



Adroddiad

Ymweliad â safle a wnaed ar 02/02/21

gan J Burston BSc MA MRTPI

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 11.03.2021

Report

Site visit made on 02/02/21

by J Burston BSc MA MRTPI AIPROW

an Inspector appointed by the Welsh Ministers

Date: 11.03.2021

COMMONS ACT 2006

APPLICATION TO DEREGISTER AND EXCHANGE PART OF THE CASTLEBYTHE COMMON,
PUNCHESTON, PEMBROKESHIRE (CL/191)

File Ref: COM/3259082

Site address: Castlebythe Common, Puncteston, Pembrokeshire

Register Unit: CL/191

Registration Authority: Pembrokeshire County Council

- The application, dated 8 September 2020, is made under Section 16 of the Commons Act 2006 to deregister and exchange land registered as common land.
- The application is made by D J Howells (as landowner).
- The Release Land comprises 2220sqm of land, situated to the west of Castlebythe Farm, Puncteston, Haverfordwest SA62 5DN.
- The application is made to enable farm expansion, including cattle housing.

Summary of Recommendation: That the application be granted.

Procedural Matters

1. Section 16 of the Commons Act 2006 (the 2006 Act) provides, amongst other things, that the owner of any land registered as common land may apply for the land (the Release Land) to cease to be so registered. If the area of the Release Land is greater than 200sqm a proposal must be made to replace it with other land to be registered as common land (the Replacement Land).
2. The application, the subject of this report, is made under Section 16 of the 2006 Act and was advertised in the 'Pembrokeshire Herald' on 11 September 2020. Notices were posted at the main entries to the lands and sent to various consultees. Relevant documentation was deposited at Letterston Filling Station, 18 Haverfordwest Road, Letterston SA62 5UA. Copies were also sent to all registered commoners and other relevant parties.
3. An amended application map was provided to reflect the correct position of the common land boundary. I do not consider that anyone's interests have been prejudiced by this amendment as the intention of the application is clear.
4. I carried out an unaccompanied inspection of the Release Land and the Replacement Land on 02 February 2021.

The Site and Surroundings

5. The overall common land unit (CL/191) amounts to some 1.1 ha, owned by the applicant. The common comprises predominantly of rough grassland, scrub and tree copse. The common is subject to rights for the grazing of sheep and cattle. These rights are distributed between 4 Commoners. CL/191 adjoins, along its western boundary, common land unit CL060 where similar rights are exercised between the same 4 commoners.

The Release Land

6. The Release Land comprises 2220sqm of the overall common and is situated within the Pembrokeshire Coast National Park. It is located to the east of the main group of buildings associated with Castlebythe Farm and abuts the public highway but is not easily accessed from it. It comprises an area of rough marshy grassland, bordered by mature hedgerows, dense scrub and trees and is not crossed by any public rights of way. At the time of my visit some of the area was also being used for the storage of rubble and soil.

The Replacement Land

7. In exchange the applicant offers 4526sqm of land, to the west of the release land. This abuts a parcel of common land known as CL060. The replacement land consists of rough grassland, scrub and tree copse, and managed as 'set aside'. It is intended to insert 3 new 3 metre openings in the southern boundary of the land to give access from CL060. A public footpath (PP/10/4/1), runs along the western boundary of the replacement land.

The Proposal

8. The deregistration is proposed to enable the applicant to expand the farm and provide cattle housing. Alternative sites had been investigated. However, the planning authority¹ advised that the release land would be the most appropriate location for the cattle sheds in planning terms.

The Statutory Requirements and Guidance

9. Section 16(6) of the 2006 Act requires that in determining this application regard should be had to the following:
 - a) the interests of persons having rights in relation to, or occupying, the Release Land;
 - b) the interests of the neighbourhood;
 - c) the public interest²;
 - d) any other matter considered to be relevant.
10. The Welsh Government's Common Land Consents Guidance, August 2014 (the Guidance) provides advice in relation to the determination of casework in relation to common land in Wales and, amongst other things, seeks to ensure that the stock of common land is not diminished, and that any deregistration of registered land is balanced by the registration of other land of at least equal benefit³. I have taken it into account in making my recommendations.

Representations

11. One objection was received from Pembrokeshire County Council, in its capacity as the Commons Registration Authority (CRA). In essence the CRA objected because the replacement land is not as beneficial to graziers or the public as the release land. In reaching my conclusions I have considered all the issues raised in this representation.

¹ Pembrokeshire Coast National Park Authority

² Section 16 (8) of the 2006 Act provides that the 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.

³ Paragraph 3.4, Welsh Government Common Land Consents Guidance, August 2014.

