaire but seemed to me to be at the very least rather uncertain as to whether he had witnessed all or any of those activities.

44. I cannot simply assume that, in the case of local residents who did not give oral evidence, the questionnaires, and in particular paragraph 4 of each questionnaire, did in fact represent their recollection of what had occurred on the Land. Much of paragraph 4 has the effect of being highly leading: "extensively used"; "significant number"; "regular basis"; "range of sports and pastimes including...". I have no doubt that people did use the Land for recreation but these evidence questionnaires are unreliable for the purpose of forming a view on whether there was significant user for the whole of the relevant 20 year period, and what use had taken place.

The Objector's Evidence

Michael Barton (OB/20)

45. Mr Barton was employed by IACC as the Head of Service (Property) in the Environment and Technical Services Department. He gave evidence to explain the background of the Land in terms of its requisition by the government for war purposes. He also exhibited certain historic maps and aerial photographs, and various minutes of the Menai Bridge Town Council concerning the requisitioning of the Land, and a later proposal to lease the Land to the Menai Bridge Boat Club. Mr Barton explained that IACC had placed signs on the Land but not until after 2004.

46. In the Town Council minutes was reference to the desire that "the public right of access to the site [including the Application Land] be protected" (OB51 paragraph 78(a)). This was in the context of the proposal that a lease be granted to the Boat Club. Mr Barton explained that recently IACC had contemplated charging the public to use the slipway, but that research undertaken by his colleague Trefor Jones suggested to the Council that the slipway (and possibly the wider Application Land) was subject to a public right of way, which meant that the Council was now to reconsider whether it would seek to introduce such charges.

Trefor Jones (OB129)

47. Mr Jones was employed as a public rights of way officer by IACC. He had carried out impressive research in order to understand whether the public highway from Holyhead to the

area formerly known as Porthaethwy or Borthaethwy, which subsequently became known as Menai Bridge (following construction of the bridge to the mainland) did run up to, and more importantly did include, the foreshore above mean high water mark at Porth-Y-Wrach, (the Application Land). Mr Robert Evans had of course explained in his evidence that his forebears operated a ferry from the Application Land to a landing place at Bangor, on the mainland.

48. It seemed to me that, by reference to the copy of the Inclosure Award map which Mr Trefor Jones had obtained, as well as the Telford and Provis Maps (i.e. the maps created and/or used by the builders of the Menai Bridge), that the public highway did indeed run *to* the Application Land. It was more open to debate whether the public right of way did indeed extend over some or all of the Application Land, but on balance I concluded that Mr Jones' hypothesis, namely that the public highway extended to mean high water on the Application Land, as per the area shaded 'burnt sienna' on the plan shown at OB183, was likely to be correct. Where there had been a main road laid out between the port at Holyhead, which had at one time been the principal sea connection to Ireland, and the ferry landing place at Porth-Y-Wrach, opposite the ferry landing place on the mainland at Bangor which led to the main road to London, it seemed probable, and indeed very likely, that the slipway at Porth-Y-Wrach which lay above mean high water mark would have become a public right of way over time. I did not however see why the *whole* of Porth-Y-Wrach above mean high water mark would necessarily be subject to public rights of way.

My impression of the Objector's evidence

49. I had no reason to doubt the reliability of the evidence given by the witnesses who appeared for the Objector.

FINDINGS

50. Below I set out my findings in respect of the main issues, identified at the outset of the inquiry, which remained in dispute.

Significant user

51. In R v (McAlpine Homes) v Staffordshire County Council [2002] EWHC 76 (Admin) the High Court approached the requirement for "significant" user, in section 22(1A) of the 1965 Act, as follows:

> "...what matters is that the number of people using the land in question has to be sufficient to indicate that their use of the land signifies that it is in general use by the local community for informal recreation, rather than occasional use by individuals as trespassers".

