



The Planning Inspectorate
Yr Arolygiaeth Gynllunio

Adroddiad

Ymweliad â safle a wnaed ar 29/3/21

gan Vicki Hirst BA (Hons) PG Dip TP
MA MRTPI

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 14.05.2021

Report

Site visit made on 29/3/21

by Vicki Hirst BA (Hons) PG Dip TP MA
MRTPI

an Inspector appointed by the Welsh Ministers

Date: 14.05.2021

COMMONS ACT 2006

APPLICATION TO DEREGISTER PART OF THE PATCH, (CL128) AND PROVIDE REPLACEMENT
LAND

Cyf ffeil/File ref: COM/3263690

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Site Address: The Patch, Ystradgynlais, Powys

Register Unit: CL128

Registration Authority: Powys County Council

- The application, dated 8 December 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 Mr Christopher Mark Evans and Mrs Ann Elizabeth Joyce Evans.
- The Release Land comprises 970m² of land and forms a parcel of land to the south west of and adjoining Bryn Y Groes Farm.
- The Replacement Land comprises 970m² of land located to the south west of Bryn Y Groes Farm.
- The application is made to enable the residential development of land at Bryn Y Groes Farm.

Recommendation: That the application be granted and a Deregistration and Exchange Order be made.

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 200m² 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 Brecon and Radnor Express on 18 November 2020. Notices were posted at the main entry points to the lands and sent to various consultees. Relevant documentation was deposited at Bryn Y Groes Farm, Ystradgynlais, Swansea, SA9 1LF and a copy of the application could be obtained by writing to the applicant's solicitor. Copies were also sent to all registered commoners and other relevant parties¹.
3. Both the Release and Replacement lands are crossed by a public footpath. Where any land is crossed by a publicly maintainable right of way the relevant Highways Authority should be a joint signatory to the application as a landowner for the purposes of section 61(3) of the 2006 Act. Powys County Council (as the relevant Highways Authority) subsequently became a signatory to the application². In doing so it stated that this did not imply any support or opposition for the merits of the application. I find no injustice to any party results from the Council becoming a signatory and I have made my recommendations on the basis that the Council as Highways Authority is a party to the application.

¹ Letter from Morgan L^ARoche solicitors dated 18 November 2020

² Letter from Powys County Council dated 27 January 2021

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4. I undertook an unaccompanied site visit on 29 March 2021 to both the Release and Replacement Lands.

The Site and Surroundings

5. The common that this report relates to is known as The Patch and overall comprises some 1.52 hectares of land. The common is not subject to any rights. There are public rights of access to the Release Land for air and exercise under section 193 of the Law of Property Act 1925. It is not subject to an Order of Limitation or scheme of management.
6. The applicants are the owners of both the Release and Replacement Lands.
7. The Release Land comprises 970m² of the overall common and is located to the south west of Bryn Y Groes Farm. The land includes the roadway entrance to three residential houses, an area laid to parking for articulated lorries and a small area of woodland.
8. The Replacement Land covers some 970m² and comprises woodland and grassland. It is contiguous with the wider common to the north and connects to an existing recreational site, Coronation Park to the south.

The Proposal

9. The deregistration is proposed to enable the residential development of a larger site comprising some 4.20 hectares of land including 117 dwellings and associated works. Outline planning permission has been granted and a full application for planning permission has been sought for the development³.
10. At the time of my site visit the Replacement Land was crossed with a track and was fenced with stock proof fencing along its boundary with Coronation Park. Access was available between the two parcels of land via a gate.

The Statutory Requirements and Guidance

11. 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 interest⁴;
 - d) any other matter considered to be relevant.
12. The Welsh Government has published guidance for the Welsh Ministers, the Planning Inspectorate Wales, commons registration authorities and applicants for consent (the Guidance). It 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

³ LPA Ref: 20/1314/FUL

⁴ 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.

balanced by the registration of other land of at least equal benefit⁵. I have taken it into account in making my recommendations.

Representations

13. Three representations were received as a result of the published notices of the application.
14. Cadw raised no objections and the original objection from Ystradgynlais Town Council (who is the landowner of Coronation Park) was subsequently withdrawn. The Open Spaces Society (the OSS) originally raised no objection but subsequently requested that the existing fence and gate between Coronation Park and the Replacement Land should be removed to allow the land to be freely available for recreational use. It also suggested that the applicants should offer to create access onto the nearby A4067 road from the replacement land opposite or near the steps up from Commercial Road. It has also suggested that, if necessary to control access by vehicles, a gate should be installed on the far side of the common. It also queried whether the Highway Authority should be a party to the application and as set out above this issue was subsequently resolved.

Assessment

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

15. As set out above the overall common is not subject to any rights. No representations have been received with regard to commoners' rights.
16. The public's rights to use the release land for air and exercise would be lost if the Order is granted. However, from my observations on site the land is largely occupied by an access road and parking area. The woodland area is very small in area and whilst contiguous with the wider common is of such a small size that its benefits for air and exercise are, in my view, negligible.
17. The Release Land is crossed by a Public Right of Way and the use of the path would not be affected by the proposal before me.
18. As such I conclude that the proposal would not unacceptably interfere with the interests of those having rights over the land.

The effect of the proposal on the interests of the neighbourhood.

