

Adroddiad

Ymchwiliad a agorwyd ar 10/03/15
Ymweliad safleoedd a wnaed ar amrywiol
ddyddiadau

**gan Emyr Jones BSc(Hons) CEng
MICE MCMI**

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 01 Mehefin 2015

Report

Inquiry opened on 10/03/15
Site visits made on various dates

**by Emyr Jones BSc(Hons) CEng MICE
MCMI**

an Inspector appointed by the Welsh Ministers

Date: 01 June 2015

COMMONS ACT 2006

APPLICATION TO DEREGISTER PART OF TREFIL-LAS AND TWYN BRYN-MARCH COMMON
(BCL015) AT RASSAU, EBBW VALE AND PROVIDE REPLACEMENT LAND

Cyf ffeil/File ref: 516000

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Abbreviations

Biodiversity Action Plan	BAP
Brecon Beacons Park Society	BBPS
Brecon Beacons National Park	BBNP
Blaenau Gwent County Borough Council	BGCBC
Circuit of Wales	CoW
Countryside and Rights of Way Act 2000	CROW Act 2000
Full Time Equivalent	FTE
Gwent Wildlife Trust	GWT
International Dark Sky Reserve	IDSR
Local Development Plan	LDP
Lighting Management Plan	LMP
Local Nature Reserve	LNR
Natural Environment and Rural Communities Act 2006	NERC Act 2006
Natural Resources Wales	NRW
Open Spaces Society	OSS
Pre Inquiry Meeting	PIM
Special Area of Conservation	SAC
Scheduled Ancient Monument	SAM
Site of Importance for Nature Conservation	SINC
Special Landscape Area	SLA
Statement Of Common Ground	SOCG
Supplementary Planning Guidance	SPG
Site of Special Scientific Interest	SSSI

File Ref: 516000

Site address: Trefil Las and Twyn Bryn-March Common (BCL015), Rassau, Ebbw Vale, Blaenau Gwent

- The application to deregister common land at Trefil Las and Twyn Bryn-March Common and provide Replacement Land is dated 1 September 2014.
- The Replacement Land is located in seven parcels at Bryn Farm, Brynmawr; Garden City Woodlands, Ebbw Vale; Waun-y-Pound, Ebbw Vale; Greenmeadow Farm, Abertillery; Sirhowy Woodlands, Tredegar; Crown Avenue, Tredegar; and Wentwood.
- The application was made by The Most Honourable Henry John Fitzroy Marquess of Worcester, Blaenau Gwent County Borough Council, and the Trustees of the Somerset Trust (Julian Richard Whately, Mathew James Wakefield & David Terrance Digby Harrel).
- The application is made under Section 16 of the Commons Act 2006.
- The application is made to enable the construction of the Circuit of Wales motorsport facility comprising: high performance circuit; motocross circuit; karting circuit; four-wheel drive circuit; riding academy; innovation centre; hotels; retail showrooms; ancillary retail; industrial and business uses; driver training area; solar park; camping; parking; landscaping and associated uses.
- The Commons Registration Authority for the common land to be deregistered is Powys County Council.

Summary of Recommendation: the application be allowed and a Deregistration and Exchange Order be made.

Procedural Matters

1. The application was advertised in the Gwent Gazette on 4th September 2014, re-advertised in the South Wales Argus and Gwent Gazette on 9th October 2014, notices were posted at the main points of entry to the lands and sent to various consultees, and relevant documentation was deposited at the Civic Centre, Ebbw Vale¹. The applicants confirmed that the Inquiry Notice was posted on site by no later than 27th January 2015 and that along with relevant documentation it was deposited at the Civic Centre, Ebbw Vale². The Notice was also published in the Gwent Gazette, the South Wales Argus and on the Planning Inspectorate's web-site.
2. I held a Pre-Inquiry Meeting (PIM) at Blaenau Gwent County Borough Council's General Office, Steelworks Road, Ebbw Vale on Wednesday 28th January 2015³. The Inquiry was held at the same location and sat for 8 days on the 10th-13th and 17th-20th March 2015. I made informal unaccompanied site visits to the Release Land and Replacement Land parcels apart from Wentwood on the 27th January 2015.
3. At the Inquiry, it was agreed that there was no need for accompanied visits to the Replacement Land parcels and I visited them on an unaccompanied basis as follows: Wentwood on 12th March 2015; Garden City Woodlands, Greenmeadow Farm and Bryn

¹ Applicants letters of 1st December (in 'Applicant Response to Reps/Objs' folder), 20th October & 11th September 2014, all in Planning Inspectorate's file

² Letter dated 26th February 2015 on Planning Inspectorate's file

³ Notes of Meeting on Planning Inspectorate's file

Farm on 13th March 2015; Waun-y-Pound, Sirhowy Woodlands and Crown Avenue on 18th March 2015. An accompanied visit to the Release Land and further areas of common proposed as Mitigation Land and Additional Mitigation Land was made on the 19th March 2015. During the course of the Inquiry, I also familiarised myself with the character and nature of the settlements in the northern part of Blaenau Gwent.

4. At the PIM I noted that it had come to light that where exchange land is crossed by a highway maintainable at public expense, the highway authority should be a party to the application as joint owner. Six of the Replacement Land parcels are owned by and in the administrative area of Blaenau Gwent County Borough Council (BGCBC). Five of these are crossed by public rights of way, but BGCBC is already a party to the application. The Replacement Land at Wentwood lies in Monmouthshire and is also crossed by public rights of way. In a letter dated 9th February 2015⁴ Monmouthshire County Council, as highway authority, agreed to be a party to the application.
5. The application⁵ gives the area of the Release Land as 248.78 ha, but this includes part of the Rassau Industrial Estate which is shown in the planning application boundary as the points of access to the development area which is not common land. The applicants submitted a revised plan which shows an area of 244.39 ha⁶. There are some discrepancies between the areas given on the Section 16 Notice and those given on the application form⁷, but, subject to the specific matter referred to in the following sentences, the applicants confirm that the correct areas are given on the application form⁸. The area of Replacement Land at Sirhowy Woodlands was originally given as 48.99 ha. However, the Gwent Wildlife Trust (GWT) noted that it is partly in third party ownership⁹. As a result, the applicants submitted a revised plan which shows an area of 48.83 ha¹⁰.
6. In this case there is no intention to transfer any rights of common to the Replacement Land. At the PIM I drew attention to the requirement in sub-section 17(2)(b) of the *Commons Act 2006*¹¹ which requires the registration authority to register as exercisable over the Replacement Land any rights of common which, immediately before the replacement date, are exercisable over the Release Land. At the Inquiry, I asked whether it was possible to have a common with no rights of common registered over it, which would be the position in respect of the Replacement Land parcels in this

⁴ On Planning Inspectorate's file

⁵ Core Document CD18

⁶ Document A2

⁷ Both in Core Document CD18 (Tabs 1, 2 & 3)

⁸ Applicants letter of 1st December 2014 in 'Applicant Response to Reps/Objs' folder in Planning Inspectorate's file

⁹ 'Additional Evidence: Exchange Sites' submitted 2nd March 2015

¹⁰ Document A2 (it should be noted that the areas for Bryn Farm and Garden City Woodlands shown on this Document are incorrect – see Applicants e-mail of 17 April 2015 on Planning Inspectorate's file)

¹¹ Core Document CD02

case. The applicants provided legal submissions in respect of these matters and the first is also addressed in a Position Statement from solicitors acting on behalf of rights holders on BCL15¹².

7. The planning permission is subject to a Section 106 Agreement¹³ and an unsigned Deed of Variation thereto¹⁴ was submitted at the Inquiry. The applicants were given a period of 14 days from the close of the Inquiry to submit an executed version and this was done¹⁵.
8. At the Inquiry, the GWT sought to cross-examine Natural Resources Wales (NRW) witnesses. However, NRW's advocate objected to such a course of action and I ruled that GWT could not do so on the basis that, as objectors, they could only cross-examine the applicants and supporters of the application.
9. The following corrections to the Statement of Evidence of Mr Richard Jones (NRW witness) are highlighted. Insofar as the Replacement Land at Greenmeadow Farm is concerned, the evidence should state that it is part designated as a Site of Importance for Nature Conservation (SINC) not a Local Nature Reserve (LNR). The Table at Appendix 2 should be replaced with that enclosed with Mr Jones' e-mail of 3rd March 2015¹⁶.
10. Some documentation, including BGCBC's Head of Legal and Corporate Compliance's report in respect of use of Council land as Replacement Land¹⁷ and the Additional Information forming part of the application¹⁸, refers to some of the Replacement Land parcels as 'Sites of Special Landscape Importance/Significance' designated under Local Development Plan (LDP) policy ENV3. However, the LDP includes no such class of designation and, as reported in the relevant minutes¹⁹, an oral correction was made at the time.

The Sites and their Surroundings²⁰

The Release Land

11. The Release Land is upland moorland with an area of 244.39 ha which forms the south eastern most part of Trefil-las and Twyn Bryn-March Common (BCL015) to the north of

¹² Documents A31 and IP6 respectively

¹³ Core Document CD16

¹⁴ Document A13

¹⁵ Under cover of a letter dated 7th April 2015 on Planning Inspectorate's file

¹⁶ On Planning Inspectorate's file

¹⁷ Document A6

¹⁸ Tab 3 of Core Document CD18

¹⁹ Document A7

²⁰ Core Documents CD13, CD15 Volume 2 tab 3 & Volume 3 tab 3, CD18; Documents A26 - A29, A32; Mr Campion's Proof of Evidence; and Replacement Land Biodiversity Management Plans

Rassau, Ebbw Vale, Blaenau Gwent. It lies within the Trefil and Garnlydan Special Landscape Area (SLA) designated under BGCBC's LDP. A public bridleway runs along the south western boundary following the line of a dismantled mineral railway line and a public footpath runs north from the bridleway through the Release Land. Most of the south eastern boundary of the Release Land abuts the Rassau Industrial Estate which lies just to the north of the realigned A465, Heads of the Valleys Road. The industrial estate includes a single wind turbine and a large metal fabrication plant with a number of associated chimneys. A line of overhead 400kV power lines on pylons crosses the Release Land close to the boundary with the industrial estate. An underground high pressure gas pipeline runs along the north western boundary. The northern and north eastern boundary abuts the Brecon Beacons National Park (BBNP).

12. Trefil-las and Twyn Bryn-March Common is surrounded on the western and northern sides by common land unit numbers BCL014 and BCL016, which in turn adjoin units BCL002, BCL018 and BCL019 with further units of common land beyond these stretching across the southern slopes of the Brecon Beacons. There are further units of common land to the south, along the ridges which separate the valleys in this part of South Wales.

The Replacement Land

13. In total, the Replacement Land would provide 306.56 ha of new common land to replace the Release Land. The Replacement Land Sites are as follows with (i) to (vi) being owned by BGCBC who approved the relevant terms and conditions for the use of its land on the 18th March 2015²¹:
 - (i) Bryn Farm: 16.53 ha of land to the north of the Gurnos Estate and North West of Brynmawr cemetery, at Brynmawr. It comprises a number of upland fields, including one containing a multi-sports court, and a block of coniferous planting. The land adjoins the section of Mynydd Llangattock Common (BCL018) that lies to the south of the A465. 1.39 ha is designated as *Countryside and Rights of Way Act 2000* (CROW Act 2000) open access land, all but the southern part is designated as a SINC in BGCBC's LDP, part of it is included in the Beaufort Ponds and Woodlands LNR designated under the *National Parks and Access to the Countryside Act 1949*, and it lies within the Beaufort Common SLA. A public footpath runs along its north eastern part and there are a number of other non-registered pedestrian access points.
 - (ii) Garden City Woodlands: 45.37 ha of land located to the west of Park Road and north, south and west of Garden City, Ebbw Vale. This land is on a hillside and is largely wooded in character. It adjoins the eastern boundary of Man Moel Common (CL12). The land is designated as a SINC, is subject to a covenant preventing use other than for the planting of trees, as open space and for recreation, is a candidate LNR and lies within the Cefn Manmoel SLA. A number of public footpaths cross the site.

²¹ Document A9

- (iii) Land Adjacent to Waun-y-Pound Industrial Estate: 29.99 ha of land surrounding and to the south of Waun-y-Pound Industrial Estate and north west of Gwaun Helyg Road, Ebbw Vale, which is designated as a SINC and is also within the Sirhowy Woodlands and Cardiff Pond LNR. This includes the area known as the Cardiff Ponds which is subject to a fishing licence in favour of the Ebbw Vale Welfare Angling Club. It is predominantly woodland and scrub with more open areas at the south eastern end and is crossed by a number of tracks providing informal public access.
- (iv) Sirhowy Woodlands: 48.83 ha of land to the south west of the A4047, east of Thomas Ellis Way and north of Grangetown Hill, Tredegar. This is designated as a SINC, and is within the Sirhowy Woodlands and Cardiff Pond LNR and the Cefn Manmoel SLA. The land is a mix of wooded and more open areas crossed by a number of public footpaths and further routes provide informal public access.
- (v) Land East of Crown Business Park: 16.34 ha of land to the east of the Crown Business Park, north of Shepherd Close and Heather Close, and west of Bryn Serth, Tredegar which is designated as a Green Wedge in the LDP. The land is former derelict industrial land which has been reclaimed and planted with trees. It is crossed by a restricted byway and public footpaths.
- (vi) Greenmeadow Farm: 36.60 ha of agricultural land to the north east of the houses on Valley View Road and north of Rhiw Park Road and Heather Grove, Cwmtillery. This adjoins Gwastad Common (CL16) to the east and north east. 17.25 ha are designated as open access land, most is designated as a SINC and it lies within the Cwm Celyn & Cwm Tyleri SLA. The land is crossed by a number of public footpaths, bridleways and restricted byways.
- (vii) Land at Wentwood Forest: 112.90 ha situated to the north of the A48 and east of the A449. This adjoins Gray Hill Common (CL59) to the south and Bicca Common (CL58) to the south east. The land is heavily forested being leased to the Welsh Government and managed by NRW. It is crossed by public bridleways and also has a number of informal way-marked access trails.

Mitigation Land and Additional Mitigation Land²²

14. The plan attached to the Deed of Variation shows an area to the north west of the Release Land to be used as Mitigation Land. This comprises around 61.31 ha to the north west of the high pressure gas main within the planning application boundary and a further 110.5 or so ha of adjacent land to the north east. It also shows two areas to be used as Additional Mitigation Land, one to the north east of the Mitigation Land and the other further to the east beyond the B4560, both within the BBNP. The Deed, amongst other matters, provides for a Mitigation Strategy for the improvement of grazing by sheep and cattle and habitats on an area of land with a total area within the Additional Mitigation Land of no less than 800 ha. The original 106 agreement provides, amongst other matters, for an Ecology Management Plan relating to grazing and biodiversity controls or improvements at the Release Land and Mitigation Land. Parts of the Mitigation Land and the western Additional Mitigation Land lie within the

²² Core Document CD16 and Document A13

Mynydd Llangynidr Site of Special Scientific Interest (SSSI), designated for its karstic geomorphological interest, whilst the eastern Additional Mitigation Land lies within the Mynydd Llangatwg (Mynydd Llangattock) SSSI which is part of the Usk Bat Sites Special Area of Conservation (SAC)²³.