Assessment

The interests of persons having rights in relation to or occupying the Release Land.

12. The overall Common is subject to rights as set out above. There have been no objections submitted from any of the graziers and no adverse effects of the proposed exchange have been highlighted by them.
13. As a simple mathematical calculation, the extent of suitable vegetation for grazing currently available on the replacement land is likely to exceed that within the release land and therefore there would be no impact on stocking levels. However, there are also other matters to consider.
14. The replacement land has not been grazed for many years and given the processes of natural regeneration, it is similar in character to the wider parcel of common land. The Release Land, being close to the farmstead has, as a consequence, been more intensively grazed. Accordingly, I accept that the replacement land may offer poorer grazing opportunities than the release land. Nevertheless, given the relatively small area of release land, the individual commoners would still have sufficient common land available to maintain a living and sustain a grazing system.
15. Access to the release land from the highway is somewhat difficult given the boundary vegetation and dense scrub. However, the applicant proposes to create a 5-metre-wide access from the highway which will provide a suitable access to both CL191 and CL060. This would be a benefit to the commoners⁴.
16. The replacement land does not border a highway and therefore does not offer the opportunity or convenience for direct access from it. Even so, the boundary separating the replacement land from CL060 would include 3 large gaps giving direct access to wider common and as such would not be isolated from it. The public footpath also provides access to the site from the highway if stock needed to be checked.
17. Finally, where it is proposed to offer land in exchange which is not contiguous with the common in which the release land is situated, the movement of animals over different commons could affect the rights and usage of those with existing rights on different commons. However, in this case the same commoners use both CL191 and CL060 which would reduce any risks from overgrazing and any diseases spreading to/from the other land and/or from one flock or herd to another.
18. In conclusion, whilst the proposed replacement land would be of poorer quality than the release land this would not have a noticeable effect in terms of the overall availability of common land capable of being grazed and thus would not unacceptably interfere with the interests of those having rights over the land or exercising their rights of common over it.

The interests of the neighbourhood

19. The 2006 Act does not define the term 'neighbourhood'. In a rural situation such as this, the hamlet of Castlebythe and the nearby community of Puncheston would be the most appropriate area to consider with Puncheston Community Council being best placed to represent people living in this particular neighbourhood. The Guidance asks

⁴ The same Commoners have rights over both CL191 and CL060.

"Does the proposed replacement land or outcome intended by the proposed works add something that will positively benefit the neighbourhood?"

20. A consideration in relation to the neighbourhood is the ability of local people to use the common now and in the future in the way they are used to. No objections have been received from local residents at the loss of the availability of the release land.
21. There is no convenient parking area close to the wider areas of common which is generally covered with scrub and woodland with few paths and is difficult to access. Nevertheless, it was evident at my site visit that the roadside verge close to the release land offers some potential for parking. Thus, it is a positive benefit of the application that a more formalised access, directly from the highway where parking is available, will be provided. Furthermore, the area of replacement land would also be accessible via a right of way and will provide a 'gateway' to the wider parcel of CL060.
22. The CRA states that the area of replacement land appears to be impassable. However, I observed a number of 'sheep paths' that crossed the area and it seemed to represent the character of the wider common. Thus, the terrain would not be unfamiliar to local people. I consider that the replacement land will be equally advantageous in terms of access as the release land and that the exchange would not prevent local people from using the common as they do now.
23. In their present condition, it is my view that neither the release land nor the replacement land offers any significant benefit to inhabitants of the neighbourhood. However, the dedicated 5-metre-wide access route would provide some benefit in terms of accessibility.

The public interest

Nature Conservation

24. The release land is not located in or near any statutorily designated sites for their nature conservation interest. I noted on my site visit that the land is not dissimilar to the surrounding common, being rough grassland. Nonetheless, in the absence of any detailed ecological assessment in relation to the application before me, I am unable to reach a definitive view of the potential value of the release land in nature conservation terms. However, I consider that the replacement land would offer land of at least equal or greater benefit in nature conservation terms and as such I conclude that there would not be an impact on the public interest in these terms.

Conservation of the Landscape

25. The release land is located within the National Park, albeit on the boundary. As such this parcel of land and the broader common play an important role in the transition between National Park and the wider Pembrokeshire landscape.
26. The National Parks and Access to the Countryside Act 1949 ('the 1949 Act') enabled the creation of the National Parks. The 1949 Act defines the National Park purposes as being to conserve and enhance natural beauty, wildlife and cultural heritage and to promote opportunities for the understanding and enjoyment of the special qualities of the National Parks by the public.
27. The release land is currently one of relatively few areas of rough grassland area within the common, the remainder of which is relatively overgrown through natural regeneration. As such it has little impact on the wider landscape but does offer some variety within the common which might be regarded as valuable. However, this value

is to some extent reduced by the land's proximity to dwellings and agricultural buildings. The replacement land is located on the edge of the common and given this location away from the settlement of Castlebythe, offers extensive views.

