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Ysgrifennydd y Cabinet dros yr Amgylchedd a Materion  
Gwledig  
Cabinet Secretary for Environment and Rural Affairs



Llywodraeth Cymru  
Welsh Government

Ein cyf/Our ref: COM/3162916

J. Whately, M. Wakefield and D. Harrel  
The Trustees of the Somerset Trust and  
Andrew David Milloy  
c/o Edward Harris Solicitor  
Tredegar Fawr  
Llangyfelach  
Swansea  
SA5 7LS

5

June 2017

Dear Sirs

**COMMONS ACT 2006**

**APPLICATION BY THE TRUSTEES OF THE SOMERSET TRUST AND MR DAVID MILLOY UNDER SECTION 16 OF THE COMMONS ACT 2006 IN RESPECT OF COMMON LAND AT CLYNE COMMON, MUMBLES, SWANSEA IN CONNECTION WITH THE BUILDING RE-DEVELOPMENT AT 202 MAYALS ROAD**

1. Following your application reference COM/3162916 made under section 16 of the Commons Act 2006 (the 2006 Act) for the deregistration and exchange of common land at Clyne Common (CL15), Mumbles, Swansea, I have received the report by the Inspector, Martin Elliott BSc FIPROW from the Planning Inspectorate (PINs).

**Summary of decision**

2. The formal decision is detailed at paragraph 21 below. The application is approved.

**Procedural Matters**

3. Welsh Ministers have appointed PINs to undertake the processing of section 16 applications on their behalf, including the making of recommendations to Welsh Ministers on whether or not an application should be approved.
4. In considering an application to exchange land it is necessary for the proposals to be advertised to allow those with private interests and third party rights the opportunity to make representations on the application. The Inspector's report notes that the application was advertised in the Western Mail on 8 November 2016 and that notices

were posted at the site and sent to relevant parties. A pre-application consultation was also conducted.

5. No objections to the application were received as a result of the published notice or pre-application consultation. PINs considered it appropriate to deal with the application on the basis of written representations.
6. In his report, the Inspector notes that regulation 7(2)(j) of the Deregistration and Exchange of Common Land and Greens (Procedure) (Wales) Regulations 2012 (the 2012 Regulations) requires that the notice of the application must contain an address from which copies of the application form and accompanying documents may be requested from the applicant, and that this requirement was not complied with. In the Inspector's view, whilst acknowledging that the notice was not in strict compliance with the 2012 Regulations, there was no evidence of any prejudice and consequently, and as permitted under regulation 9(c) of the 2012 Regulations, the non-compliance was waived. The 2012 Regulations require various information to be provided within the notice. I note that the notice provided the name and address of the person making the application. It also set out the place at which a copy of the application form and plans could be inspected, it provided both a postal and email address for PINs, and contained the name and address and contact number of the solicitor making the application. Further, it is understood that one of the commoners, in response to the notice, contacted the applicant seeking a copy of the plans. Given the numerous contact details provided in the notice, and the instance of a commoner procuring copies of documents from such contact details, I am of the view that the Inspector's conclusion that there was no evidence of any prejudice, and decision to waive the non-compliance (as permitted under the 2012 Regulations), was a reasonable one.

### Considerations

7. The Welsh Government has issued guidance on 'Common Land Consents'. Welsh Ministers seek to adhere to the guidance in processing and determining applications. I note that every application must be considered on its own merits and a determination may, in exceptional circumstances, depart from the guidance if it appears appropriate to do so.
8. Section 16(1) of the 2006 Act provides that the owner of any land registered as common land may apply for the land (release land) to cease to be so registered. If the area of release land is greater than 200m<sup>2</sup> a proposal must be made to replace it with other land to be registered as common land (replacement land). Whilst the 2006 Act does not require replacement land to be provided where the release land is less than 200m<sup>2</sup>, section 16(4) provides that the application *may* include a proposal. The Welsh Government's guidance sets out that 'even in cases where the land to be deregistered is less than 200m<sup>2</sup> the Welsh Government expects land to be offered in exchange for the land being deregistered as our policy is not to allow our stock of common land and greens to diminish'. The applicant has offered 15.24m<sup>2</sup> of replacement land in exchange for the suggested release land of 14.87m<sup>2</sup>. This approach accords with the position taken in the guidance.
9. In determining this application, regard is to be had to:
  - i) the interests of persons having rights in relation to, or occupying, the release land (and in particular persons exercising rights of common over it);
  - ii) the interests of the neighbourhood;
  - iii) the public interest;

- iv) any other matter considered to be relevant.
10. Section 16(8) of the 2006 Act sets out that 'public interest' includes the public interest in nature conservation, the conservation of the landscape, the protection of public rights of access to any area of land, and the protection of archaeological remains and features of historic interest.
11. Welsh Government's aim is to protect common land as part of its strategic objectives in relation to biodiversity and for the sustainable use of natural resources to improve the benefits to local communities, the economy and the environment. The 2006 Act provides for the safeguarding of commons for current and future generations, helping the Welsh Government to ensure that the stock of common land is not diminished.