The Proposals²⁴

15. The deregistration would facilitate the construction of the Circuit of Wales (CoW) motorsport facility which was granted outline planning permission by BGCBC on 25 September 2013²⁵. The motorsport facility would comprise a high performance circuit, motocross circuit, karting circuit, four-wheel drive circuit, rider academy, innovation centre, hotels, retail showrooms, ancillary retail, industrial and business uses, a driver training area, solar park, camping, parking, landscaping and associated uses.
16. The main circuit would be located in the centre of the site. It would measure 5.4km in length and provide 19 turns (9 right hand turns and 10 left hand turns). Due to the inclusion of links, the circuit could be split into two separate tracks and two paddock spaces would be provided to allow two events to operate simultaneously. The west circuit would be 2.9km in length and the east circuit 2.5km in length. The total surface area occupied by the main circuit would be 59.6 ha.
17. The circuit has been designed to international race standards and would be capable of hosting all major world championship events. The primary target user for the circuit is Moto GP and its support series, but this does not preclude other forms of motorsport.
18. A medical centre would be located immediately to the east of the pit building and include an operating theatre.
19. The Rider Academy would also provide classrooms for participants to learn racing techniques and a physical fitness centre.
20. The innovation centre would provide 63,504m² of light industrial and ancillary office space comprising 14 buildings, each having an estimated footprint of 1,512m² and a gross floor area of 4,536m² over 3 storeys. 36,272m² of gross floor area would be provided for employment use as industrial (B2 Use) and warehousing space (B8 Use). A total of 3 industrial units would be provided, each delivering an estimated development footprint of 1,008m² and a gross floor area of 1,260m². A total of 14 warehouse units would be provided.
21. 37,314m² of automotive retail space through the provision of brand centres and showrooms would be provided. Brand centres are car showrooms aimed at prestige car retailers, which would provide an opportunity for customers to access the sections of the main circuit to test drive a vehicle. Eight such brand centres would be included with 7 located adjacent to the eastern section of the main circuit.

²³ Appendices 1 & 2 to Mr Reid's evidence

²⁴ Core Documents CD13, CD15 Volume 2 tab 4 & Volume 3 tab 4, CD18, & Documents A32

²⁵ Outline Planning Permission at Core Document CD17, Environmental Statement at Core Document CD15, and Head of Planning & Building Control's Report at Document A5

22. All those with registered common rights, whether active or not, have entered into agreements for the surrender and variation of their common rights in advance of de-registration. The bridleway would be unaffected but, subject to separate statutory procedures, the public footpath would be diverted further to the west²⁶.

Alternatives and site selection²⁷

23. A total of 11 sites were considered with each being scored against 10 weighed criteria. The criteria with their weightings in brackets being site size (2), land availability/ownership/assembly (3), population catchment (3), land costs (2), topography (2), socio-economic impacts (3), industry/sporting requirements (3), future proof/potential for expansion (1), access (2), and minimising environmental impacts (3). The sites with their scores in brackets were: Brynbach Park, Ebbw Vale (-3); land at Abertillery (1); Llanwern, Newport (-2); Jersey Marine, Swansea (-5); Redcar, Middlesbrough (10); land at Pembrey (-16); site on Anglesey (-18); Rockingham, Corby (-2); Donington Park, Derby (0); the application site (24); and Silverstone, Towcester (2).
24. The Blaenau Gwent area was chosen because of its strategic location with good accessibility to key population centres and, of the possible areas considered, it is the one that would benefit most from a socio-economic point of view. A further reason was the topography of the site allowing the design of a high performance circuit without significant earthworks or re-profiling.

The Case for the Applicants²⁸

The material points are:

Foreword

25. This application represents a once in a generation opportunity for Welsh Ministers to make a difference to the most deprived area of Wales. If the devolution of powers to Welsh Ministers for planning, regeneration and commons means anything; it means that decisions as important as this should be made by those who know and understand the context and criticality of those decisions and by those who are immediately accountable to the people of Wales for the out-turn of those decisions.
26. Parliament has deliberately given Welsh Ministers a very wide discretion in the determination of applications to deregister common land. By necessary implication, that discretion is more likely to be exercised in a wide manner where issues of more than very local importance are engaged. Where larger scale infrastructure and regeneration projects are being considered, Parliament has invested Welsh Ministers with a discretion which necessarily requires a consideration of narrower commons issues, but also wider issues of public interest.

²⁶ Documents A30A & A30B

²⁷ Core Documents CD15 (Chapter 5), CD18 (Tab 4) and Mr Farrar's Proof of Evidence

²⁸ Particularly Document A32 and relevant Statements of Evidence

27. The nature of the balancing exercise which is required of Welsh Ministers is a paradigm matter of judgment for the devolved jurisdiction in a very real way with this case representing an important litmus test for that devolved jurisdiction. Obviously, where a very wide discretion is at large, the potential for different agencies, consultees and assessors to reach different, but equally lawful, decisions is also wide.
28. It is important that Welsh Ministers not only understand the nature and extent of what is at stake here, but also that they understand the nature and extent of their legal power, (pursuant to s 16(6) of the *Commons Act 2006*²⁹) to make a real difference.
29. It is of importance also to record that there was no dispute at the Inquiry (or at all) about the nature of the wide discretion available to the Welsh Ministers. Both Counsels at the Inquiry agree in terms as to this. That is repeated in NRW's closing submissions³⁰.

The Devolved Commons Jurisdiction

30. Section 16(1) of the 2006 Act provides, among other things, that the owner of any land registered as Common Land may apply for the 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").
31. The decision makers - in this case the Welsh Ministers - are required by Section 16(6) of the 2006 Act to have regard to the following in determining this application: (a) the interests of persons having rights in relation to, or occupying, the Release Land; (b) the interests of the neighbourhood; (c) the public interest; (d) any other matter considered to be relevant. The term neighbourhood is deliberately not defined by the Parliamentary draughtsman.
32. The decision makers and those advising them will also have regard to non-statutory published guidance in relation to the determination of applications under Section 16(2). The guidance of most relevance in this case is the Common Land Consent Guidance 2014³¹ and submissions on this Guidance are set out below.
33. 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.
34. A number of very important matters flow from this introduction to the legislation. First, the parliamentary discretion as to whether to grant the application or not is as mentioned above very wide indeed. There is no specific statutory test which is identified which has to be met or engaged in. The discretion allows the decision-maker to grant or refuse the application in his absolute discretion as long as he "has regard" to the matters identified in section 16(6).

²⁹ Core Document CD02

³⁰ Document NRW3

³¹ Core Document CD06

35. Second, the matters identified in section 16(6) are themselves deliberately wide. They include the more private interests of persons having rights in relation to the land (most likely to be commoners), the interests of the neighbourhood, the public interest and any other matter considered to be relevant.
36. The width of these considerations reinforces the notion that ultimately, the discretion to be exercised by the decision maker is a very wide one and will depend upon the specific circumstances of each case.
37. It is thus of critical importance to note that:
 - a. The categories of matters to which the decision-maker is directed to have regard are not closed; they include "any other matter considered to be relevant". Anything which touches upon the use of or impact of the Release Land or the Replacement Land which might properly affect the wide discretion to permit the de-registration will as a matter of law be relevant.
 - b. The categories of matter to which regard must be had are unlikely to be hermetically sealed. Some matters will fall into two or more categories.
 - c. The definition of public interest in section 16(8) is not an exclusive one. The public interest includes the matters set out there but is not confined to those matters.
38. Parliament has made the discretion a very wide one and allowed the material considerations to be taken into account to be drawn so widely for a reason. It is because Parliament recognises that although in most smaller and straightforward cases, the compass of determinative relevance is likely to be limited. However, in larger, infrastructure and regenerative projects, the compass of relevance is likely to be much broader requiring wider and more public interests to be balanced against the more local impacts of the deregistration and replacement. This truth is recognized in both the Welsh and English versions of the non-statutory guidance issued to accompany the section 16(6) jurisdiction.
39. The consequence of this analysis is that the decision-maker in deciding whether or not to grant the application will have to grapple with the more usual and narrow based commons implications of the application, but will also have to balance matters such as the wider implications of the application for the public and wider public interest.
40. Of course where Parliament has identified matters to which decision-makers are to have regard, it is well understood that the weight to be given to those matters is a matter for the decision-maker and no-one else and that any one of those matters may thus be capable of outweighing any other of the relevant considerations as a matter of law (subject to ordinary public law challenge).
41. What this means in practice was a matter which was canvassed at the Inquiry in two ways. First, the Inspector has (correctly) recognised the width of this ministerial discretion in the identification of the main issues at the Inquiry. They include the issue of whether if any commons impacts of deregistration are negative, they are outweighed by the socio-economic benefits of the proposal facilitated by deregistration. The identification of this overall "balance" as a main issue is clearly correct (as NRW

agrees). It has of course a profound effect in the circumstances of the present case on the decision-making matrix which should be adopted by Welsh Ministers. It requires a consideration of whether there is a public interest in the facilitated project and, if so, what weight should be given to that public interest.

42. Parliament has given the power to determine such cases to Ministers (and Ministers have especially reserved the determination of the larger cases such as this to themselves) because all recognise that ultimately, the weight to be given to the public interest in such matters is a matter of judgment for them.
43. Second, the issue of how the jurisdiction deals with a public interest case which was described as "compelling" was canvassed. The Inspector asked whether in such circumstances the decision-maker should simply disregard the more local commons issues. Of course the Inspector was correct in inferring in the question that the decision-maker could not disregard the commons issues even where a compelling public interest exists.
44. The decision-makers are absolutely required to "have regard" to the commons issues and to the fact that the aim of the legislation is to protect existing commons and the contribution which they make as part of their determination. If as part of that balance the decision-makers decide that overall, having had regard to all relevant matters including the commons considerations the balance lies in favour of deregistration then they are legally entitled to make the deregistration and exchange order.
45. In the present case, the applicants are clear that the case for deregistration and exchange when looked at in commons terms in the round is a powerful one based on the significant benefit to the operation of the wider common and nature conservation. When the socio-economic benefits of the proposal are added to this, the case for Welsh Ministers granting the order becomes overwhelming.

The Guidance³²

46. The Guidance on the operation of section 16(6) is non-statutory, but is nonetheless of considerable importance since it sets out the way in which Ministers expect to exercise the wide discretion given to them by Parliament. It must be applied appropriately and with care. It should be remembered that the Guidance relates to applications under s 38 and under s 16 and the relevant context should be borne in mind when seeking to understand the meaning of the Guidance.
47. Further, it will be remembered that the Guidance makes it clear that each case falls to be determined on its own merits and that it cannot supplant or alter the Parliamentary decision-making matrix referred to above. It is of particular note that the Guidance makes it clear that weight can be given to the wider public interest in the overall determination of the application. It cites the example of large infrastructure projects, but does not limit the application of this principle simply to such projects.

³² Core Document CD06

48. Gadsden³³ correctly confirms that a public interest in a development project facilitated by deregistration is capable of being an important material consideration.
49. Clearly therefore regard can (and where relevant must) be given to such public interests as a matter of law and policy and by definition determinative weight can be given to such interests so long as all other matters are properly taken into account. It follows that Welsh Ministers are fully entitled as a matter of law and their own policy to make the relevant order in this case.
50. Thus if having regard to all the relevant matters, Ministers believe that the interests of the devolved jurisdiction are, say, for wider public interest, nature conservation and other reasons best served by the facilitation of the proposal, the grant of the Order would not only be lawful but it would be consistent with the proper operation of the stated policy and not contrary to it.

Blaenau Gwent County Borough

51. Blaenau Gwent is an area with a proud history. It has had a global impact on the world long before the global economy existed. It has produced the coal, iron and steel which fuelled the industrial revolution and made much of the UK a wealthy, industrial and eventually democratic country. Ebbw Vale itself has a history of technological innovation. The works produced the first ever steel rail in 1857, an innovation which altered the transportation world. There are still strong manufacturing links to the automotive industry.
52. In spatial terms, the valley floor and much of the steeply sloping areas of the County Borough above them are tightly squeezed with peoples' homes, shops, pubs and community facilities. Those parts of the valley floor which once housed heavy industry or coal have also been redeveloped for housing, education, leisure or other uses. There remain smaller pockets of brown-field land available for investment, but most sadly for now laying vacant.
53. Beyond the settlements, almost all major non developed blocks of land are upland moor, SLA and common. That spatial disposition is a key element of context to be considered in the circumstance of this case. It is a context which many objectors to the making of the Order fail to address at all.

The Decision-making process

54. The Courts have made it clear that where Ministers are given a largely unfettered discretion such as in the present case, there is no prescription as to the decision-making method which they should apply in determining the application. There will be many lawful ways in which Ministers can approach that process.
55. Where, however, one of the main issues identified as part of the Inquiry into the application involves a balance between the impacts of deregistration and the socio-

³³ Gadsen on Commons and Greens, 2nd edition, Sweet & Maxwell, (ISBN: 9780414025677), page 419

economic benefits of a facilitated proposal it is important to ensure that the correct impacts and benefits are identified as part of that balance.

56. Thus, the simple act of deregistration has very few of the impacts that are being complained of by objectors. What in reality is being objected to is that deregistration would facilitate a development which itself would have impacts upon commons rights and matters relevant to commons considerations. If such matters are relevant, then it follows that the benefit of the facilitated development should also to be taken into account in narrow commons terms and in terms of the public interest and wider public interest. It is also of relevance, but not in a binding way, that the competent planning authority has already found that the development facilitated is in the overall public benefit.
57. It is these truths which separate this case from the majority of section 16 cases and which mean that care should be taken not to apply parts of the Guidance too mechanistically to these circumstances.
58. Further, in order to put both the commons impacts of the facilitated proposal and the socio-economic benefits of the proposal into the balance, as required by the identification of the Inspector's Main Issue, it is necessary to identify those impacts and benefits with the facilitated development in place. Any other approach would be artificial and would risk failing to capture the matters relevant to the balance correctly set by the Inspector as a main issue.
59. Beginning with the development and its socio economic benefits, because if Welsh Ministers do not believe the proposal facilitated is in principle in the public interest as a concept then of course, since the public interest as a whole is one of the key s 16(6) Commons Act tests, the application is unlikely to succeed.
60. However, it is believed that Welsh Ministers are overwhelmingly likely to support the principle of the proposal facilitated in the public interest. The real question for Ministers as properly identified by the Inspector is the weight to be given to these matters and whether such weight is insufficient to outweigh commons and other impacts. This is of course another way of addressing the Inspector's main issue which requires exactly the same balance to be undertaken. It is therefore important to understand these matters in detail.
61. It is also relevant to consider these matters now, because if Welsh Ministers take an in principle view that it is a weighty consideration that the principle of this facilitated development should be encouraged, the ability to facilitate the development other than on common land is relevant to the weight which should be given to commons impacts positive and negative too.