52. On the face of it the oral evidence given by the Applicant's witnesses appeared to give the impression that the Land was in general use by the local community for informal recreation. From the limited number of witnesses who gave oral evidence it seemed to me that there had been use of the Application Land for a variety of activities. Boating, swimming, diving and other watersports did take place in part *on* the Land. People would congregate on the Land, often to supervise their children who used both the Land and the wider foreshore as a place to play. Other people would come to the Land simply to relax, take in the view, walk their dogs, eat their lunch and read newspapers. I do not know precisely why IACC decided to landscape the Land and place benches upon it in the period after 2004 but that action

appeared at least to be designed to facilitate use of the land – or at least the northern part of the Land - as a recreation area, by the public.

53. However it is for the Applicant to demonstrate that, for the whole of the relevant period, there was use by a *significant* number of people i.e. that the Land was in general use by the local community. It is therefore necessary to consider what oral evidence of such use, for which periods of time during the relevant 20 year period, was given to the public inquiry.

54. For present purposes Mr Robert Evans was resident in the locality from 1984-1986, and then from 1999-2004. He was not in a position to tell me about daily or weekly patterns of use on the Land during the 13 year period when he was not a resident of the Town. Mr Garth Griffiths had been a resident for the whole of the relevant period. It appeared to me that his use for leisure purposes, rather than as part of his business, was on average at least weekly, and perhaps more frequently than that. Mr Robert Wood had been a resident of the locality only for the last 3 years of the relevant period, and in any event his evidence concentrated on the use of the Land by the Bangor University sub-aqua club, saying little about use by other people. Dr Cecil Jones himself said he was not a "regular" user of the Land, although he had been resident in the locality for the whole of the relevant period. Mr Hugo Breen Turner, who lived at a property which overlooked the Land, had been a resident of the locality only since 2000. Mrs Wilson was a resident of the locality for the whole of the relevant period but it seemed to me that her most frequent use of the Land – with her children – occurred in the first half of the relevant 20 year period. In summary, therefore, I heard from only 3 witnesses who had lived in the locality for the whole of the relevant period, and only one – Mr Griffiths – who appeared to be a regular and frequent user for the whole of the relevant 20 year period.

55. There were numerous evidence questionnaires included in the Applicant's Bundle, completed by people who did not give oral evidence. For the reasons explained above I think those questionnaires must be treated with considerable caution, especially in respect of matters such as frequency of use.

56. Included in the Objector's evidence is an analysis of the Applicant's written evidence, set out at paragraphs 43-47 of Mr Barton's witness statement. Mr Barton provided the population figures for Menai Bridge taken from the 1981, 1991 and 2001 censuses. Over that period the population of the town remained fairly constant at just below, or just above, 3000 people.

57. In closing submissions (paragraph 2.4) Ms Ellis cited the decision of the House of Lords in Beresford [2003] UKHL 60 [2004] 1 A.C. 889, per Lord Bingham at paragraph 2, who cited the judgment of Pill LJ in R v Suffolk County Council, Ex p Steed (1996) 75 P & CR 102, who held at 111:

> "it is no trivial matter for a landowner to have land, whether in public or private ownership, registered as a town green ..." It is accordingly necessary that all ingredients of this definition should be met before land is registered, and decision-makers must consider carefully whether the land in question has been used by the inhabitants of a locality for indulgence in what are properly to be regarded as lawful sports and pastimes and whether the temporal limit of 20 years' indulgence or more is met."

58. The oral evidence of user throughout the whole of the period has been limited, especially in relation to the period before 1999/2000. I have heard from three people who were resident throughout the 20 years. Mrs Wilson was the only witness who, to my mind, gave detailed evidence of regular use by persons other than herself in the period before 1999/2000. I cannot be satisfied that, in respect of a locality populated by approximately 3000 people, I

have heard sufficient oral evidence to be satisfied that throughout the period 1984-2004 there was user by a significant number of inhabitants of the locality; or to put it another way, that the Application Land was in general use by the community for the whole 20 years. The Applicant's written evidence – questionnaires completed by people who did not appear to give oral evidence – is of very limited use in this regard, and it cannot safely be relied upon to make good a case which is lacking on the basis of the oral evidence alone.