### **Inspector's Report**

12. Consideration has been given to the Inspector's report. The Inspector's conclusion is set out at paragraph 20 of his report, a copy of which is enclosed. The Inspector, at paragraph 22 of the report, recommends that 'the application to deregister and exchange common land at Clyne Common in the Community of Mumbles, Register Unit CL15, is granted in accordance with the terms of the application dated 4 November 2016 and the plan submitted therewith and that an order pursuant to Section 17 of the 2006 Act shall be sent to the City and County of Swansea and the applicant'.
13. The Inspector in making his recommendation considered a range of issues; including statutory requirements, policy guidance issued by the Welsh Government and the representation received as a result of the published notice of the application.

### **Conclusions reached by the Inspector**

14. Mr Andrew Milloy is the owner of the absolute freehold estate of the land known as 202 Mayals Road. Mr Milloy has received planning permission to redevelop the land by demolishing the existing house and constructing an estate road with five new private residences. Access to the proposed development will be directly off the north side of Mayals Road (B4436), a highway maintainable at public expense. The major part of the access road into the development will be over the public highway. However, a small part of the proposed access is contained in an area of land registered as part of Clyne Common (CL15) owned by the Trustees of the Somerset Trust. If the exchange is granted, although the land will cease to be common land, it will, once the development at 202 Mayals Road has been completed, form part of the public highway. The deregistration and exchange will enable Mr Milloy to carry out the development in accordance with the granted planning permission.
15. In considering the application the Inspector applies the statutory tests under section 16(6) of the 2006 Act, and I consider these below.
16. Section 16(6)(a) requires me to have regard to the interests of persons having rights in relation to, or occupying, the release land (and in particular persons exercising rights of common over it). The Inspector concludes there is nothing to indicate any interest of persons occupying the release land or with rights over it, will be adversely affected by the deregistration and exchange of the land in question. The Gower Commoners Association has not raised any objection to the application. I agree that the application will result in a benefit to graziers as the replacement land offered will be available to graziers whereas the release land was fenced off from grazing. Whilst this represents a small increase in land available for grazing, it is nevertheless a net

benefit. I am satisfied that the land proposed as replacement land is of equal benefit, and that there will be a positive impact on the commoners and members of the public due to the small increase in land being made available within the stock proof fence.

17. When considering the interests of the neighbourhood (section 16(6)(b)) the Inspector concludes that nothing suggests that the proposals could have any negative effect upon the neighbourhood. No evidence has been presented to suggest that the proposals would negatively affect the way in which those in the neighbourhood use the common. This is also the conclusion he reaches when addressing the public interest considerations, as required under section 16(6)(c) of the 2006 Act. Having reviewed the Inspector's considerations, and considered the statutory requirements and the representations received, I agree with this assessment.
18. When considering 'any other matter considered to be relevant', as required under section 16(6)(d) of the 2006 Act, the Inspector states the application does not result in any loss of common land; the exchange will, in fact, result in a small increase in the area of common land. The Inspector is of the view the application will not have any adverse effect on those who have rights over the common, the interests of the neighbourhood or the public. He states that both the applicant and Andrew Milloy (owner of the replacement land) are content the proposed exchange is just and reasonable to their individual interests. The inspector believes, from his assessment of the submissions and from his observations on site, he considers the proposal just and reasonable.
19. The Inspector recommends that the application to deregister and exchange common land at Clyne Common (CL15) is granted in accordance with the terms of the application dated 4 November 2016 and the plans submitted therewith and that an order pursuant to Section 17 of the 2006 Act should be sent to the City and County of Swansea and the Applicant.
20. I have considered the report and the issues that have been considered by the Inspector and agree with the Inspector's conclusion that the application should be granted and an Order of Exchange should be made. I believe that the considerations that form section 16(6) of the 2006 Act support this conclusion. In particular, I agree with the Inspector that the section 16 application will create a small benefit for graziers as the land offered is connected to the common, is slightly larger than the release land and, whilst the release land is not currently grazed as it falls outside the stock grazing fences, the replacement land will be available for grazing.

### **Formal Decision**

21. I have considered the Inspector's report and noted the case for the applicant, the representations and the Inspector's conclusions. In conclusion, for the reasons given above, and in exercise of my authority as Cabinet Secretary for Environment and Rural Affairs, one of the Welsh Ministers, I hereby grant the application (COM/3162916) to deregister and exchange common land at Clyne Common, Mumbles, Swansea, Register Unit CL15, in accordance with the terms of the application [Ref: COM/3162916] dated 4 November 2016 and the plan submitted therewith, and that an order pursuant to section 17 of the 2006 Act shall be made.
22. I enclose a copy of the Inspector's report and a copy of the Order made under Section 17(1) and 17(2) of the 2006 Act, which has today been sent to the City and County of Swansea.

23. The Welsh Ministers' decision on this application will be published as required by regulation 19 of the Deregistration and Exchange of Common Land and Greens (Procedure) (Wales) Regulations 2012.

24. This letter does not convey any approval or consent which may be required under any enactment, by-law, order, regulation or private agreement other than sections 16 & 17 of the 2006 Act.

25. A copy of this letter has been sent to the City and County of Swansea for information.

*Yours faithfully*  
*Lesley Griffiths*

**Lesley Griffiths AC / AM**

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Cabinet Secretary for Environment and Rural Affairs