The proposal which would be facilitated

62. At times, all parties have made the error of labeling the development facilitated by the proposal simply as the CoW; it is noteworthy how many of the objectors were simply unaware of the range and depth of the regeneration opportunities offered by the proposal. The proposal is much more than simply a world class motor-sport circuit; it is a major regeneration opportunity in its own right which extends far beyond the more

obviously newsworthy circuit itself. It is a centre of automotive excellence which would have an international role and reputation.

63. Welsh Government as a whole is acutely aware of the holistic nature of the development and it's wide ranging economic impact. Nonetheless, it is right that the determining Ministers here understand and appreciate this element of the proposal in the context of this application.
64. The nature of the design secured by planning conditions would make the circuit one of the best in Europe and it is anticipated that the facility would become one of the best used in the UK. The report to Committee on the grant of planning permission³⁴ records that: "In summary, the circuit will transform expectations of British motorsport, and offer a much-needed alternative to the narrow and unsafe airfield circuits that competitors, manufacturers and spectators are used to encountering within the UK."
65. One of the stated aspirations of the CoW is to promote motorsports to young people and to nurture a future British World Champion. The Rider Academy would provide a safe environment for the realisation of this aspiration. Such an academy would be the first of its kind in the UK and would offer participants access to CoW motorsport facilities. Given that Wales already produces a disproportionate number of world class motor sports drivers because of its topography and natural facilities, it is to be hoped that this facility would help further benefit the profile of the Country in the area of motor sport.
66. The innovation centre floor space would primarily accommodate investment from private sector companies based in advanced automotive engineering and low carbon technology research and development. These businesses would work in synergy with each other and with the significant number of automotive industries in Ebbw Vale at present and through the section 106 agreement³⁵ with local educational institutions. Many companies have already indicated a very strong preference to locate their testing, research and development facilities at the location (see the business Plan Appendix to Mr Farrar's planning proof).
67. The two high quality hotels would function in association with the circuit and its facilities, but also with the local economy and the adjacent National Park. These hotels would have the potential to act as both powerful local employment provisions and to boost the tourism industry in an area which presently gains little from its proximity to the BBNP.
68. Motorsport retail (A1 Use) would provide the basis of the development's retail offer and it is anticipated that the units would be occupied by race-wear/automotive brands and food and beverage providers (A3 Use). The restaurants, cafes and bars would all produce employment opportunities and economic activity for the local economy, suppliers and contractors.

³⁴ Document A5

³⁵ Core Document CD16 as modified by the Deed of Variation referred to in paragraph 7

69. The range of regenerative developments proposed thus needs to be properly understood. A holistic, wide ranging diverse economic package is proposed. Its integration with local business and education is secured through the section 106 agreement.

The existing economic context

70. The existing economic context really could not be worse. It is easy at Inquiries such as this for the real impact of this deprivation to be misplaced or mischaracterised. It is true, as the Inspector pointed out, that social deprivation is not necessarily visible or apparent to casual observation.
71. In this case, the failure to have regard to the objectively defined levels of poverty, unemployment and absence of hope would be a terrible mistake. The communities of Ebbw Vale, Tredegar and Brynmawr are truly among the most economically disadvantaged communities in the whole of the UK.
72. In terms of population shift, these communities regularly ship out their brightest and best every year because the opportunities for young residents simply do not exist. The net out migration figures by themselves are staggering, but when it is remembered that often it is those with most to offer the community who leave, the economic and social impact of the absence of high quality or any job opportunities becomes even more important.
73. In terms of employment, the unemployment, long-term unemployment and youth unemployment figures are no less than a scandal. Those who are in employment tend to rely heavily on the public sector for that employment or find themselves in lower quality training jobs. The incidence of unemployment is felt disproportionately in some of the communities which are the very closest to the proposal facilitated by this deregistration.
74. The County Borough shares hardly at all in the benefits of tourism that its proximity to the National Park was designed in part to encourage.
75. The most recent research on the labour market has described Blaenau Gwent as “the most difficult job market in the whole of Wales and possibly the UK”.
76. How does one get a feel for the impact of this on ordinary families through an Inquiry process? Well it’s impossible... but the applicants have asked the Inspector and very unusually (but not without precedent) ask the Ministers themselves if they are able at the very least to visit on an unaccompanied basis. The good thing about devolution is that Welsh Ministers are likely to know the conditions well already but are only a short train journey away if they need to re-acquaint themselves with the realities of life here. A schedule of visits was provided to the Inspector³⁶. The applicants believe that such visits (already undertaken generally by the Inspector during his time here) are an essential element in any proper analysis of the socio-economic benefits of the proposal.

The impact of the development on the economic context

³⁶ Annex 1 to Document A32

77. The impact of the facilitated development would be one of generationally transformational importance. 4,000-6,000 full time equivalent (FTE) person years of construction work would be provided during the construction phases. There are commitments to local employment and local contractors contained in the section 106 agreement accompanying the grant of permission.
78. In the operational phase 4,000-6,000 FTE operational jobs based in technology, engineering, research, management, hospitality and event management would be created directly. Beyond that further spin off and multiplier jobs would be created across the South Wales economy. It must be recognised that the significance of this development for the area has wider implications than Blaenau Gwent and the proposed development could become a second centre for automotive excellence within the UK.
79. Training facilities would be set up to ensure that short, medium and long term labour would be available so that the County Borough would gain the maximum possible advantage from the scheme. The creation of a Low Carbon Technology hub would form a recognised centre or cluster of knowledge, excellence and technology of exactly the type encouraged by the Welsh Government.

Verifying the impact

80. Too often, too many grand claims for the impact of inward investment have been made only for the Welsh public to be left frustrated and disappointed and the Welsh economy to be let down by promises insufficiently scrutinised. In this case, Welsh Ministers should proceed on the basis that the business case for the proposals and the economic consequences of the development have been scrutinised probably more thoroughly than any other inward investment opportunity. Further, there is no evidence before the Inquiry to indicate that this consideration was inadequate or incorrect.
81. First, the respected Cardiff Business School carried out an independent assessment of the likely economic impact of the proposal. It concluded that 1,500 visitor facing jobs and up to 4,000 operational jobs would be likely to be provided by the proposal. In just the first 8 years there would be a direct injection of £45M to the Welsh economy. The indirect benefit would be considerably greater.
82. The Welsh Government has great experience of considering the viability of inward investments. It commissioned Grant Thornton to undertake an assessment of the economic viability and socio economic benefits of the proposal. Using a Treasury based model in part, this analysis confirms the broad estimate of jobs derived from the Cardiff Business School model.
83. Finally, in considering the planning application, the Cardiff Business School analysis and the Welsh Government Assessment, BGCBC commissioned Professor Pickernell, a noted inward investor expert with special expertise in the automotive industry, to give a view of the potential economic impact. He and his department were given full open book access to the business plans, financial models and bank details of the applicants. He was of the view that the Cardiff Business School analysis was likely to be conservative, but that especially as part of the policy emphasis to create a vibrant City Region, the prospects for job creation, economic impact and training were all likely to

fall within the ranges set by the Cardiff Business School model and the Welsh Government analysis.

84. The business case for the proposal has been very thoroughly considered and assessed including an open book assessment made available to BGCBC, its advisors and as part of its funding commitment to the Welsh Government. There is no meaningful challenge to it at this Inquiry and no evidence whatsoever which should support Welsh Ministers taking a different view. An updated business report accompanies the planning evidence³⁷. It reports that the prospects for delivery have improved even since the three reports referred to above with key manufacturers and teams clearly indicating a commitment to the Centre of Excellence.

Policy Compliance

85. In economic and socio economic terms, the location of a regeneration opportunity as significant as this at this place is wholly supported by policy. It is consistent with the aims and objectives of the Welsh Government Regeneration Strategy: 'Vibrant and Viable Places', which seeks to deliver improved economic activity, a more confident workforce with a greater variety of skills, the empowerment of younger people and local cultures. A raft of land use and economic policies has over the years sought to regenerate and redevelop the Heads of the Valleys area. The proposal is a dream fit for these policies.
86. The proposal is also a good fit for the ambitious Cardiff City Region concept being promoted by the Welsh Government. Blaenau Gwent sits on the northern edge of the City Region. The proposal would provide a node of growth to the north of the Cardiff City Region, ensuring consistent with the policy, a spreading of growth through that City Region. The 2012 City Region Report stated that the regions should focus their efforts on identifying and winning relevant, large scale projects with the potential to deliver sustainable economic development.
87. Importantly, and a key plank of its employment and enterprise policy, the Welsh Government has identified 7 Enterprise Zone across Wales. One of those Zones is in Ebbw Vale. The Zone is a multi-site one. The boundaries are identified by red-line maps. The application site is identified as being one element of the Enterprise Zone. Of course this identification does not bind Welsh Ministers at all in the determination of this application. Neither does it indicate that the Welsh Government has pre-judged the important commons and other issues raised by this application. It does however identify that, in economic and socio economic terms, this proposal is in the right place at the right time.
88. More locally, the development plan supports a large new tourist based regeneration development in the north of the County Borough. Given the topography mentioned above it is difficult to see how such a strategic aim can be achieved without the development of common land such as this.

Weight to socio political matters

³⁷ Appendix C to Mr Farrar's evidence

89. The weight to be given to these matters is ultimately a matter for Ministers.

90. But given:

- a. the scale of the deprivation which falls to be addressed;
- b. the nature of the impact which the development would have on those factors;
and,
- c. the spatial and economic policies which are all aimed at meeting that need;

the weight to be given to these matters must be very significant indeed.

91. Indeed Ministers could properly take the view that there ought to be very significant, cogent and powerful reasons to set aside these benefits.

92. Turning to consider the other key matters which Parliament has indicated are relevant to the overall determination. They set, along with the socio-economic matters, the scope of the balance which Welsh Ministers must apply in the determination of this application.

The interests of those with a right to use or occupy the Common

93. This heading essentially deals with the more private elements of the balancing exercise required of Welsh Ministers.

94. It is common ground at this Inquiry that it only applies to those with private rights of common in CL015, part of which would be deregistered in the event that the Order was made. The rights of common are as far as it is material restricted to grazing rights, such rights are property rights of the same type as a *profit a prendre*. As any real property right, the right to common brings with it the unalienable ability to surrender that right voluntarily or for compensation.

95. The surrender of an individual right or group of rights is not in any way contrary to the letter or spirit of the legislation. Neither does it in any way by itself mean that the land is anything other than registered common. Indeed the *Commons Act 2006* deliberately provides a mechanism which allows commoners lawfully and properly to surrender their rights by Deed- though the land remains registered common. In this case, all of the relevant commoners (including Llangynidr Community Council which is not exercising its rights and is not an active commoner) for the relevant part of CL015 have agreed by an already executed Deed to surrender their rights in the Common and it is inconceivable that they would have done so if they considered that they required replacement grazing³⁸.

96. Upon the payment of compensation, this Deed would become effective and the rights surrendered. At the relevant date therefore, there would be no such grazing rights to be transferred to the Replacement Land, though (unless the Ministers think it inappropriate), other commons rights such as s 193 *Law of Property Act 1925* rights of

³⁸ See also applicants letter of 1st December 2014 in 'Applicant Response to Reps/Objs' folder in Planning Inspectorate's file

public access on foot and horseback would be transferred to the Replacement Land. (See note on s 17³⁹).

97. The reason why the commoners are content to surrender this portion of CL015 becomes clear when its usefulness as common land is examined:
- a. The land is predominantly boggy and difficult for grazing. It is marked on OS maps as boggy land in significant part for a reason. Animals and vehicles have been lost in bogs on the Common;
 - b. It is low quality grazing with most of the forage area not suited to sheep grazing at all. This has led to under-grazing which in turn has further reduced its value; and,
 - c. It is not secure.
98. All of the commoners would retain rights to the balance of CL015 and all of the active commoners also retain further rights over the massively under-grazed wider Common. For reasons set out below, the balance of CL015 and wider Common as a whole would be very considerably enhanced as a result of the proposal overall.
99. Thus those with a right of common would release their rights of common to a small part of CL015 voluntarily in line with the Act and receive appropriate compensation whilst maintaining their rights to the remainder of the Common, which itself is significant at 689.99 ha and would be substantially enhanced. In purely commons terms, the private interests of the commoners would thus be properly respected, indeed enhanced.
100. There is nothing in this matter which suggests that it would be inappropriate to make the deregistration Order on narrow private commons based grounds or at all. Certainly there is nothing which would suggest that there is anything here which would require the Welsh Ministers to set aside the huge socio-economic gains set out above.

The interests of the neighbourhood

Introduction

101. Neither the term “the neighbourhood” nor the term “interests” is defined by the Act. This as mentioned above is deliberate. It would be wrong to read across the definition relevant to Town and Village Greens to Commons. Parliament could have done that but has chosen not to. It means that consideration of these issues is highly fact and context sensitive.
102. Ordinarily, the impact of deregistration on the ability of neighbours to use and enjoy the Common is the key consideration under this heading. It remains a relevant consideration in this case and is analysed below. But the interests of the neighbourhood which are effected by deregistration and the consequent development are wider in the present case.

³⁹ Document A31

103. Planning Inspectors have rightly held that the wider interests of the neighbourhood which flow from the application are a relevant consideration (such as the application where surpluses from hydro-electricity generation works were to be paid into local funds⁴⁰).
104. The identification of neighbourhood in this case is a matter for Ministers but, clearly includes the settlements to the north of the A465 and at least the northern parts of Tredegar, Ebbw Vale and Brynmawr. The benefits which flow from the scheme facilitated by this proposal are also benefits relevant to the interests of the neighbourhood. They are in kind no different to the hydro-electricity generation monies, but in reality are much more valuable.

Socio-Economic benefits

105. The wards and towns closest to the Release Land and particularly those to the north of the Heads of the Valleys road (A465) are generally even more deprived than the wider neighbourhood. This is particularly the case in relation to long-term and youth unemployment. There is no reason to suppose, given the wide make up of job opportunities, including, tourism, leisure and hospitality across the site that these wards would not benefit at least proportionately with and likely even more than the wider economic benefits to the community set out above.
106. This-socio economic interest is clearly a powerful interest capable of being taken into account as a matter of law. In this case, it will be taken account by Welsh Ministers and is a powerful argument in favour of deregistration.