19. There is no definition of neighbourhood in the 2006 Act. However, the Release Land is located close to the settlement of Ystradgynlais and the Guidance requires consideration to be given to whether the proposal would mean that local people will be prevented from using the common in the way that they are used to. Furthermore, the Guidance requires consideration to be given to whether the proposal would interfere with the future use and enjoyment of the land as a whole.
20. I have no evidence before me that the Release Land is used by local residents or for any form of recreation. As set out above, it is unlikely to be used by the public for recreation to any great extent due to its small size and characteristics. It is also situated on the opposite side of the busy A4067 to the main nearby residential area.

⁵ Paragraph 3.4, Welsh Government Common Land Consents Guidance, August 2014

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21. The Replacement Land would be contiguous with the wider common and it would also be connected to Coronation Park to the south. From my observations on site, Coronation Park is a well used amenity area that is accessible via a bridge over the A4067 or from the north via a public footpath. In my view the Replacement Land would offer a far superior area of land to the Release Land for public enjoyment.
 22. I note the suggestion by the OSS that the fence be removed between the Replacement Land and Coronation Park. However, Coronation Park is a recreational amenity area and is of a distinctly different character and use to the common. I concur with the applicants' view that the fence is required to mark the boundary between the two areas and, if the common is ever used for grazing in the future to restrict stock from accessing Coronation Park.
 23. I am also satisfied that the existing points of access to the common would not be affected by the proposal. I have no evidence before me to suggest that any further access from the A4067 is required given the existing access arrangements which appear adequate. In addition, the road is situated at a much lower level than the Replacement Land and would require a crossing over a busy road. The existing bridge provides a safe and accessible route into Coronation Park and into the Replacement Land or the land can be accessed via the public footpath to the north.
 24. I also have no reason to believe that further gates are required to stop vehicles accessing the common. From my observations on site such gates are already in situ.
 25. I conclude there would be no impact on the neighbourhood arising from the removal of the Release Land from the common and the Replacement Land would offer a more beneficial area for recreation, air and exercise.

The Public Interest

Nature Conservation

26. Neither the Release or Replacement Land are located in or near any statutorily designated sites for their nature conservation interest. Whilst no ecological assessment has been provided, as stated above, the Release Land is largely a hard surfaced road and parking area. The Replacement Land comprises grassland and woodland and is accessible via an existing track. I have no reason to believe that the proposal would be harmful to the nature conservation value of the Replacement Land.
27. As such I conclude that there would not be an impact on the public interest in nature conservation terms.

Conservation of the Landscape

28. The sites do not lie within a specially designated landscape. The Release Land is a degraded area in landscape terms due to its primary use as a road and parking area. It is largely visually divorced from the wider common and its development would not have any particular adverse effect on the enjoyment of the remainder of the common in landscape terms.
 29. The Replacement Land is a small area of grassland and woodland and is similar in landscape terms to the remainder of the common that it would be contiguous with. Its inclusion in the common would be a logical extension and would have no harmful landscape effects.
 30. I conclude that there would not be harm to the public interest in landscape terms.
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Protection of public rights of access

31. As set out above, the proposal would remove the public rights to the Release Land for air and enjoyment. However, given my conclusions above that the land is degraded and offers little public benefits for such rights I do not find the loss of such rights would be harmful. The proposal before me does not affect the use of the public right of way that crosses this land.
32. The Replacement Land would offer a much more beneficial area for enjoyment and recreation and would link the existing amenity area at Coronation Park with the common. It is also contiguous with the wider common. As such I find the exchange of land would be a positive improvement to public rights of access.

Protection of archaeological remains and features of historic interest

33. Cadw has raised no objection to the proposal. On the evidence before me and from my own observations on site, I am satisfied that there are no archaeological remains or features of historic interest that would be affected by the proposal.

Conclusion

34. Overall, I conclude that in relation to matters of public interest, there would not be harm arising from the proposal.

Other Relevant Matters

35. The applicant's case for a Deregistration and Exchange Order is predicated on building a residential development comprising some 117 houses.
36. The provision of housing is clearly in the public interest in meeting housing need. The development has the benefit of outline planning permission and a detailed application has been submitted to the Council. I have no reason to believe that the development will not go ahead. I find the development of the land is an important consideration that weighs in favour of granting the Order.
37. I am satisfied that no other relevant matters have been put forward that should be taken into account.

Conclusions

38. I conclude that the proposal would not unacceptably interfere with the interests of those exercising their rights to use the common for air and exercise. No other rights exist. The proposal would not result in harm to the interests of the neighbourhood and would provide improved public rights of access. I conclude that there would not be harm to the public interest arising from nature conservation, landscape or archaeological remains or features of historic interest. The proposal would be in conformity with the Welsh Government's policy objectives and Guidance to only allow deregistration of common land where that is balanced by the registration of other land of at least equal benefit or justified through wider public benefits⁶.
39. 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 approved and that a Deregistration and Exchange Order should be made.

⁶ Paragraphs 3.4 & 3.9.4, Welsh Government Common Land Consents Guidance, August 2014

40. 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 (WBFG 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 WBFG Act.

Recommendation

41. I recommend that the application to deregister and exchange land at The Patch, Ystradgynlais, Powys is approved and that an Order pursuant to Section 17 of the 2006 Act be made.

VK Hirst

INSPECTOR