59. I also accept the submission made on behalf of the Objector that, in relation to some uses which were made of/from the Application Land, a reasonable landowner would be unlikely to appreciate that local inhabitants were exercising and claiming a right to recreate on the Land. A considerable amount of the activity on the Land related, it seemed to me, to boating/sailing, and diving. One of the three witnesses who gave oral evidence and who had lived in the locality for the entire 20 year period, Mr Griffiths, ran a marine engineering business and agreed that he regularly launched boats as part of his business; moreover he accepted that it would be difficult for a representative of IACC to distinguish between his business activities and his leisure use of the Land. Dr Jones, another of the three witnesses present at the inquiry who had lived in the locality for the entire 20 years, accepted the same point in respect of his diving, which was mainly for the purposes of his academic work, rather than for recreation. It is therefore necessary to discount, to a degree, the evidence of user relied upon by the Applicant, because much of the boating and diving activity would not have appeared to a reasonable landowner as being recreational user pursuant to a claimed right to use the Land. There is therefore even less evidence to found a conclusion that there was significant user of the Land for the whole of the relevant period.

Existing public right to use part of the Application Land as open space

60. The relevant conveyancing history of the Land is summarised in Mr Barton's evidence. The conclusion drawn by the Objector at paragraph 8.3 of Ms Ellis' closing submissions, namely that part of the southern half of the Land – an area referred to in shorthand as the “blue land” - was conveyed as part of a wider parcel of land into the ownership of IACC subject to a covenant that *that* land should not be used “otherwise than as a public pleasure ground”, seems to me to be correct and was not apparently disputed by the Applicant Mr Evans. The land immediately outside the southern boundary of the Application Land is of course open to the public as a public garden or park.

61. Ms Ellis submitted that, as regards the blue land: “Local authorities being creatures of statute, it [IACC or its predecessor] must have taken the conveyance and entered into the covenant under some statutory power and in pursuance of some statutory function” (paragraph 8.5). Earlier in that paragraph she submitted “It is to be inferred that the Conveyance was entered into under one or other of these powers”. Ms Ellis' Closing Submissions proceeded on that basis, and explained which statutory provisions concerning open space provision - either section 164 of the Public Health Act 1875 or section 9 and 10 of the Open Spaces Act 1906 - would, in the view of IACC, apply to the Land, with the effect that the public had been granted a right to go onto the Blue Land to recreate.

62. It seems to me on the facts of this case that, with respect, one does not get to the point at which section 164 of the Public Health Act 1875 or sections 9 and 10 of the Public Health Act 1906 are engaged. IACC has not been able to produce evidence capable of satisfying the Registration Authority that it took conveyance of the blue land pursuant to any particular statutory power. Where an objector asserts that user of land was not as of right because user was enjoyed under a particular right granted to the public, the burden of proof lies with the objector on that point. Whilst I accept the suggestion that the powers in the 1875 and 1906 Acts appear to be a “good fit”, I have seen no evidence that the land was, as a matter of fact, acquired pursuant to any particular statutory power, let alone a power which would have the effect of granting a right to the public to use the blue land. Accordingly I do not consider IACC has demonstrated that the blue land was subject to a public right of recreation, such that any

user by local inhabitants could not have been 'as of right'. As a matter of fact the blue land comprised only a small portion of the Application Land, in the southern part of the Land. The majority of evidence of use related to the northern area on which the benches and garden are now sited, and the area around the slipway.

Whether a reasonable landowner would be aware that a right to recreate was being exercised and claimed

63. In R(Lewis) v Redcar and Cleveland Borough Council [2010] UKSC 11 [2010] 2 AC 70 Lord Walker, at paragraph 30, held:

> "...if the public (or a section of the public) is to acquire a right by prescription, they must by their conduct bring home to the landowner that a right is being asserted against him, so that the landowner has to choose between warning the trespassers off, or eventually finding that they have established the asserted right against him."