Access Interests

107. A large section of common land would be lost to the local community for the purposes of roaming and leisure access. That is undoubtedly one of the impacts which in principle sounds against deregistration. The applicants do not seek to hide from that, but it is important that this matter is seen in its wider context.
108. The Release Land itself is not often resorted to in significant number by the inhabitants of the near or wider community. The assertion that it was well used for these purposes was simply that, an assertion inevitably and always made by a person or organisation away from the neighbourhood.
109. The direct evidence came from those who live and work in the area, from those who do habitually walk the mountains and came to speak at the Inquiry. There is evidence of some but limited leisure use of the footpath across the site. That footpath is to be diverted and would be more useable. It would provide, it is agreed with NRW, an enhanced access to the Common and National Park beyond (see access section 3 Statement of Common Ground (SOCG)⁴¹). Evidence of widespread roaming across the site by the neighbourhood simply does not exist at all in any meaningful way.
110. The reason why the evidence is so one sided is as follows:

⁴⁰ Reference to s 23 National Trust Act 1971 Decision Reference 515971

⁴¹ Document A12

- a. Roaming generally across the Release Land is not an easy prospect, the site is in places boggy and in the absence of way-marked routes it is very easy to find yourself in difficulty;
 - b. Access is difficult and/or unattractive. The Rassau industrial estate is not exactly the perfect gateway to the Beacons. The A465 is a physical and psychological barrier and will become an even greater one once dualling has taken place. It was interesting that Mr Reid chose to identify the ad hoc pallet bridge into the site from the industrial estate as the best and most likely convenient place to start the site view of the Release Land; and,
 - c. The availability of better more accessible areas either to the west around Trefil or between the industrial valleys on the common land which real valleys folk know as "up the mountain".
111. The position is even clearer in relation to horse riding. Although in theory the whole of the Release Land is available to horse riders, it is absolutely remarkable, given the level of objection to the development that would be facilitated by deregistration, there is not one credible piece of evidence that the Release Land is ever used for this purpose.
112. Not a single objector was able to identify the use of the Release Land for roaming by horse and there was only one piece of evidence of the footpath outside of the site being so used. Suggestions by Mr White that dung and hoof marks proved that the site was regularly ridden completely ignore the fact that the site is grazed by horses both legally and illegally and that they too produce dung and hoof marks. Mr Western, who seemed in truth to have but a passing understanding of the land or area, accepted that horse riding could not take place for safety reasons on the boggy areas. Ms Ashbrook on behalf of the Open Spaces Society (OSS) volunteered that such areas came and went and so one couldn't be certain where they were. That perhaps explains why local people are not prepared to take the risk of riding out on the Release Land.
113. The absence of any evidence of any significant use on horseback is in stark contrast to the direct evidence contained in the letter from a local resident⁴² which clearly and specifically identifies why local horse riders do not use the Release Land. That evidence also chimes with the direct evidence on this matter from the other local people who spoke at the Inquiry about the absence of use general or equine of the Release Land for recreational purposes.
114. Notwithstanding this, the loss of 244 ha odd of Common is clearly on the face of it a significant loss of Common in the neighbourhood which Welsh Ministers will, subject to the matters set out below, need to weigh in the overall balance.
115. Four replacement sites are offered which are of direct benefit to the neighbourhood. They are at:
- a. Bryn Farm;

⁴² Document IP22

- b. Crown Avenue;
- c. Sirhowy Woodlands; and,
- d. Waun-y Pound.

116. These sites clearly serve a reasonable concept of neighbourhood and would constitute 112 ha of new common land. Because of the topographical and spatial disposition of Blaenau Gwent set out above, these sites cannot reflect exactly the upper moorland single space area which would be deregistered. Neither would they replicate the experience achievable on the Release Land exactly; it is not possible to do that in the circumstances of the present case.
117. It is also true that all of the sites have some form of limited public access. But it is just that, it is (apart from 1.39 ha at Bryn Farm) limited to public rights of way and/or is simply permissive.
118. It is common ground between the applicants, NRW and BG CBC⁴³ that these sites:
- a. are accessible to the neighbourhood; and,
 - b. provide additional opportunities for unrestricted public access across the Replacement Land and added security around the continued provision of these sites for access into the future.
119. The sites would remain in the control of the County Borough Council and be the subject of management measures and funding to ensure their long term future. That management and funding would be secured by formal legal agreements with BG CBC, the terms of which have been formally endorsed by the Council⁴⁴.
120. It is accepted that more work needs to be undertaken on access issues in order to accommodate equine access to the sites, but there is no in principle reason why these sites could not be made in large parts accessible to horse riders. The British Horse Society agreed in response to a question by the Inspector.
121. It was also accepted in evidence and recorded in NRW closing⁴⁵ that in the context of this area, the sites represent the best possible suite of replacement sites for the neighbourhood.
122. Welsh Ministers can therefore be satisfied that if there is a wider public interest served by the proposal, the alternative provision secured is the best possible provision of replacement sites available given the context of the borough. In addition, they are accessible, well located and in actual truth likely to be used by more local people and horse riders than the Release Land.

Conclusion on Interests of the neighbourhood

⁴³ Documents A12 and A10 respectively

⁴⁴ Documents A6, A7 & A9

⁴⁵ Document NRW3

123. There would be a significant loss of Common Land to the neighbourhood in quantitative terms. However, in the context of the quality and usability of the land and of the alternatives made available that loss does not come close to outweighing the benefit which would accrue to that neighbourhood overall.

The public interest

Introduction

124. Parliament has used this term advisedly. It is well known and well understood in public law circles. It relates to the interests of the public at large. In the case of Commons Act considerations, the nature of commons and the contribution that commons necessarily provide to the public interest, Parliament has directed that the public interest shall include the public interest in nature conservation, landscape conservation and archaeology. But, this definition is not an exclusive one. The public interest is by definition wider than these matters to which the decision-maker is directed to have regard. If another matter is relevant to the public interest arising out of the application, then it must be taken into account in the determination of the application.
125. In the present case the wider public socio-economic interest referred to and set out in detail above is clearly relevant and falls to be weighed in the balance as a likely consequence of deregistration.

Nature Conservation

126. The statute requires the decision maker to have regard to the public interest in nature conservation. That should never be forgotten. Some objectors have forgotten it; choosing to close their eyes to the overall interest which is identified by the Act and preferring a mechanical and illogical application of questions in the Guidance Note shorn of their context. Such an application would in fact stymie the public interest in enhancing nature conservation.
127. If the likely out-turn of the deregistration is an overall enhancement of nature conservation interests on the wider Common and on the Replacement Land, then there would inevitably be an overall nature conservation benefit as a result of the proposal as a whole. The positive nature conservation out-turn of deregistration and consequential development is perhaps the most powerful ordinary commons based argument in favour of the making of the Order.
128. It was no coincidence that the position of NRW moved from one of clear objection to the grant of planning permission to non-objection based on the significant change of circumstance in relation to the litmus issue of the Additional Mitigation Land and its consequences for nature conservation as a whole. The stance of non-objection pertains in these proceedings too and the reasons for this stance are clear once the evidence is properly examined.

The Position on the Common and Wider Common

129. The Mynyddoedd Llangattock and Llangynydir Commons are significantly under-grazed. This has both nature conservation and agricultural consequences. Most

importantly it means that the open moorland is deteriorating because of the absence of proper management and husbandry. NRW describes this as a structural decline and accepts that there is little if any evidence that the reverse will be halted.

130. The solution is a relatively simple one. It is to alter the nature of the grazing on the Commons in a meaningful way, in a way which has been absent for the last 15 years at least. There is a need NRW asserts for cattle to graze the Commons in significant numbers. That change is not going to take place by itself. The structural changes noted by NRW mean that the decline will continue. There is little or no prospect of the relevant 'Glastir' provision finding favour with the required 80% of commoners, especially since they elected to join a lower stocking scheme recently.
131. NRW originally opposed the grant of planning permission on the single basis that insufficient Mitigation Land was made available to compensate for the proposal. It engaged positively with the developer to seek to overcome this single objection. As a result, it sought to identify sufficient land on the wider Common that would be able to mitigate for the loss of the Release Land in nature conservation terms. Mr Reid identified areas of land which he thought were appropriate in terms of area and quality. He targeted the areas that were of limited grazing quality and could work best with the structure of grazing as he appreciated it on the Commons. It was on this basis that the Additional Mitigation Lands were born as a real concept.
132. The management prescriptions for these areas are significant in number but simple in essence. The underlying basis of the management programme is to ensure that a mixed grazing regime is systematically introduced onto the wider Common. This would allow the differential grazing habits of sheep and cattle to take effect upon the Commons. The structure of the forage land would open up, become more mixed and less rank. The mosaic of variety which in small parts gives the land its County conservation value, would extend further and wider as a re-introduction of the more historic pattern of grazing across the wider Common.
133. The consequence of the management regime which would be secured through the planning process would be that the loss of the Replacement Land to development in part would be more than off-set by the consequences of enhanced management and the re-introduction of traditional grazing patterns. The consequences of the management regimes being introduced are captured by the SOCG⁴⁶.
134. They are that the regime would:
- a. Offset the loss of the release habitats including those of principle importance for conserving biodiversity, listed under s 42 of the *Natural Environment and Rural Communities Act 2006* (NERC Act 2006);
 - b. Be likely to enhance species diversity including those of principle importance for conserving biodiversity under the same Act;
 - c. Result in advantages to the Mynydd Langattock SSSI; and,

⁴⁶ Document A12

d. Not result in harms to the integrity of the relevant SAC.

135. These conclusions are seminal conclusions in the context of this Inquiry. They allow a clear finding that de-registration alone is in the public interest in terms of nature conservation. They also address the three important bullet points in the Welsh Government guidance relating to nature conservation impact which reflect the responsibility of Government to meet its national and European nature conservation duties.
136. Not only would the duties be met, they would be exceeded. The ability to deliver these benefits should not be in any doubt.
137. First, from a legal point of view, there is a requirement for these matters to be put in place by the s 106 agreement and Deed of Variation thereof prior to pre-commencement of any development. The principles proposed in the detailed management plans for the Mitigation and Additional Mitigation Land are in keeping with the eco-system service approach⁴⁷ and these would be finalised through the submission of reserved matters applications in consultation with NRW and determined by BGCBC. Welsh Ministers are fully entitled (and indeed required) to proceed on the basis and assumption that the planning system would operate fully and properly in this regard. These proceedings and the SOCGs⁴⁸ will of course be powerful material considerations in the determination of any reserved matters application.
138. Second, from a husbandry point of view, there are clearly sufficient, able active commoners to put the management prescriptions into effect. Mr Robert Davies spoke expertly and ably about the sensible nature of the regime proposed and how in principle there was sufficient incentive for the active commoners to want to take part. He explained how to the north of the Additional Mitigation Land he was already running smaller numbers of cattle and producing good results from an agricultural and nature conservation point of view including the return of the ringed ouzel. Here was a farmer who knew what he was about.
139. The criticisms of the scheme by Mr Gibbs⁴⁹ were not well rooted in basic agricultural practice. Suggestions that sheep and cattle do not mix well on commons was a tricky one to fathom as was his assertion that cattle somehow would not mix with dogs and cars while sheep could.⁵⁰
140. The suggestion of Mrs Gibbs that the proposal could not work without the agreement of all of the commoners is simply wrong and betrays a simple absence of understanding of the operation of commons. No commoner has the right to bar the grazing rights of another. If commoners choose to exercise their rights of common in

⁴⁷ Document A25

⁴⁸ Documents A10 & A12

⁴⁹ Document IP23

⁵⁰ Document A21

accordance with a management regime which itself is of benefit to the Common then that is their right.

141. Welsh Ministers can be more than satisfied on the balance of probabilities that there is the will among the commoners to put this mitigation into effect.
142. There is in addition of course the landowner's right to the surplus grazing rights which in this case are significant and could be used for the purposes of the mitigation and additional mitigation strategy in any event. The existence of such a surplus is confirmed by the landowner's agent⁵¹, NRW and Mr Robert Davies. Its very existence is part of the incentive for the active commoners to want to sort this matter out themselves.
143. NRW points out that there remain a number of hurdles to cross before the mitigation is actually delivered. That is true, but since the issue of sufficient mitigation was the litmus issue in their decision not to object, it must follow from their continued absence of objection that nothing in their identification of these further steps suggests that the mitigation would not in principle be achieved or that it warrants a recommendation that there be a refusal of the order. As the guardian of the water environment, NRW raised no concerns regarding hydrogeology and hydrology and those raised by others are addressed in evidence.⁵²
144. The seven points they raise in closing⁵³ are all now dealt with. Thus:
- a. The plans though as yet unapproved contain the essential and sufficient information for Ministers (like NRW) to be satisfied that they would work. NRW Counsel (para 17) advised NRW and Welsh Ministers that Ministers should in this case assume the proper functioning of the planning system where these detailed plans would with NRW's assistance be confirmed;
 - b. The Deed of Variation is now agreed and is complete;
 - c. The applicants are required before even pre-commencement work to demonstrate legal capacity to undertake the work. Since the landowner is a signatory to the Deed of Variation there is no issue as to this matter;
 - d. The applicants are also required to provide assurance that funding is in place through the Deed of Variation;
 - e. The position of graziers is clear and transparent. Welsh Ministers can operate on the basis that there are sufficient graziers to make the system work and there are reserve powers to the landowner in any event;
 - f. The Release Land plans are also sufficiently clear to ensure that there would be a net enhancement to biodiversity on those lands;

⁵¹ Documents A18 and IP6

⁵² Appendices D and E to Mr Farrar's evidence, respectively

⁵³ Document NRW3

- g. The Release Land plans would be managed and secured by way of a formal agreement with the Council, the terms of which include the provision of management and have been agreed with the Council⁵⁴.
145. Further, NRW which was content with this mitigation (and its longer term impact) being in place for 30 years has as a result of this Inquiry, secured two further important elements to the mitigation strategy.
146. First, the mitigation strategy would stay in place for the lifetime of the development beyond 30 years. This obligation is as it must be subject to the landowner's consent. But it is hugely significant to note that there is agreed to be no evidence at all to suppose that such consent would not be given after 30 years. Thus:
- a. The scheme would be of benefit to the landowner and his interests and to those of nature conservation; and,
 - b. There is no other conceivable use of the Mitigation Land and Additional Mitigation Land given their location in the National Park and in part in SSSI.
147. Welsh Ministers should in these circumstances operate on the basis that there is every probability of the mitigation strategy operating well beyond the 30 years, which by itself would have a positive transformative effect on the structure of the Common.
148. Second all green levy surpluses from ticket sales would be used for nature conservation work over and beyond the Mitigation Land and Additional Mitigation Land strategies. These are potentially very large sums of money being generated to ensure nature conservation enhancement. Again a significant advance.
149. The OSS submission that Welsh Ministers must close their eyes to this mitigation beggars belief. The proposition made is that the decision-maker can have regard to the impacts of the development in determining where the public interest lies but not the mitigation secured by part of the same planning permission. That is not right. Regard must be had to the public interest in nature conservation. If the deregistration facilitates a proposal, Gadsden⁵⁵ is clear then the wider public interest in that permission can be taken into account as part of the statutory discretion. It must follow, and NRW agrees, that the mitigation too can be taken into account. Any other approach would involve unlawful shutting out of the most material of considerations.
150. In the present case the mitigation would off-set the loss of the Release Land (which is already subject to edge effects⁵⁶) in nature conservation terms, and give wider benefits across the wider Common. This in turn would facilitate the benefits set out above which specifically address the bullet points on this matter in the Guidance. How can it be that a decision maker is obliged to ignore this element of public benefit? Of course the decision-maker must have regard to it and it is a very weighty consideration.

⁵⁴ Document A9

⁵⁵ Gadsen on Commons and Greens, 2nd edition, Sweet & Maxwell, (ISBN: 9780414025677)

⁵⁶ Document A25

Replacement Land

151. The position in relation to the Replacement Land is also pretty clear. There would be a nature conservation benefit as a result of these largely local authority lands being registered as common and being subject to management regimes. It is right to say that the precise scale of the improvement is a little conjectural and that is a proper criticism raised by the GWT. Nonetheless, the ability of the management proposals as they are to enhance nature conservation value in the Replacement Lands is not in doubt. That is accepted in terms in the written submissions of Ms Sorrel Jones⁵⁷ and recorded as fact in the SOCGs⁵⁸.
152. In relation to Wentwood, it is accepted that there is in place a management scheme for nature and visitors already but of course the ability to put that management proposal into play would be significantly de-risked if the land is made common and the issue of the restrictive covenant can be removed.

