



Ein cyf/Our ref: COM3197870

Mr J Evans
Acting Principal Land Agent
Natural Resources Wales
Powells Place
Powells Lane
Welshpool
Powys

8

January 2019

Dear Mr Evans

COMMONS ACT 2006 - APPLICATION BY NATURAL RESOURCES WALES, MACHYNLLETH GOLF CLUB AND POWYS COUNTY COUNCIL, UNDER SECTION 16 OF THE COMMONS ACT 2006 IN RESPECT OF COMMON LAND AT PARC COMMON, MACHYNLLETH, POWYS.

1. Following your application reference COM/3197870 made under section 16 of the Commons Act 2006 (the 2006 Act) for the deregistration and exchange of common land at Parc Common (MCL032), Machynlleth, Powys, I have received the report by the Inspector, Vicky Hirst Ba (Hons) PG Dip TP MA MRTPI, from the Planning Inspectorate (PINs).

Summary of decision

2. The formal decision is detailed at paragraph 23 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 the application was advertised in the County Times on 16 March 2018, the Cambrian News on 15 March and that notices were posted at the site and sent to relevant parties.

5. Four representations were received as a result of the published notice of the application. PINs considered it appropriate that the application should be dealt with by the written representation procedure. This included the taking of written evidence followed by a site visit by the appointed inspector

Considerations

6. 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 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.
7. 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 200m² a proposal must be made to replace it with other land to be registered as common land (replacement land).
8. 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.
9. 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.
10. 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 the stock of common land is not diminished.

Inspector's Report

11. Consideration has been given to the Inspector's report. The Inspector's conclusions are set out at paragraphs 56-61 of her report, a copy of which is enclosed. The Inspector, at paragraph 61 of the report, recommends *'that the application to deregister and exchange common land at Parc Common, Machynlleth, Powys is granted in accordance with the terms of the application dated 28 February 2018 and the plans submitted therewith and amended on 11 September 2018 and that an Order pursuant to Section 17 of the 2006 Act be made.'*
12. The Inspector in making her recommendation considered a range of issues; including statutory requirements, policy guidance issued by the Welsh Government and the representations received as a result of the published notice of the application.

Conclusions reached by the Inspector

13. The application is made to enable the provision of a gypsy and traveller site on the release land. Planning permission has been granted for such a site and to include the erection of 3 buildings, improvements to existing vehicular access, formation of a footway link and internal roadway, installation of a sewage treatment plant and all associated works.
14. In considering the application the Inspector applies the statutory tests under section 16(6) of the 2006 Act, and I consider these below.
15. 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 that grazing rights are not currently exercised on the release land. The registered graziers were consulted and no representations were received. The land in question is not connected, nor is it contiguous to the wider common. Livestock are not able to use the release land as this would be a potential hazard to users of the highway and to the livestock.
16. The inspector notes that the replacement land is currently unsuitable for grazing due to the thick undergrowth and wooded nature of the land. However, the proposed scrub clearance and removal of fencing would substantially increase the likelihood of the land being grazed and would provide more potential for exercising commoners' rights than the release land.
17. The Inspector therefore concludes that the proposal would provide some benefits to the graziers and would not unacceptably interfere with the interests of those having rights over the land or exercising their rights of common over it.
18. When considering the interests of the neighbourhood (section 16(6)(b)) the Inspector concludes that there would be a minor negative impact on the interests of the neighbourhood arising from the removal of the Release Land from the common. This is due to the replacement land being some distance from the main town and accessed via an unsurfaced track, thus being inaccessible for those with physical impairments. This has been balanced as part of the Inspector's overall consideration of the application. When addressing the public interest considerations, as required under section 16(6)(c) of the 2006 Act, her overall conclusion is *'that in relation to matters of public interest, there would be some harm arising from the proposals in relation to public rights of access'* This is due to the removal of the public's right of access onto the release land. While the replacement land is accessible by the public through the provisions of the CROW Act as open access land, the undergrowth presently on the land makes it very difficult to traverse, being impenetrable in places. The proposal to clear scrub and to remove fencing would result in the land becoming much more accessible and there would be associated benefits to the public resulting from its inclusion as common land.
19. The Inspector was satisfied the proposal for an exchange of common land would not result in harm to the public interests in nature conservation terms, noting that on balance, she found that the replacement land offers land of at least equal benefit. The Inspector concluded there would be no harm to the public interest in landscape terms. The Inspector was also satisfied that no archaeological remains or features of historic interest would not be affected by the proposals
20. When considering 'any other matter considered to be relevant', as required under section 16(6)(d) of the 2006 Act, the Inspector notes: Local authorities are required by national planning policy to assess the accommodation needs of the gypsy and traveller

community and have policies in place under their development plans for the provision of gypsy sites. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires local planning authorities to determine applications for planning permission in accordance with their development plans unless material considerations indicate otherwise. The Inspector notes the Council has granted planning permission for the use of the release land as a gypsy and traveller site against this legislative and policy context, she was provided with no evidence the site was not required to meet an identified need or that more suitable sites were available. The Inspector also notes that no other relevant matters have been raised

21. The Inspector recommends the application to deregister and exchange common land at Parc Common (MCL032) is granted in accordance with the terms of the application dated 28 February 2018 and the plans submitted therewith and an order pursuant to Section 17 of the 2006 Act be made.
22. I have considered the report, the representations made and the issues have been considered by the Inspector. I agree with the Inspector's conclusion the application should be granted and an Order of Exchange should be made. I believe the considerations that form section 16(6) of the 2006 Act support this conclusion.

Formal Decision

23. 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 Energy, Planning and Rural Affairs, one of the Welsh Ministers, I hereby grant the application (COM/3197870) to deregister and exchange common land at Parc Common, Machynlleth, Powys, Register Unit MCL032, in accordance with the terms of the application [Ref: COM/3197870] dated 28 February 2018 and the plan submitted therewith, and an order pursuant to section 17 of the 2006 Act shall be made.
24. 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 Powys County Council.
25. 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.
26. 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.
27. A copy of this letter has also been sent to Mrs Claire Goodman-Jones at Birchill Access Consultancy and Mr P Harris, Machynlleth Golf Club.

Yours sincerely
Lesley Griffiths

Lesley Griffiths AC / AM
Gweinidog yr Amgylchedd, Ynni a Materion Gwledig
Minister for Environment, Energy and Rural Affairs