



Ein cyf/Our ref: COM/3277079

Mr Adam Pearce,

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27 November 2023

Dear Adam

COMMONS ACT 2006- APPLICATION BY CELTIC ENERGY LTD UNDER SECTION 16 OF THE COMMONS ACT 2006 IN RESPECT OF COMMON LAND AT GWAUN CAE GURWEN.

1. Following your application reference COM/3277079 made under section 16 of the Commons Act 2006 (the 2006 Act) for the deregistration and exchange of common land at Cwaun Cae Gurwen (CL25A), I have received the report by the Inspector, Joanne Burston BSc MA MRTPI AIPROW, from Planning and Environmental Decisions Wales (PEDW).

Summary of decision.

2. The formal decision is detailed at paragraph 23. The application is approved.

Procedural matters.

3. Welsh Ministers have appointed PEDW 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 South Wales Guardian on 16 June 2021. Notices were posted at the site, sent to relevant parties and a copy was available online.

5. Several representations were received. Thirteen residents submitted objections including one 61 signature petition against the proposal. The Gower Society also submitted concerns. Cadw and Open Spaces Society made no comment. The Caeguiwen and Penllerfedwen Commoners Association support the proposal. I note following these representations you notified PEDW proposed release land at Banwen place and Siloam chapel was to be removed from the exchange. You also submitted a Unilateral Undertaking, a section 106 agreement, which you considered created a legal obligation restricting the landowner, and any successors in title, from erecting fencing on the land, to alleviate concerns about splitting the common. PEDW did not consider it necessary to hold an independent public local inquiry. An accompanied site visit was carried out on 4 May 2022.
6. Following the submission of the report my officials were notified a part of the release land had been sold and the new owner did not wish it to be part of the application. I note you have updated the map and the total amount common land to be released is 99.06ha and the replacement land remains at 102.34 ha.

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 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 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).
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 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 41 of her report which is enclosed. The Inspector at paragraph 45 of the report, recommends 'the application to deregister and exchange common land at CL25A is allowed and that an Order pursuant to Section 17 of the 2006 Act be made.'
13. The Inspector in making her recommendation considered a range of issues: statutory requirements, policy guidance issued by the Welsh Government and the representations received as a result.

Conclusions reached by the Inspector

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). I note the Inspector's view that the proposed deregistration is in the interests of the applicant and the commoners and I agree with her view. I note the applicant states prescriptive easements enjoyed by property occupiers near the common will not be interfered with. I also note the Replacement Land is larger in size than the Release Land and the Replacement land is of a similar grazing quality to the release land. I believe this land will offer greater grazing opportunities for those with rights.
16. When considering the interests of the neighbourhood (section 16(6)(b)) the Inspector considers the view of the inhabitants concerned about small pieces of land being released as they are of value to the elderly. I also note the Inspector believes many areas of open space would remain within settlements and the wider common is within walking distance.
17. The Inspector also considers the issue of splitting the common as raised by the Gower Society. She accepts the applicant states the release land will remain open and unfenced. However, she is concerned circumstances may change and a potential successor in title may decide to fence it. In light of these concerns, I note you submitted a Unilateral Undertaking, a section 106 agreement, which you considered created a legal obligation restricting the landowner, and any successors in title, from erecting fencing on the land. She believes the Unilateral Undertaking is sufficient mitigation and would overcome the concerns relating to splitting the common and preventing access. It is, however, my view the Unilateral Undertaking is not enforceable by the Welsh Ministers. I do, however, believe it shows sufficient intention on your behalf to enter into a legally binding agreement to prevent the common from being split and I encourage you to explore other legal avenues to realise this aim.

18. The Inspector further states the replacement land would fill in 'gaps' in the expanse of the wider common and would open the area for long distance walking, cycling and horse riding which is a positive benefit of the application. I agree a larger contiguous area of common land would be beneficial, however I wish to clarify the public will only have a legal right to access the common for recreation on foot as outlined in the Countryside and Rights of Way Act 2000. I hope you may consider granting access for horse riding and cycling. Nonetheless, cyclists and horse riders may benefit from having a country park where they are likely to be able to go for recreation.
19. Overall, the Inspector states the continuous nature of the whole common and the restoration of historic mining operations would outweigh any harm to the localised neighbourhood through the loss of small pockets of common land. I agree with this assessment. Regarding the potential split of the common, I consider this risk to be low.
20. When considering the public interest as required by section 16(6)(c) the Inspector concludes the Replacement Land is of at least equal benefit in nature conservation terms. In regards, to the conservation of landscape as the Inspector states, the granting of planning permission (P2021/1073) and any conditions imposed would have addressed any negative harms on the landscape. The Inspector also states the removal of fencing and mining paraphernalia would have a positive impact on the wider landscape. I agree with this view and the restoration of the area would be a positive impact on the landscape. With regard to the protection of public rights of access, there will be a slight loss to some neighbourhoods in terms of immediate access to common land outside their homes, but arguably this is offset by a larger continuous area of common to enjoy as a result of the exchange. This land is still within close proximity of the neighbourhoods. The Inspector is also satisfied there is no evidence archaeological remains and features of historical interest will be effected, and I note Cadw did not object to the proposal.
21. Section 16(6)(d) requires me to have regard to other relevant matters. The Inspector notes 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. The Inspector acknowledges the proposed development of a dive centre, country park and other infrastructure would offer social and economic benefits for the area both locally and regionally. I note the application states the development could create an excess of 200 full time local jobs and deliver a destination tourism project which could economically benefit the Upper Swansea Valley, the Amman Valley and the Brecon Beacons National Park by around £340 million per annum. It also states the proposal can only be built, operated and used if approval of the exchange occurs. I agree with the Inspector's overall assessment when considering other matters considered to be relevant.
22. I have considered the report and the issues considered by the Inspector and agree with her conclusion the application should be granted and an Order of Exchange should be made. I believe the considerations in section 16(6) of the 2006 Act support this conclusion. I believe the exchange will benefit the graziers and there will be a positive impact on the conservation of landscape. In particular, I agree with the Inspector the proposal would benefit the local economy. The Welsh Government is committed to securing a prosperous Wales as set out in the Well-being of Future Generations Act 2015.

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 Minister for Rural Affairs and North Wales, and Trefnydd, one of the Welsh Ministers, I hereby grant the application (COM/3277079) to deregister common land at Cwaun Cae Gurwen Common CL25A), and provide replacement land, in accordance with the terms of the application COM/3277079 dated 14 June 2021 and the plans 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 Neath Port Talbot 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 and 17 of the 2006 Act.

Yours sincerely,

A handwritten signature in black ink that reads "Lesley Griffiths". The signature is written in a cursive style with a large, sweeping flourish at the end of the name.

Lesley Griffiths AS/MS

Y Gweinidog Materion Gwledig a Gogledd Cymru, a'r Trefnydd
Minister for Rural Affairs and North Wales, and Trefnydd