Overall Conclusion on Nature Conservation

153. In such circumstances, the Mitigation Land and Additional Mitigation Land and the wider Common is likely to be significantly enhanced as a result of deregistration. The Release Land too would be enhanced. Applying the statutory requirement to have regard to the public interest in nature conservation, there would overall be a significant benefit to this interest. It would be perverse to turn this benefit away on the inappropriate assumption that the only test to apply is whether the Replacement Land is as good as the Release Land.
154. In nature conservation and agricultural terms, the least valuable, most degraded land would be "sacrificed" to ensure the long term well being of the wider Common. Nature Conservation would overall be enhanced in the public interest even before the Replacement Land is considered. Its enhancement too further emphasizes the weight to be placed on this overall benefit. And all of this is before the huge socio-economic effects are taken into account.

Public Interest in Landscape Conservation

155. Deregistration in and of itself would not have any impact on the landscape. Nevertheless, there is no hiding the fact that the implementation of the planning permission which is facilitated by the proposal would. What is presently open but degraded moorland would become built development. The question for the Welsh Ministers is whether this impact is sufficient to outweigh other matters which weigh in favour of deregistration. The applicants do not think it comes close, but more importantly, even NRW (who assess the impact on landscape as being marginally greater than the applicants) does not think so either.
156. The reasons are clear. The site does not fall into any of the categories identified in the Guidance as gaining special protection i.e. National Parks or Areas of Outstanding Natural Beauty. It does have a non-statutory local designation as a SLA. It is not

⁵⁷ Document GWT1

⁵⁸ Documents A10 & A12

suggested that the release site is not appropriately identified as an SLA. Indeed almost all of the upland areas of the County Borough are identified as SLA. It is correct to understand however that not all SLA is of equal quality. The release site is undoubtedly seen in a more man-made context than much of the rest of the Borough's SLA land. Thus:

- a. It sits adjacent to the hard edge of the Rassau industrial estate and in close visual connection with the industrial buildings at Tafarnaubach;
- b. It is clearly within the zone of visual influence of the electricity pylons that pass east west across the site. NRW's suggestion that the influence of this feature essentially ceases at the line of pylons is not accurate. Especially from the north, the pylons exert an influence on the landscape experience as does the stark white wind turbine and tall white chimneys and structures of the industrial process plant;
- c. It is also within the urbanising influence of the dualled A 465 currently under construction;
- d. There is a ridge line which forms a visual horizon to and from the North which has the effect of providing a visual containment of this urbanised or man made influence. This is most apparent from Bryn Serch to the south but also from Sirhowy Woodland opposite;
- e. There is evidence of urban fringe degradation of the landscape by way of tipping and vehicle damage;
- f. Views from the Brecon Beacons would (from the limited areas they could be seen) be of a well designed development hard up against the urban edge, back-dropped by existing (uninspiring) built development with a transitional landscape belt providing a softer better edge to the built development than now;
- g. No party was able to identify any better site from a landscape point of view where the public interest in the regeneration project might be met.

157. This analysis means that if there is a public interest in the provision of this regeneration, its landscape impact would take place on the best placed site for it in landscape terms. The impact on this locally designated landscape, the best placed site to meet the needs of the community should not begin to weigh heavily against the other elements of public benefit in this case.

Public Interest in Access

158. The very near neighbourhood aspects of access have already been set out in full above under the heading "Interests of the Neighbourhood". It is important to note however that in wider terms, the other replacement sites, as well as serving a wider neighbourhood and the balance of the County Borough and parts of Monmouthshire, would maintain and significantly enhance the area of land in Wales that is common land and available for open access.

159. The 244 ha of Common Land which is being deregistered would be replaced by 307 ha of land which would be new Common Land for the purposes of the Act.
160. The additional parcels of land are at:
- a. Garden City Woodland;
 - b. Greenmeadow Farm; and,
 - c. Wentwood.
161. Again it is right to note that there is some element of public access to all of this land at present. However, it is also correct to note that such access is (apart from 17.25ha at Greenmeadow Farm) limited largely to footpaths and bridleways. Development pressure for housing at Greenmeadow was also not entirely ruled out on part of the site as a matter of principle⁵⁹. Both BGCBC and NRW are clear in their SOCGs⁶⁰ that extending the right to roam over all of these areas in perpetuity would be a significant advance on the present more limited position.
162. Special mention needs to be made of Wentwood. It is a huge strategic resource of countryside for South East Wales, and yet it would appear to be operating in clear breach of covenant in promoting and providing public access to the site. No action appears to have been taken in relation to that breach; perhaps until this Inquiry it was not properly known about or understood, but that position has altered. The applicants are not suggesting that in the event that this release and replacement is refused then public access to Wentwood would cease straight away or even soon. In all probability it would not- though the matter is now being actively pursued by the landowner⁶¹.
163. But NRW is realistic here; there is more than a fanciful risk to the future of significant elements of public access at Wentwood. That is why NRW has deliberately and very carefully recorded that the effective overriding of the covenant by deregistration and replacement would represent a not insignificant advantage for the Woodland Estate. The people of South East Wales frequent this resource in very large numbers. Even a minor risk to that ability to enjoy the forest carries huge consequences and NRW appreciates that. So should Ministers.
164. Para 2.3.3 of the SOCG contains few words. But they have mighty consequences. They are worth repeating:
- "Both parties AGREE that the gain of public access provision at Wentwood, via Common Land designation would grant Welsh Government's Woodland Estate a gain with respect to the key aim of access provision which is currently restricted under the existing lease".

⁵⁹ Appeal Decision Ref: APP/X6910/A/09/2113650

⁶⁰ Documents A10 & A12

⁶¹ Document A17

165. This public benefit, albeit away from the immediate neighbourhood of the site, is itself a powerful reason to grant the order sought.

Archaeology

166. The proposal would have a harmful impact on elements of the archeological landscape⁶². That is an inevitable outcome of the built development which would take place on the Release Land. Again the question is whether such impact is sufficient to outweigh the other issues which sound in favour of the proposal. They do not.

167. Cadw, the body specifically charged with advising Ministers on this issue has from the outset identified some significant concerns⁶³ and sought to work with the applicants and the local planning authority to minimize the harm caused by the proposal facilitated by this release. Cadw's formal position to this Inquiry⁶⁴, having regard to all relevant matters is that it does not object and that it is content with the imposition and discharge of conditions which it is policing as part of the planning process. This is a proper approach given that most of the impact of the proposal is on lower value assets and given that there is no direct impact on relevant Scheduled Ancient Monuments (SAMs) (though impact on the setting of one important SAM setting is noted). The harm nonetheless would be realised and falls to be weighed in the balance against the Order.

Other relevant matters

Introduction

168. The key matter here is the wider public interest in socio-economic enhancement. This is dealt with very fully above. It is addressed there as explained because if there is no finding of public interest in the project which is the only reason for deregistration, this application would be unlikely to succeed.

169. Other matters have been raised and are dealt with below.

Development Control impacts on the National Park

170. There is a need for proportionality here. The impacts of the facilitated development upon the National Park were comprehensively considered by the planning system as part of the grant of planning permission⁶⁵. There was no challenge to that permission and Welsh Ministers, though not bound by the conclusions of the planning system, are required to grapple with them and to judge whether it would be appropriate to take a different view on the evidence. Traffic generation was considered as part of the

⁶² Core Document CD15 Chapter 7 & Appendix I of Mr Farrar's evidence

⁶³ See letter dated 21st June 2013 in 'Additional Documentation' folder

⁶⁴ Letter dated 25th September 2014 in 'Reps + Objections' folder in Planning Inspectorate's file

⁶⁵ Document A5 & Core Document CD17

determination process and supplementary evidence has been submitted to the Inquiry.⁶⁶

171. The main issues raised are impact on landscape which is considered above, the impact from noise and the impact on dark skies. A bespoke noise assessment has been undertaken for the purposes of the Inquiry which is supplemented by a Rebuttal⁶⁷. It was not challenged in any material way. Its conclusion that the impact on the National Park would be limited and well within accepted ranges has not been shifted by the Inquiry process.
172. There is quite a science surrounding lighting within and on the edge of International Dark Sky Reserves (IDSRs). The development plan system in the National Park has yet properly to grapple with the IDSR. The Park Authority has however produced a very recent draft Supplementary Planning Guidance (SPG) which reflects lighting and astronomical best practice in relation to such international reserves. It explains very clearly that very well defined Zones accompany the IDSR. For each Zone there are policy and numerical descriptors, standards and benchmarks (see note on Dark Skies⁶⁸).
173. There is a core Zone E0, a critical buffer Zone E1 a remainder buffer Zone E1 (to the edge of the Park) and then a Zone outside of the Park Zone E2. The Reserve's own internal methodology and standards are fixed by these Zones. It would be nonsense to police the Reserve by notionally deeming that a site lies in a Zone which it does not.
174. In the present case the site is in Zone E2. The lighting proof and response paper on Dark Skies⁶⁹ makes it clear that in principle the development could meet and significantly exceed the benchmarks and parameters for E2 sites. Indeed many of the E1 requirements would be met.
175. The conclusion that the impact of the development properly controlled to meet these limits would be minimal has not seriously been challenged. The planning system has required a detailed lighting management plan to be served; the Reserve's existence and relevant numerical guidance as well as the evidence given here will be a material consideration of importance in the determination of the reserved matters application.

Procedural Matter

176. GWT made a limited complaint that it was not allowed to cross examine the NRW witnesses. The conduct of the Inquiry is of course entirely a matter for the Inspector subject to the rules of fairness. It is not usual to allow cross examination of a party who is not in opposition to your position and the Inspector correctly ruled that cross

⁶⁶ See Environmental Statement Chapter 15 at Core Document CD15, Head of Planning & Building Control's Report at Document A5, and Appendix G to Mr Farrar's evidence

⁶⁷ Appendix H to Mr Farrar's evidence and Document A23 respectively

⁶⁸ Document A24

⁶⁹ Appendix F to Mr Farrar's evidence and Document A24 respectively

examination of NRW in these circumstances was not appropriate, NRW Counsel agreed. This was an entirely normal and correct approach to be taken.

177. Notwithstanding that, the Inspector and all parties were content that GWT should produce their questions from which it was apparent that all of the matters canvassed had already been considered at length through questions of other witnesses or by other cross examination. There were no new issues raised which had not therefore otherwise been considered at length by the Inquiry.

Overall conclusion

178. This decision will represent one of the most important decisions faced by the Cardiff administration. The upper valleys are facing an economic turning point. This application would facilitate a development that could alter the lives of tens of thousands of families who feel that they have been left behind by successive Governments and jurisdictions.
179. It would do so while increasing the overall stock of common land protected for the people of Wales and by significantly enhancing the biodiversity and productivity of the vast Mynyddoedd Llangattock and Llangynidr plateau. It would produce the only realistic and best package of Replacement Land available which would serve the local population and have the benefit of releasing one of the best used natural woodlands in Wales from a problematic restrictive covenant. It would do so on the best and realistically only site available for the purpose in the upper valleys and in a way which thus minimizes the inevitable impact of significant built development.
180. Welsh Ministers have the power to make this Order and the relevant evidence overwhelmingly suggests that they should. The application will be determined on its merits but Welsh Ministers will want to reflect on what might constitute the future for Ebbw Vale, Tredegar, Brynmawr and the other Heads of the Valleys communities in the absence of deregistration here: on what signals they would in those circumstances be sending to the residents of these communities about their true priorities and values.

The Case for Natural Resources Wales⁷⁰

The material points are:

The application

181. The development of the land for the CoW is clearly incompatible with its continued status as common land, hence the need for this application.

Natural Resources Wales

182. NRW was established in April 2013 and brings together the work of the former Countryside Council for Wales, Environment Agency Wales and Forestry Commission Wales as well as some functions of Welsh Ministers. It provides Welsh Ministers with such advice and assistance as they may request and it may advise any other person on any matter in which it has knowledge skill or experience. As a body, its purpose is to

⁷⁰ Particularly Document NRW3 and relevant Statements of Evidence

ensure that the environment and natural resources of Wales are sustainably maintained, enhanced and used, now and in the future.

183. NRW's functions are set out in the *Natural Resources Body for Wales (Functions) Order 2013*. NRW must exercise its functions, inter alia, so as to further nature conservation and the conservation and enhancement of natural beauty and amenity; to promote the provision and improvement of opportunities for access to and enjoyment of the countryside and open spaces; open air recreation; and the study, understanding and enjoyment of the natural environment.
184. NRW must also have regard to the health and social well-being of individuals and communities and the economic well-being of individuals, businesses and communities. As was said in opening⁷¹ and confirmed in evidence, in the past NRW has acknowledged the socio-economic benefits that would be brought about by the CoW and nothing has changed in this regard. The applicants' evidence on socio-economics is not challenged.

NRW's role and position at this Inquiry

185. In opening it was made clear that NRW does not object to the application for deregistration of the Common. That was a carefully considered decision taken in full knowledge of all the circumstances that here pertain, the application itself and the development for which it is made. NRW can and does object where it considers it necessary. NRW's evidence must be considered with its overall position in mind. As Mr Campion agreed in cross-examination, the points raised by NRW's individual witnesses – however strong – did not lead NRW to object.
186. Rather it has participated in the Inquiry in its role as statutory advisor to provide the Inspector and the Welsh Ministers with information and advice on limited areas that fall within NRW's remit. NRW does not provide an overall view on the merits of this application. The areas on which NRW will provide information and advice fall within the 'public interest' consideration to which the decision maker is to have regard under section 16(6) of the *Commons Act 2006* and, more particularly, the public interest in nature conservation, the conservation of the landscape and the protection of public rights of access.
187. Further, as was said in opening, NRW's participation in this Inquiry aims to ensure that the CoW – if the development does come forward – is developed in the best possible way. To that end NRW will continue to participate fully in the planning process as statutory consultee and has made progress with the applicants even during this Inquiry: the SOCG⁷² has developed in some meaningful ways as this Inquiry has progressed.

⁷¹ Document NRW1

⁷² Document A12

Legal points

188. On the basis of the applicants' submissions to date on the approach to an application to deregister common land there is nothing material between the parties in this regard.
189. In opening, NRW referred to what the Welsh Government sees as the purpose behind the requirement for approval for the deregistration of common land: it is to ensure, inter alia, that "any deregistration of registered land is balanced by the registration of other land of at least equal benefit". NRW's evidence focuses on that test narrowly. However, the Inspector and the Welsh Ministers need to apply the test in the wider context. The context includes: the fact that planning permission has been granted (and the judgement that entails in the public interest); that no alternative sites are suggested in relation to either the Release Land or the Replacement Land; and that the upland areas in BGCBC comprise common land (such that the Replacement Land is likely to be of a different landscape type).