At paragraph 36 Lord Walker said that in the light of the authorities he had:

> "…. no difficulty in accepting that Lord Hoffmann was absolutely right, in Sunningwell [2000] 1 AC 335, to say that the English theory of prescription is concerned with "how the matter would have appeared to the owner of the land" (or if there was an absentee owner, to a reasonable owner who was on the spot)."

At paragraph 67 of his speech in the same case Lord Rodger analysed the structure of section 15(4) of the 2006 Act:

> "..it is, I think, possible to analyse the structure of section 15(4) in this way. The first question to be addressed is the quality of the user during the 20- year period. It must have been by a significant number of the inhabitants. They must have been indulging in lawful sports and pastimes on the land. The word "lawful" indicates that they must not be such as will be likely to cause injury or damage to the owner's property: see *Fitch v Fitch (1797)* 2 Esp 543. And they must have been doing so "as of right": that is to say, openly and in the manner that a person rightfully entitled would have used it. If the user for at least 20 years was of such amount and in such manner as would reasonably be regarded as being the assertion of a public right (see *R (Beresford v Sunderland City Council* [2004] I AC 889, paras 6, 77), the owner will be taken to have acquiesced in it – unless he can claim that one of the three vitiating circumstances applied in his case. If he does, the second question is whether that claim can be made out. Once the second question is out of the way – either because it has not been asked, or because it has been answered against the owner – that is an end of the matter…".

It is therefore necessary for the registration authority to consider whether user of the Land during the relevant 20 years was of such amount and in such manner as would reasonably be regarded as being the assertion of a public right.

64. The nub of the Objector's case in relation to this point was that whole of the Application Land was in fact subject to public rights of way, for the reasons described in the evidence of Mr Trefor Jones. A reasonable landowner, it was said, being aware of that fact, would therefore be likely to attribute much of the use of the Application Land to enjoyment of public rights of way, rather than the enjoyment of and claim to a wider right of recreation.

65. I accept Mr Trevor Jones' conclusion that the area of the concrete slipway was likely to be subject to such public rights, although I am less persuaded that the whole of Porth-Y-Wrach, including the whole of the Application Land, was subject to such rights.

66. This matter must be looked at from the point of view of the reasonable, objective landowner, rather than on the subjective basis of what the actual landowner knew during the relevant 20 year period. What I have difficulty with, however, is the Objector's submission that in seeking to determine what the reasonable landowner would or would not have appreciated, one must ignore entirely what the actual landowner did know. Moreover the submission that there are public rights of way and that the reasonable objective landowner would have known this throughout the relevant period amounts to the submission that the reasonable landowner should be taken to have perfect knowledge of the position in fact and law. I do not, with respect, consider that is the correct approach. The reasonable landowner is just that, it seems to me, and is not necessarily a landowner with perfect knowledge of all relevant factors. Within the relevant period of time IACC did not seem to hold the view that the Land was subject to public rights of way; it had not carried out any research into the matter, apparently having no need to, and indeed was intending to introduce a system of charging for use of the slipway by members of the public, which would obviously conflict with a public right of way over it. Looking at the matter in another way, if any reasonable landowner would consider the position to be diametrically opposite, then the actual landowner, in its state of knowledge and belief, would have to be characterised as unreasonable. I am not persuaded that the position was and is so clear that it was unreasonable for IACC not to have concluded that there were public rights of way. Indeed it would appear that Mr Trefor Jones only arrived at that conclusion, which has not been formally accepted or adopted by IACC, only after considerable and painstaking research. The reasonable landowner would not, in my view, be very far from the position that IACC took during the relevant period i.e. that it did not give the point any consideration, and when it did it consider the matter it formed the view that a system of charging for use of the slipway, being inimical to public rights of way, could and should be introduced.