28. Overall, there would be no conflict with the purposes of which National Parks are established and the proposed exchange could result in increased opportunity for the public enjoyment of satisfying views over adjoining countryside.

Protection of public rights of access

29. It appears that the areas of Common land are currently little used by the public. It is some distance from most dwellings in the area and there is no convenient public parking area that would facilitate access.
30. The public have rights of access to the release land, although access to it from the highway is limited by the dense scrub boundary. The release land, although seemingly mainly free of the overgrowth, is only a small part of this open, grazed parcel of land, the majority of which is privately owned by the applicant for grazing of livestock. Therefore, access to it could be curtailed. The proposal would remove the public's right of access onto the small area of land and whilst this would be mitigated by the replacement land and the creation of an access to CL060 from the highway, there would be limited short term harm during construction of this access.
31. The replacement land is currently in private ownership. A public footpath runs to its boundary but does not continue through it. The replacement land would facilitate greater access to the wider common and the creation of 3 'gateways' into the replacement land from the adjacent common would improve accessibility and linkages to the rights of way network.
32. I accept the CRA's comments that there is lack of sign positing and management of the Rights of Way network hereabouts. Nevertheless, obstructing a public right of way is a criminal offence and the highway authority has the right to demand that any obstructions are removed. The Highway Authority can also install official signposting and ensure that paths are suitably managed. The applicant also states that he would be willing to work with the relevant authority to provide necessary signage and infrastructure on PP/10/4/1 to further improve accessibility.
33. Overall, the proposed deregistration and exchange will not diminish public access to common land and will potentially enhance opportunities for access to a larger more attractive area in the medium to long term.

Protection of archaeological remains and features of historic interest

34. There is no evidence that the proposal would harm Scheduled Ancient Monuments or historic assets and no objection has been received from Cadw. Therefore, I am satisfied that any archaeological remains or features of historic interest would not be affected by the proposals.

Public Interest Conclusion

35. Overall, the proposed deregistration and exchange will have little adverse effect on the public interest and potentially could bring some benefit in the medium to long term.

Other Relevant Matters

36. The 2006 Act, along with a suite of earlier legislation on common land, enables the Welsh Government to safeguard commons for current and future generations to use and enjoy. To achieve this, it is paramount that the stock of common land is not diminished, and any deregistration of registered land is balanced by the registration of other land of at least equal benefit.
37. In this case there would be no reduction in the overall area of common land as a result of the exchange; in fact, there would be an increase. I also acknowledge that the improvements as set out by the landowner would benefit the rural economy and maintain local infrastructure and expertise capable of long term sustainable agricultural management.
38. I acknowledge the CRA's comments regarding the management of the Common, given the lack of grazing and that land is reverting to scrub. Whilst such matters are beyond the scope of this report it maybe the case that the CRA can assist the Commoners and Landowners in this area to establish a Commons Council or Commons Association to manage the area.

Overall Balance and Conclusion

39. I have concluded that whilst the proposal would offer slightly poorer grazing this would not unacceptably interfere with the interests of those having rights over the land or exercising their rights of common over it. I have also found that the proposal would not result in harm to the neighbourhood. However, as a result of construction operations there would be limited short term harm to public interests.
40. On the other hand, I find the benefits of the scheme in terms of improvements to public access to the Common in the medium to long term and support for sustainable rural communities, to outweigh the identified harm.
41. In concluding on the balance, the proposal would be in conformity with the Welsh Government's policy objectives and Guidance in relation to the deregistration and exchange of common land, in that the stock of common land would not be diminished.
42. I have had regard to all other matters raised but find none that would lead me to a different conclusion. I conclude that the application should be allowed and that a Deregistration and Exchange Order should be made.
43. In making my recommendations I have taken into account the requirements of sections 3 and 5 of the Well Being of Future Generations (Wales) Act 2015 (WCFG Act). I consider that my recommendations are in accordance with the Act's sustainable development principle through their contribution towards one or more of the Welsh Ministers' well-being objectives as required by Section 8 of the WCFG Act.

Recommendation

44. I recommend that the application to deregister and exchange common land at CL191 is granted in accordance with the terms of the application dated 8 September 2020 and the plans submitted therewith and that an Order pursuant to Section 17 of the 2006 Act be made.

J Burston

INSPECTOR