SOCG and delivery

190. The following points remain with regards delivery.
191. The reality is that there is much to be done to capture all the mitigation offered by the applicants. In so saying, as Mr Campion agreed in cross-examination, the decision-makers can do nothing but assume the proper functioning of the planning system. Nonetheless, it is material that the following critical steps remain to be undertaken especially so given that the detail of the some of the mitigation is yet to be developed.
192. First, it is agreed that further iterations of the Mitigation Land Ecology Management Plan, the Additional Mitigation Land Mitigation Strategy and the Replacement Land Management Plans are required (SOCG, para. 2.1.1⁷³). As of now the plans are unapproved drafts on which discussions are ongoing (agreed by Mr Morrison in cross-examination). Further, these plans are at the strategic level with the detail to be developed and agreed in the future (agreed by Mr Morrison in cross-examination).
193. Second, a Deed of Variation to the section 106 is required to ensure the measures in the plans are delivered (SOCG, para. 2.1.2). This needs to reflect the update to the SOCG. This is critical if the updates are to have teeth.
194. Third, the applicants are to demonstrate legal entitlement to implement the strategy and plan on the Additional Mitigation Land prior to the commencement of the pre-enabling works (SOCG, para. 2.2.10). As Mr Morrison agreed in cross-examination, this remains to be done.
195. Fourthly, the applicants are to provide assurance that funding is in place to implement the agreed versions of the Mitigation Land Ecology Management Plan and the Additional Mitigation Land Mitigation Strategy (SOCG, para. 2.2.11). Again Mr Morrison agreed in cross-examination this remains to be done.

⁷³ Document A12

196. Fifthly, whilst some of the incentives that might be offered to graziers to ensure the requisite grazing practices are delivered became clearer during the course of evidence, how these incentives are to be secured and delivered is less clear. Further, it is notable that the applicants have not been able to demonstrate the willingness of all relevant graziers to participate.
197. Sixthly, the Biodiversity Management Plans prepared for the Replacement Land sites (save Wentwood) are, again, in draft and further need significant changes in order to change them from straightforward biodiversity plans to being integrated plans for biodiversity and landscape. Mr Morrison agreed in cross-examination that the applicants would undertake this further stream of work.
198. Seventhly, as Mr Morrison agreed in cross-examination, as of now there is nothing to secure the implementation of these Biodiversity Management Plans.

Timeframe of mitigation

199. NRW was particularly concerned that the applicants had rescinded their promise recorded in the 2013 SOCG⁷⁴, made in the context of the planning permission, to provide mitigation for the lifetime of the development and instead now refers to a minimum of 30 years.
200. As a consequence, NRW agreed in the current SOCG (para. 2.2.7) that:
- “...for a minimum of 30 years, successful implementation of the principles set out in the agreed versions of the Mitigation Land Ecology Management Plan and the Additional Mitigation Land Mitigation Strategy (in conjunction with landowners and active graziers) would:
- Offset the loss of the Release Land habitats including those of principal importance for the purpose of conserving biodiversity, listed under Section 42 of the NERC Act 2006. To achieve this, there needs to be an integrated arrangement between the applicant and the graziers that takes into account stocking level, stock type, timing of grazing and degree of shepherding and stock management as well as delivering other active habitat management works.
 - Be likely to enhance species diversity including those of principal importance for the purpose of conserving biodiversity, listed under Section 42 of the NERC Act 2006.
 - Result in benefits to Mynydd Llangatwg (Mynydd Llangattock) SSSI.
 - Not result in adverse effects to the integrity of the Usk Bat Sites SAC.”
201. And in the context of the Replacement Land (SOCG, para. 2.2.20):
- “Both parties AGREE that for a minimum of 30 years, successful implementation of the principles set out in the Replacement Land Management Plans (in conjunction with landowners and active graziers):

⁷⁴ Document NRW2

- Should result in net enhancement to habitats including those of principal importance for the purpose of conserving biodiversity, listed under Section 42 of the NERC Act 2006.
- Would be likely to enhance species diversity including those of principal importance for the purpose of conserving biodiversity, listed under Section 42 of the NERC Act 2006.”

202. Just so as there is no doubt: NRW understands these paragraphs to mean, as was made very clear in cross-examination of Mr Farrar, that the benefits would be secured for a minimum of 30 years, i.e. they would subsist whilst the management subsists.
203. It appears this is not what the applicants understood the same passages to mean. However, there has now been progress on this issue and, whilst not finalized at the time of writing, the applicants now agree in principle, through an update to the SOCG, to implement the management under the mitigation plans for the lifetime of the development, subject to landowner consent. This is a significant improvement – even with the caveat – and will need to be captured in the Deed of Variation.
204. As Mr Reid made clear, if the grazing and other land management activities delivered ceases, some long term beneficial effects of management should continue, particularly where there has been effective re-wetting of bog and reactivation of bog building processes, whilst other beneficial effects may not continue in the long term (e.g. where purple moor-grass has been reduced to a low percentage of the vegetation’s cover benefits to grazing may remain, however where purple moor-grass cover remains at a high percentage, benefits are more likely to be lost).

Nature conservation – the remaining Common Land

205. Mr Reid addressed the effects of the deregistration of the Release Land on the remaining Common and surrounding commons and explained why grazing is key to the nature conservation interests of the Common and the fact that it has generally declined over the recent past, in particular on the south of the hill. He explained, the key risk in deregistration of the Release Land is the potential for a knock-on further reduction of grazing in the already under-grazed remaining common land.
206. In principle, NRW and Mr Reid support the proposed Mitigation Land and Additional Mitigation Land strategies as compensation for the loss of habitat as a result of the development. If these are managed to a favourable condition using a common standards monitoring approach to set the target structure for the vegetation (and if this is then maintained for the life of the development), NRW is satisfied that the benefit to the nature conservation value of the remaining common land should be enough to offset the nature conservation value that is lost from the Release Land. This takes into account that if those areas are managed in an integrated way with the graziers there should be a benefit to a wider area than just the Additional Mitigation Land and Mitigation Land.
207. In all of this, delivery is key and the key steps and hurdles in this regard have been set out above. The applicants have tended to adopt language which suggests a certainty of outcome for nature conservation interests (see, for example, Mr Morrison’s

evidence, paras. 3.3.41 and 3.5.3). However, it is only the objectives that are certain as of today. Whether or not they are achieved would be confirmed by monitoring from the current baseline.

Nature conservation – the Release Land and the Replacement Land

208. The Replacement Land has nature conservation value in its own right. A fact that has been recognised through the designation of some of these sites comprising the Replacement Land as LNRs or SINC's or both. Whether the Mitigation Land and Additional Mitigation Land strategies would be effectively delivered or not, this application would result in the loss of some 244 hectares of open moorland and priority habitat from the stock of Wales' common land. Further, with the right management, that lost land could have been managed to a favourable condition. This potential would be lost forever. In addition, there would be a global loss in common land available for grazing given the nature of the Replacement Land.
209. However, the Replacement Land as a group is inherently different in nature to the Release Land. In NRW's and Mr Richard Jones opinion, the Replacement Land is of less value in nature conservation terms due to either the absence or lower proportion of priority habitats (for example, the Release Land is comprised of 64 per cent. of section 42 NERC Act 2006 and priority Biodiversity Action Plan (BAP) habitats as compared to only 13% on the Replacement Land) (which figures Mr Morrison broadly agreed in cross-examination). Habitat, of course, influences species. The poorer habitats of the Replacement Land both in terms of types, extent and nature, mean that the Replacement Land is likely to support species populations of a lower conservation value than the Release Land. However, Mr Jones acknowledged in this regard that there is insufficient information to make a definitive conclusion on nature conservation value for species.
210. Two further points on the Replacement Land. First, the benefits of the Biodiversity Management Plans also need to be understood in the context of existing ecological management plans for some of the Replacement Land declared as LNRs. As Mr Jones confirmed in answering the Inspector's question, there is a degree of overlap between these plans and the prescribed management is similar. Secondly, some parcels of the Replacement Land benefit from existing protections such as restrictive covenants (Garden City) or designation as green wedge (Crown Avenue).
211. Mr Jones' overall conclusion is, however, clear: the deregistration of the Release Land would result in the loss of valuable nature conservation habitat (in particular, those habitats that have developed on peat soils such as flush, wet heath and blanket bog) from the stock of common land in Wales. The Replacement Land does not support these specific habitats. It is, as a consequence, of less value in nature conservation terms.

Landscape

212. Mr Champion described how the Release Land has landscape and visual attributes which are similar to those of the adjacent land within the BBNP to the north. The Release Land has landscape value by virtue of its location adjacent to the BBNP, which has the highest landscape value ascribed by virtue of its national designation and in its own right.

213. Mr Campion showed that the LANDMAP assessment for the Release Land results in a high overall evaluation for visual & sensory, historic landscape, landscape habitats, geological landscape (high/ moderate) and outstanding in terms of cultural landscape. It is notable, as Mr Smith agreed in cross-examination, that the boundary picked out by LANDMAP is the line of pylons which Mr Campion saw as marking a change in landscape character.
214. In this regard Mr Smith also accepted that the National Park boundary was arbitrary in landscape character terms. Mr Campion's conclusion on the marked change in landscape character plainly has force. It is also important to note that one can see parts of the National Park (Blorengge etc to the south-east) when on the Release Land. The National Park is not just to the North as one might be forgiven for thinking from Mr Smith's evidence. Indeed, the SLA Report states a primary landscape quality and feature of the open upland (of which the Release Land forms part) is that it is 'essentially part of the BBNP.'
215. In addition, the Release Land lies within the Trefil and Garnlydan Surrounds SLA and so has been recognised by BG CBC as being of local value worthy of special protection measures above and beyond more general planning policy provisions. This, as Mr Smith agreed in cross-examination, is a planning policy designation that has been subject to public consultation and found to be justified, evidence based and sound. This upland SLA forms a major part of a continuous tract of SLA in the northernmost part of Blaenau Gwent County Borough, comprised of the Beaufort Common and Trefil and Garnlydan Surrounds SLAs.
216. De-registration of the Release Land and the fundamental alteration of a large and centrally placed portion of this SLA land would adversely affect the landscape experience on the neighbouring areas of the SLA which would remain to the east and west. Whilst Mr Campion accepts that in the circumstances that pertain in BG CBC it was appropriate in identifying the Release Land to look for areas of less value within the SLA and he does not suggest an alternative site for the Release Land, he concludes that the remaining common land is likely to be reduced in value as a consequence.
217. With regards the Replacement Land, Mr Campion concludes that these sites differ widely in character, location, topography and the range of landscape experience from the Release Land and from each other. They also vary in their inherent landscape value, as expressed by LANDMAP and whether the local planning authority has recognised landscape value by designation as a SLA. None of the sites has LANDMAP Aspect Area overall evaluation scores that compare favourably with those of the Release Land. None of them except Bryn Farm benefits from the close proximity of the BBNP. Nor do they offer a landscape experience of extensive open upland with very wide, attractive panoramic views over higher ground and upper valleys as does the Release Land.
218. Although, the Garden City Woodland and Greenmeadow Farm sites offer potentially beneficial local landscape experiences these are markedly different from that of the Release Land site. The sites comprising the Replacement Land have no landscape or visual link with the Release Land site or the National Park. All of the sites except Wentwood have significant urban development in close proximity to varying degrees, which plays a major role in characterising them. Although the Release Land site has a

hard edge to the south formed by the Rassau Industrial Estate, the wide expanse of landscape on the rising ground to the north is of such a scale and appearance that it is not characterised by urban influences.

219. Mr Campion concludes that the proposed Replacement Land does not provide land of 'at least equal benefit' in terms of the landscape and visual effects of the proposal.

Access

220. NRW did not call a witness to deal with access but it does make the following points⁷⁵.

221. First, the Release Land is wholly open with no physical difficulties in relation to access in any area. There was conflicting evidence – anecdotal evidence as to use of the Release Land – as Mr Smith fairly said in evidence in chief 'there is lots of evidence from objectors that contradicts' his own experience that the site was not used recreationally. The SLA Report⁷⁶ specifically identifies the open upland as being 'increasingly popular for leisure and recreational access into the BBNP' (page 36).

222. Secondly, the Replacement Land is not open. Several of the sites are densely wooded (Waun-y-Pound, Garden City Woodlands, Sirhowy Woodlands, Crown Avenue and Wentwood). NRW estimates that approximately 60% of the Replacement Land is wooded. This is likely to have the effect of limiting open access in comparison to the Release Land. Further, access within some of the Replacement Land sites is currently restricted by the presence of fencing. Indeed, there are also proposals within some of the Replacement Land biodiversity management plans to provide additional fencing to facilitate grazing and thereby improvements to nature conservation. However, this would clearly impose further restrictions on accessibility. It would also be contrary to the stated Welsh Government objective of ensuring the preservation of the special qualities of common land which include its unenclosed nature. In addition, some of the sites have further impediments to access such as steep terrain (e.g. Garden City Woodlands).

223. Thirdly, all of the sites benefit from public access on public rights of ways – where the remainder of the land is physically difficult to access as set out above, it is difficult to see the benefit of securing access to that remainder. Similarly, 17.25 hectares of Green Meadow Farm and 1.39 hectares of Bryn Farm are already subject to open access under the CROW Act 2000. Again, in respect of this land the benefits of registration are limited.

224. Fourthly, the Inspector will have in mind the location of these sites and Mr Farrar's agreement in response to his question that only four of the seven sites fell within the neighbourhood.

225. For all these reasons, NRW still finds it difficult to conclude that the Replacement Land is of equal value in access terms.

⁷⁵ By means of a Written Statement, in 'WSOE' blue folder

⁷⁶ Core Document CD12

226. Insofar as Wentwood is concerned⁷⁷, NRW acting as land agent for Welsh Government's Woodland Estate has not formed a view as to the suitability or otherwise of the proposed Replacement Land and its agency role is entirely independent of comments made in connection with the application before the Inquiry. Although marked on OS maps as open access, it is not designated as such. The Woodland Strategy for Wales identifies public access provision as being a key aim where this is permissible i.e. freehold without restrictive covenant. The Replacement Land is leasehold and NRW is not permitted under the terms of the lease to promote public access.⁷⁸

Conclusion

227. As made clear above, the purpose of NRW at the Inquiry is not to provide an overall recommendation or conclusion but it is hoped that its advice in the limited areas above will assist the Inspector and the Welsh Ministers in coming to their conclusions on this application.

The Cases for those supporting the application

The material points are:

Mr Nick Smith MP⁷⁹

228. Mr Smith supports the CoW wholeheartedly because he wants to see the area thrive, and have real growth, real jobs and a real boost to the economy. He believes that the CoW can provide a real chance for that to happen. As an MP he has campaigned avidly on the issues of public health and wellbeing, with Blaenau Gwent having one of the worst track records in the UK. The CoW could go a long way to help tackle these issues.

229. Mr Smith spent his teenage years living on the Waundeg estate in Tredegar and there was nothing else to do other than walk all over the valley. As an avid walker he still takes every chance he can to enjoy the beauty of the Borough and is aware of the Release Land which is marshy and not well travelled or grazed.