67. Ms Ellis submitted that if the reasonable landowner in these circumstances was taken to be ignorant as to the public rights of way (assuming they exist over some or all of the Land) that would undermine the status of the highway as a highway. I do not agree. A highway is a highway until such time as it is stopped up or diverted under statutory powers. That is to my mind a different issue to the question of whether a reasonable landowner would know, or strongly suspect (which is the highest that the Objector can in fact put the matter) that the Application Land has always been subject to public rights of way, a surmise which the Objector relies upon to found the proposition that most user of the Land would have been attributable, in the mind of a reasonable landowner, to use consistent with highway use..

68. A further point was raised under this heading, namely that the Objector considered it had granted permission for use of the Land as part of the charity raft race/raft run. I was not persuaded that the Objector had proved, on the balance of probabilities, that permission was granted to the raft race organisers, and that the raft race at least was not as of right. Nor did I consider that the circumstances surrounding the various communications between the raft race organisers and IACC – which the former characterised as 'notifying the Council as a matter of courtesy' and the latter characterised as 'the seeking, and grant, of permission' – were such as to lead to the conclusion that a reasonable landowner would conclude that the raft race use was not asserted to be use 'as of right'. But it did seem to me that, on the Applicant's evidence, the participants of the raft race were drawn from a much wider area

than the locality of Menai Bridge – not least because I was shown a programme for one of the races containing a list of the entrants, many of who were obviously not inhabitants of Menai Bridge itself – and that a reasonable landowner would not consider the raft race to be the exercise of and claim to a right, on the part of local inhabitants, to recreate on the Land. It should be remembered of course that the raft race was held no more than once a year during the relevant 20 year period, and in some years it did not take place. I do not consider that the occurrence of this event would make much difference to the question of whether there was significant use of the Application Land, but it is a factor of some weight in consideration of whether the reasonable landowner would have appreciated that *local inhabitants* were asserting a right to recreate on the Land.

69. I do not agree with the Objector that a reasonable landowner would have attributed most of the 'land-based' use (for want of a better expression) of the Application Land to user pursuant to public rights of way, but I do consider that a substantial amount of the boating and diving use which did take place would not have appeared to a reasonable landowner to be user which was asserting a right, on the part of local inhabitants, to recreate on the Land.

Conclusions

70. In light of the findings I have made above, my conclusions on the various requirements of section 22(1A) of the Commons Registration Act 1965 are as follows:

...a significant number

For the reasons set out above I do not consider the Applicant has demonstrated there was use by a significant number of local inhabitants for the whole of the relevant 20 year period.

...of the inhabitants of any locality [or of any neighbourhood within a locality]

I consider that the Applicant has demonstrated that the area of the town of Menai Bridge is a relevant locality for the purposes of a village green application.

...indulged as of right

I do not consider that, on the basis of the evidence presented by the Objector, user of the Application Land was by right. I was satisfied that user was 'as of right'. I do however conclude that a significant amount of the user which was made of the Land was not of a quality to bring home to a reasonable landowner that local inhabitants were asserting a right to recreate on the Land.

...in lawful sports and pastimes on the land

I find that lawful sports and pastimes were undertaken by local inhabitants during the relevant period. This conclusion is however subject to my conclusion that there was insufficient evidence of significant user throughout the relevant 20 year period.

...for a period of at least 20 years

There was user of the Application Land for the whole of the 20 year period from January 1984 to January 2004, but the evidence was insufficient to demonstrate that it was significant user for the whole of the 20 year period.

...and they continue to do so at the time of the application

I find that user of the Application Land did continue up to the date of the Application, but the evidence does not satisfy me that such user was indulged in by a significant number of local inhabitants.

RECOMMENDATION: for these reasons I recommend that the Application should be rejected.

71. I was grateful for the assistance provided by Mr Evans and Ms Ellis Queen's Counsel during the public inquiry. I also record my gratitude to Mr Alan Carr, solicitor acting on behalf of IACC, for his assistance throughout.

JEREMY PIKE

12th July 2011

Francis Taylor Building,

Temple

RDNANCE SURVEY

:: 1:1250 or 50·688 inches to 1 mile

Surveyed..... December 1965
Levelled.....1953,55