230. He is also aware of the lack of opportunities and the deprivation he knew growing up has only deepened as the industrial foundations have been lost. The case is compelling as it would provide hundreds of millions of pounds investment to one of the most deprived areas in the UK, create thousands of jobs, and a boost for tourism. He has heard arguments that a different, usually undefined, solution can be found, but questions whether any other development would offer so much. He speaks to

⁷⁷ Letter of 22nd December 2014 on Planning Inspectorate's file

⁷⁸ Inspector's Note: On my visit to Wentwood it became apparent that, notwithstanding lease limitations, the Forestry Commission had been actively promoting public access and NRW continues to do so (Document I1). This was reported back to the Inquiry and NRW conceded that what happens on the ground may not accord with the restriction

⁷⁹ Document IP1

constituents all the time about the CoW, on the doorstep, in street and supermarket surgeries, through e-mail and letter; the refrain is always that the CoW is needed.

231. The Heads of the Valleys road acts as a barrier to the Brecon Beacons. The CoW has suggested that the development could provide an access point and facilities for visitors wanting to enter the National Park, thereby enhancing access thereto. Mr Smith has tried to listen to GWT's arguments and to get it to work with the developer. However, it has shown little interest and wouldn't even tell him how many members it has in Blaenau Gwent. It is hard to balance that against the massive groundswell of support from the Blaenau Gwent public.
232. The CoW must be given every chance to succeed and to block it over a land dispute would be denying the area the chance to heal it has needed for decades and could damage Blaenau Gwent for years to come.

Mr Dai Davies⁸⁰

233. Mr Davies was the Works Council Secretary when the steelworks closed, he has seen good times but there has been a steady decline since then with shops closing. The area is at the top of every league table on lack of cars, heart disease, unemployment etc. The fantastic people have built industry and will do so again if given the chance. He is pleased to see development on the steelworks site, but that relates to relocation of schools and hospitals and has not created much work.
234. Tinplating was brought to the area in 1938 to alleviate unemployment and suffering; the CoW could do the same for the area and surrounding boroughs including Merthyr Tydfil. The area was once known for its innovation, now it is known for having the first food bank – something that it is not proud of. As the former MP for Blaenau Gwent, his largest case load related to benefits, something that could be alleviated by the employment potential of the CoW. The valley communities were built on social cohesion, but young people are moving away. The area is desperate for employment and he has a 17 year old at college and wants his son to have an opportunity and a reason to come back to the area.
235. Mr Davies has worked with the local college to provide courses giving skills and knowledge but the opportunities for work in the area are very limited and this is demoralising and cannot be right. With the CoW there would be a large employer in the area and one could look forward to apprenticeships and training. He is associated with the Institute in Ebbw Vale which provides a facility for training and entertainment, but it needs people to have a disposable income to survive. Such income is very low, 45% of local businesses have failed since 2002 and a shop that had been trading for 25 years closed on the Saturday before the Inquiry opened.
236. Mr Davies has been a campaigner for the tourist industry because it generates income, but it needs people to come. Producing the best tinplate used to be the area's unique selling point and it needs another one. The area's wonderful history and environment together with the CoW would satisfy that need.

⁸⁰ Document IP2

237. Mr Davies does not drive and has walked all parts of the valley, but has never walked the Release Land because it is known as a dangerous place with peat bogs which is not suitable for walking. The area is one of the main breeding areas for ponies and cobs but riders do not use the Release Land. Whilst it is a significant parcel of land, more than enough space would be left.

Rev. Geoff Waggett⁸¹

238. Rev. Waggett has served in Ebbw Vale for 15 years and walks the area when he can. He recently spent 3 hours walking the Release Land and found it an almost impossible task. Apart from the bridleway and path, locals who know the area don't use it because it is too dangerous and a horse rider he spoke to the day before he gave evidence indicated that the area is too dangerous to ride horses.

239. The Inquiry has heard a lot about sheep, shepherding and endangered species. Rev. Waggett is one of 12 shepherds in a parish of over 25,000 sheep. They pasture them, care for them, and feed them physically, emotionally and spiritually. Their sheep might wander, they might not all gather in the sheepfold, but most acknowledge the shepherd. The people of this neighbourhood have aspirations and hope. Over the past 40 years the economic and social pasture of the parish has been in decline. There is undoubtedly a need to have a concern for the environment, but there is a greater need to care for the wellbeing of God's people.

240. A figure of 16% has been mentioned in relation to SLA land, but what about the comparable unemployment rate and the 27% youth unemployment? A sum of £300,000 to relocate a couple of dozen common reptiles has also been mentioned; most of his flock don't earn that much in their lifetime! The people of the deprived and poverty stricken areas of the Hill Top, Williamstown and Newtown areas of Ebbw Vale are the real endangered species. These are the sofa surfers, those that walk aimlessly through the town of pawnshops and closed shops, and those that they meet whilst out as Street Pastors on Friday evenings. There are stories of false hopes and dashed dreams as well as endless applications for jobs.

241. Rev. Waggett gave three examples of the problems faced by his parishioners, the first related to a young mother with 3 children whose husband is disabled who can't afford the bus fare to travel 2 miles to the food bank. The other two being a young man who walks his 3 children 2.5 miles to school in all weathers because he has no car and a young lady who is depressive and has taken an overdose 4 times over a 3 week period.

Mr Robert Davies⁸²

242. Mr Davies spoke on behalf of a group of 5 working farmers, including himself, with rights of common on the Mitigation Land/Additional Mitigation Land. He farms in Dyffryn Cwannon and grazes cattle on CL015 and CL016 with 2 of the other 4 also currently running cattle on the Commons.

⁸¹ Document IP3

⁸² Document IP19

243. In responding to points made by Mr Gibbs, he noted that cattle are reasonably easy to contain in a particular area without the need for electric fencing, cattle and sheep mix very well and complement each other, and he has experienced no problems between people and cattle. Mr Davies was present at the meeting referred to by Mr Gibbs; although most were generally in favour of improvements to the Common no vote was taken.
244. Mr Davies explained that the Common needs cattle for habitat management reasons because they graze the rougher grasses which sheep find unpalatable and was aware of NRW concerns that the lack of cattle was having an adverse impact. There is a very real risk that the Additional Mitigation Land will no longer be deemed forageable by the Welsh Government, resulting in a reduction in Basic Payment Scheme Entitlement payments and Glastir payments. He cited his own experience of seeing Ring Ouzel and Merlin returning after cattle were re-introduced.
245. The 5 farmers are keen to work with the developer and his understanding of discussions so far is that the active graziers would be given the opportunity of running cattle donated by the CoW who would also employ a herdsman. Insofar as TB is concerned, he felt that grazing on the Common was quite safe as Badgers don't go there but acknowledged that the cattle would need to be tested before they left the Common. He also indicated that keeping cattle on the Common could result in reduced supplementary feeding and bedding costs.

Ms Sophie Rose⁸³

246. Young people growing up in Blaenau Gwent are constantly told that they live in a deprived area, there will be no jobs for them when they leave school, that there are no opportunities and that everything around is closing down. They are also constantly reminded of how things used to be when Blaenau Gwent was at its strongest when the coal and steel industries bloomed, with one being able to leave school on a Friday and get a job by the following Monday, but that was over 30 years ago.
247. Ms Rose wasn't even born when those industries closed but it affects her and other young people. The CoW is the only opportunity to get the area back up after being down for so long and finally be able to look forward to the future rather than look back to the past. She hopes that we are not going to tell the next generation that we almost had an opportunity to change and move forward but lost it like everything else.
248. She acknowledges that young people are the hardest to motivate and they don't know what they want. Nonetheless, as a representative of the young, she confirms that they strongly support the CoW and can see how much they need it to provide a bright future ahead.

⁸³ Document IP4

Mr Aled Davies⁸⁴

249. Mr Davies is currently a Gold Young Ambassador for Blaenau Gwent. Growing up in the area, he has been able to see a lack of ambition and believes this to be because the public do not get to see enough success first hand. Bringing the CoW to the area would remedy this and show that the people do matter and have a purpose. It would also inspire many to drive for the success that they would be witnessing.
250. Sadly there is a huge negative feeling and a lack of pride in most local people with responses to the CoW being things like 'it will never happen, why build it here' because they feel it is too good for them. The last time the majority felt proud was when the steelworks was around as it was known that the works made an impact worldwide. However, since its closure the younger generation has missed out on that positive image as something to latch onto and say that they are proud to live here. The CoW is the perfect opportunity as it could also make an impact worldwide whilst also opening the door to the rest of the world for many young people.
251. The CoW translates as hope and opportunity to lift Blaenau Gwent out of the doldrums experienced for too long. It is much more than just for the people of Blaenau Gwent, it would be beneficial to Wales, the UK and motorsports in general and if done properly the advantages would be endless.

The Cases for those opposing the application

The material points are:

Brecon Beacons Park Society⁸⁵

252. The Brecon Beacons Park Society (BBPS) is an independent, charitable organisation of over 700 members that exists to:
- a. Advance the enhancement, protection and conservation of the countryside and other amenities of the BBNP for the benefit of the public; and,
 - b. Enhance the education of the public in the ways in which to achieve the above, including the provision of opportunities for healthy recreation and in particular walking. The BBPS, therefore, attaches great importance to all international, EU, and national law, policy and guidance that assist in the attainment of the first objective.
253. The BBNP is a Category V Protected Landscape. The National Park designation confers the highest status of protection as far as landscape and scenic beauty are concerned. The dual purposes of the designation are:
- Conservation and enhancement of natural beauty, wildlife and cultural heritage; and,

⁸⁴ Document IP5

⁸⁵ Particularly Documents BBPS2, BBPS3, BBPS4, BBPS5, and BBPS7

- Promotion of opportunities for the understanding and enjoyment of the special qualities of the National Park by the public.

The duty to have regard to these purposes applies to activities affecting these areas, whether those activities lie within or outside the designated areas.

254. The Society believes that the CoW would be damaging to the BBNP. Such an enormous development with its alien built forms up to 6 stories in height which with the tracks and solar farm would cover up to 115.5 ha, noise, movement, traffic and other disturbance right on the edge of the National Park would damage for ever its special qualities. Gone for eternity would be the wildness, remoteness, tranquillity and the other special qualities of this part of the National Park. The public enjoyment and appreciation of this special landscape, with its historical influences going back to the Bronze Age, would undoubtedly be detrimentally affected by the intrusive nature of the development. In considering the public interest, there would be a deleterious effect on the National Park and this should be given due weight.
255. Should Ministers approve the application, the Landscape and Ecology Management Plans for the Mitigation Land and Additional Mitigation Land could, if properly designed and managed, bring some benefit to the National Park in terms of biodiversity and landscape, and could improve the grazing on the Commons and help to enable the ancient tradition of grazing these Commons to remain viable. However, it is essential that the scheme be in place before any pre-enabling, enabling or construction works commence because once work starts the delicate moorland habitat would be destroyed forever.
256. The Society does not think that any scheme would be viable without the consent of all the graziers and it is clear that there is no unanimity among graziers. It is also essential that the charitable trust is set up before work commences and is properly constituted and endowed with sufficient capital to enable it to continue its function in perpetuity. Calculating the capital required will need realistic costings of all the works proposed, salaries of employees and incentives for graziers etc. to ensure that the mitigation continues to be delivered if the development should fail and the proposed green ticket levy not materialise.
257. Contrary to the applicants' assertions, the public right of way crossing the Release Land is clearly visible, following a ridgeline to the east of the Nant Milgatw. It is used by hikers, families, joggers and dog-walkers and Mr White has led walks along it. The Release Land is easily accessible from the bridleway, from paths leading up from Trefil and from the National Park and it is crossed by informal paths with dung and hoof-marks being evidence of horse riding.
258. Although the Rassau Industrial Estate provides an industrial backdrop, it becomes less and less dominant as one moves north and soon disappears from view. The CoW would extend industrial development to the very edge of the National Park in a location where the sense of wilderness and isolation is currently at its strongest. This would also undo the historic justification for the use of the Chartist's Cave, a very important part of the cultural story of early industrial Wales.
259. The Society is concerned about the likely effect of noise on the tranquillity of the adjoining moorlands of the National Park with prevailing winds being from the south west. Even if it is only the noisier events that would create a problem, these would be

likely to take place at peak holiday times when the public are most likely to be out enjoying the National Park. Furthermore, the Motorsport Noise Assessment⁸⁶ has confirmed that almost all the proposed activities planned for the venue would be likely to cause noise complaints in several areas around the site such as Trefil and Rassau. This would create a problem for both the operator and BGCBC as highlighted in the report from the Head of Planning⁸⁷. The high likelihood of complaint from most of the activities would mean that BGCBC may be forced to take action to reduce a potential nuisance and this could result in restrictions which might affect the financial viability of the project.

260. The Release Land, which includes 2 SAMs in the form of the Trefil Tramroad and the Twyn Bryn March Round Cairn IV, is of much more archaeological interest than the Replacement Land. The setting of the cairn in particular would be affected changing from an isolated one within the context of a wide funerary setting that extends north to Mynydd Llangynidr to being amongst motor sport lodges.
261. The Society questions the use of a location at a distance from access by rail and lacking good public transport. No source of information can be found supporting the estimated less than 1% of local traffic approaching via the B4560⁸⁸ and Powys County Council's Highways Department was not consulted. The analysis takes no account of the fact that many people attending events, particularly motorcyclists, would be interested in driving on challenging roads and the use of satellite navigation means that motorists are led over unsuitable routes. Although there would be no direct access from the B4560 to the new section of the A465, the anticipated delays to westbound traffic on the A465 could well make the B4560 an attractive route.
262. The whole of the BBNP has recently been awarded IDSR status and Mr Wilson is a member of the Management Board and was a major contributor to its Lighting Management Plan (LMP). This has become a unique selling point for tourism businesses and experience at the Galloway IDSR is that 77% of businesses reported increased custom after the first year of designation. The CoW would introduce light pollution into an area where the dominant source of lighting is currently moonlight and undermine the IDSR status. Notwithstanding any mitigation, the Society is not persuaded that the level of impact would be only minimal. The SPG, being in draft form, is by definition work in progress. Although the default for the external zone is E2, the LMP notes that this is dependent on the degree of threat and will vary according to the nature and intensity of lighting.
263. The Society is very aware of the need for job creation and regeneration, but believes that this should be through a more sustainable strategy to develop a number of smaller, more diverse projects on previously developed land which would also be more certain of delivery.

⁸⁶ Appendix H to Mr Farrar's evidence

⁸⁷ Document A5

⁸⁸ Appendix G to Mr Farrar's evidence

Gwent Wildlife Trust⁸⁹

264. GWT is a registered charity that was established in 1963 and has a membership of around 10,000. It is a member of the Wildlife Trusts Partnership – the largest voluntary organisation concerned with all aspects of the protection and enhancement of natural heritage. The Trust aims to protect and enhance the wildlife of Gwent, and encourage public enjoyment and awareness of local wildlife for all with its vision of people close to nature, in a landscape rich in wildlife. Its mission is to champion nature conservation and inspire people about wildlife in Gwent.
265. The Inquiry has been presented with a rather contorted argument that deregistration and the CoW development that would follow would actually enhance biodiversity. This claim has been made despite the absence of detailed, thoroughly surveyed, management plans with very clear and unambiguous delivery mechanisms and costings. Given the substantial public funding that has already been released to the CoW, this situation is unwarranted. The applicants are urged to flesh out the details with greater ecological diligence and with all due haste and resources.
266. The upland habitats on the release site comprise a mosaic of acid grassland, marshy grassland, wet and dry heath, bog and acid flushes with a small area of calcareous grassland, some of which represent habitats of importance at the European level. The site supports a wide variety of species and qualifies as a SINC on numerous counts and features, something which is highly unusual. This biodiversity faces complete destruction, and local extinction of notable species and habitats would be inevitable. Although more mobile species would be displaced, the impact of this depends on the carrying capacity of the surrounding land which has not been studied. There would also be a negative impact on the remainder of CL15 and the adjacent CL16 because of the risk of reduced grazing and the 'edge effect' near the site boundary.
267. The landscaping biodiversity proposals inherent within the CoW development would not replace like for like and many of the proposed ecological measures are unsuitable for an exposed upland site e.g. planting tree whips on exposed western facing artificial bunds. Other CoW landscaping features would dismantle the ecosystem services currently provided e.g. the attenuation ponds would be unlikely to offer the same level of clean water into the river catchment systems within the relevant eastern valleys. The proposal would be contrary to Welsh Government ambitions to restore peatland and to increase ecosystem resilience.
268. The only meaningful mitigation on offer and under CoW control is that of the Mitigation Land. Plans for ecological enhancement elsewhere (Additional Mitigation Land and Exchange Land) are materially contingent on factors and assumptions that, as a consequence of the poorly prepared management plans and hasty site visits, remain unconfirmed, unknown or, at best, vague. Furthermore, they recommend various works which may require consent under section 38 of the *Commons Act 2006* and the implications thereof have not been considered.

⁸⁹ Particularly Documents GWT1, GWT4 and GWT7

269. There is strong evidence to suggest that Wentwood would be managed to enhance biodiversity in any event and registration as a common could conflict with forestry operations. Insofar as the sites owned by BGCBC are concerned, the Council has a legal obligation to have regard to the purpose of conserving biodiversity and this is likely to be strengthened in the future. It also has LDP policies to protect SINC's and LNRs and is a key member of the Local BAP partnership. Although all these sites are of nature conservation value, the habitats and species they support are not as rare as those of the release site.
270. Habitat enhancement on other areas of common is not equivalent to the total loss from deregistration, as these areas are of equivalent or higher value to that which would be lost with the majority already being designated as SSSI. Furthermore, it is questionable as to how much they can be improved and the carrying capacity raised.
271. The evidence provided by the applicants has fallen woefully short of the standards required to materially justify the argument that deregistration and the subsequent CoW would provide a net biodiversity gain. In this atmosphere of uncertainty, GWT is left with little option and, on the basis of the precautionary principle, objects to the proposed deregistration.
272. Nonetheless, it is recognised that socio-economic factors will inform the outcome. As a community based organisation, the GWT also recognises the importance of job creation within Blaenau Gwent. The prospect of 4,000 – 6,000 FTE jobs is a promising one, but the Trust is concerned that the multipliers used within the business models are overly optimistic and it is not alone in those concerns.
273. In view of the last minute insertion of socio-economic criteria and the weight accorded to it, there is now a responsibility on the applicants to demonstrate meaningful commitment to their stated ecological aspirations. They could start by addressing the points made by NRW witnesses, which in all but headline could be interpreted as serious doubts and concerns over the lack of detail and material commitments inherent within the current mitigation proposals. The salient points outlined in NRW's closings are very significant⁹⁰.
274. Given the unprecedented nature of the mitigation proposals, and the shift in philosophy and ethos within NRW as the statutory environment body as compared to the Countryside Council for Wales as its predecessor, GWT is not convinced that the assumption regarding the proper functioning of the planning system is a safe one to make at this stage. In order to ensure the proper functioning of the planning system, secure legally-binding, written and financially sufficient assurances of commitment from the applicants to address the points in paragraphs 18 to 22 of NRW's closings should be secured⁹¹.
275. Should Ministers conclude that the distressing socio-economic circumstances of Blaenau Gwent are sufficient justification to allow the application, despite the impacts

⁹⁰ Document NRW3

⁹¹ Document NRW3, paras reproduced at paras 192 -196 above

on nature conservation, the neighbourhood, and the landscape, GWT requests that this be done as an exception in the peculiar context of Blaenau Gwent. If deregistration would be facilitated without this caveat, and on the basis of currently insufficient mitigation measures, then the future for common land in Wales together with its attendant human and natural communities and the landscape character of the Nation would look uncertain.

Open Spaces Society⁹²

276. The OSS is Britain's oldest national conservation body, founded in 1865. It campaigns to protect common land, town and village greens, other open spaces and public paths. The society is by statute notified of all applications under sections 16 and 38 of the *Commons Act 2006*.
277. The Release Land is of great value to the neighbourhood and for its public interest because it is the closest open land with rights of access to many people's homes. As a former urban common, there are rights to walk and ride horses over the whole of it. From the Release Land people can walk and ride for miles over open common enjoying the wide views and inspiring landscape.
278. Its loss would mean that people who are accustomed to using it on foot and horseback would no longer be able to do so and this would be detrimental to their health and wellbeing. Their enjoyment of the remainder of the Common would also be affected with the proposed development presenting an ugly intrusion and a barrier to those wishing to use the Release Land to access the BBNP beyond. The Release Land forms an essential buffer to the National Park being visible from the high points in the Park and affording views to the Park. The impact on the landscape would be devastating and the proposal would damage the archaeology and history of the site. Notwithstanding claims that boggy conditions prevent wide-scale roaming on horse and foot, Mr Weston's site visit confirmed that the land is rideable and its loss would equate to a loss of an area of safe off-road riding.
279. The neighbourhoods served by the Replacement Land parcels are different from that served by the Release Land such that the Replacement Land would not add something of positive benefit to that neighbourhood⁹³. These parcels are some distance from the National Park and do not benefit from views of the Park. Much of the Replacement Land is already available to, and used by, the public on foot, and protected by a variety of designations. A significant proportion of the Replacement Land is physically inaccessible due to the presence of trees and boundaries of various types. The applicants' have paid little regard to the needs of horse-riders and there are no proposals for horse box parking at any of the locations. NRW's analysis that it is difficult to conclude that the Replacement Land is of equal value is wholeheartedly supported.

⁹² Ms Ashbrook's & Mr Weston's Proofs of Evidence

⁹³ Inspector's Note: In response to my questioning, Ms Ashbrook accepted that Waun-y-Pound, Crown Avenue and Sirhowy Woodlands were within the neighbourhood served by the Release Land

280. The land at Bryn Farm is already open for public access on foot with part of it already mapped as access land under the CROW Act 2000. The presence of boundaries and trees restricts its useability for horse-riding with the draft management plan referring to re-establishing livestock compartment fencing. This would require consent under section 38 of the *Commons Act 2006* and there is no guarantee that such consent would be given. Garden City Woodlands is subject to a restrictive covenant preventing uses other than the planting of trees and for open space and recreation. Furthermore, it is not suitable for horse riding due to its steep and wooded nature. Again the draft management plan proposes works that would require section 38 consents.
281. Waun-y-Pound is already open for public access on foot, but woodland makes much of it inaccessible. It is used by motorcyclists and given the narrowness of the track this could pose a danger to walkers and horse riders. Once again, the draft management plan refers to additional fencing works. A significant proportion of Greenmeadow Farm is already mapped as access land under the CROW Act 2000. The point made previously in respect of section 38 consents arises once again.
282. Sirhowy Woodlands is a well used community woodland with many paths but the wooded nature would restrict use by walkers and riders. Here also, there is reference to additional fencing works in the draft management plan. Crown Avenue is designated as a Green Wedge and has public access. Much is unsuitable for horse riding because of its steep nature with access being by steps. Once again, the section 38 issue arises.
283. BGCB's agreement to allow the 6 parcels in its ownership to be used as Replacement Land was made on the basis of incorrect information⁹⁴. The report indicates that the land would be subject to an automatic right of open access under the CROW Act 2000 unless it was within 20 metres of residential properties. This is incorrect, the rights would be to walk and ride over every part under the provisions of the *Law of Property Act 1925*.
284. Wentwood Forest is some 30 miles from the Release Land and is already subject to public access with a path network including access for horses having been established. There is a concordat between the British Horse Society and NRW to provide access for horse-riders to the Welsh Government's Woodland Estate⁹⁵. Access is not available over the whole area due to the presence of trees and there appears to be no proposal to clear fell them. The ability of the Welsh Government to take an independent decision on this application is questioned because NRW's letter of 26 August 2014 confirms that Welsh Ministers have agreed to accept a variation of its leasehold interest in Wentwood Forest and there may be a conflict of interest.

⁹⁴ Documents A6 and A7

⁹⁵ Inspector's Note: In response to my questioning, Mr Weston accepted that the Concordat was subject to restrictions arising from title constraints and stated that he was unaware of the lease restrictions at Wentwood

285. The application does not satisfy criteria set out in the Welsh Government's Common Land Consents Guidance⁹⁶. The application would not safeguard commons or ensure that the Common's special qualities are protected. Deregistration would not be balanced by the registration of land of equal benefit. The proposed use is not consistent with the Release Land's status as a common. Whilst any improvements away from the Common in relation to the development may be relevant to the planning application, they are irrelevant to this application. This application must be judged on the criteria that compares the Replacement Land with the Release Land.

Mr William Gibbs⁹⁷

286. Mr Gibbs spoke on behalf of himself and Mr Ivor Vaughan with whom he farms in partnership. They are active graziers on CL16, CL18 and CL19 (Llangynidr and Llangattock Commons) with grazing rights for over 1200 sheep and mountain grazing is an absolutely essential part of their farming activity. Their main sheep walk is across Llangynidr Mountain towards CL15. Although aware of habitat changes on the commons, their sheep still come back from the mountain in fine condition.

287. Messrs Gibbs and Vaughan were dismayed to see that the proposed Additional Mitigation Land would run right across their traditional grazing walks with the proposal to introduce cattle and use electric fences to manage them being of particular concern. They believe that both cattle and fences would inevitably interfere with their grazing of sheep as cattle and sheep do not mix. A meeting of the Commoners Association was held on the 18th February 2015 to hear about the CoW plans. However, the plans were most inadequately explained, no documentation was provided with one map being held up at the front of the venue. A series of questions and concerns were raised including the lack of information, the practicality of grazing cattle and the financial viability of the scheme. A motion rejecting the proposal was passed and Mr Gibbs believes that this was by a majority of 27 to 1.

288. Documents relating to the present proposal were not available on the CoW web-site until 2nd March 2015. Although Mr Morrison states that 'all graziers are fully on board with details of the scheme', this is not the case. In fact no agreement exists with the commoners on CL16, CL18 or CL19 and this call's into question the whole viability of the strategy proposed for the Additional Mitigation Land. The 2013 Environmental Statement⁹⁸ states that the ecology mitigation strategy could not work without commoners' agreement. Whilst that relates to the Mitigation Land it is believed to have been accepted by all parties that the principle established should also apply to the Additional Mitigation Land.

289. No contact has been made with Messrs Gibbs and Vaughan nor, as far as Mr Gibbs is aware, many of the other graziers with rights on CL16, CL18 and CL19. Mr Reid notes that there is no indication that the active graziers and other grazing rights holders are signed up to the management outlined for the commons and highlights the need to

⁹⁶ Core Document CD06

⁹⁷ Document IP23

⁹⁸ Core Document CD15

obtain clarity from the Commoners' Association and rights holders on whether there would be any guarantee over their delivery of necessary grazing management.

290. The wisdom of handing over sole control of 800 hectares of mountain habitat which is of enormous cultural, landscape, agricultural and environmental value to the CoW for the next 30 years is questioned. Whilst the CoW may be capable of running a race track, its ability to manage a delicate habitat system and work with the established graziers must be open to question.

291. Discussion with commoners should have encompassed:

- a. The interaction with Glastir Advanced. Whilst it has been suggested that no other funding was available, this can provide funding for control of grazing and improvement of habitats with funding of about £280,000 being currently provided in respect of Llangynidr and Llangattock Commons. Further funding could be sought from trusts such as the Usk Valley Discretionary Trust and the Beacons Trust. Furthermore, no contact has been made with the Common Land Development Officer for CL16, CL18 and CL19.
- b. The GWT has highlighted the complexities of grazing cattle on the open mountain and there is a particular concern about the impact of cattle which test positive for TB.
- c. The part of the mountain under consideration is easily accessible and used by dog owners who run their dogs' free leading to potential conflict with cattle.
- d. Graziers regularly have sheep killed by traffic on the B4560. This road would become the primary north – south route to and from the circuit and traffic volumes would significantly increase when events are being held. In such circumstances, wandering cattle would be a severe hazard endangering human life.

Ms Gwyneth Love

292. Ms Love lives in Dyffryn Cwannon, to the north west of the Release Land beyond the ridge, and considers that the CoW would result in a large amount of losers. She referred to other schemes that had promised jobs but only made a lot of money for a few. She views the number of jobs to be created with scepticism and questions how many would be for local people with no guarantee of the benefits. Other losers would be people in the neighbourhood who could see or hear the development and have their everyday life significantly affected by litter and have to share their community health facilities.

293. The residents of Trefil and Rassau and the villages around would not only see and hear the development, but would also suffer from the additional traffic, and their lives would be very radically altered. Congestion has been attested to by people living near Silverstone who report being unable to get out of and back into their dwellings with the pubs around being overloaded. Nineteen families live in Dyffryn Cwannon and Ms Love asks what plans are there to mitigate the impact on them. Whilst many are enthusiastic others feel differently and the CoW would be divisive when there are other ideas around. National Parks need a buffer zone and the zone here is not very wide

having already been reduced by developing the Rassau Industrial Estate on what was once part of the Common.

Written Representations

294. In addition to NRW, OSS, GWT and BBPS who appeared at the Inquiry, the Planning Inspectorate received objections/representations in response to the notification from Llangynidr Community Council, Shirenewton Community Council, Mr Mario Lenza, Powys County Council, Cadw, Monmouthshire County Council, Mr Barry Embling, Ramblers Cymru and the BBNP Authority⁹⁹.
295. Llangynidr Community Council indicates that some farmers need Replacement Land on the Llangynidr side of the mountain and questions why it does not appear on the list of active commoners. Shirenewton Community Council objects to the Replacement Land at Wentwood Forest because this is already accessible to the public, and its distance from and different characteristics to the Release Land. Mr Lenza does not see a compelling case for another race circuit with existing circuits struggling to make a profit. He notes that Wales already has several circuits and believes that state aid would be illegal.
296. Powys County Council is the registration authority for the Release Land. Following discussions with Blaenau Gwent Borough Council and Monmouthshire County Council it suggests that, in the event of Welsh Ministers granting the application, the Replacement Land at Bryn Farm be placed on its register, that at Wentwood be placed on Monmouthshire's register, and the remainder be placed on Blaenau Gwent's register. Cadw notes that the Release Land includes the Twyn Bryn March Round Cairn, the impact on which has already been addressed through the planning permission.
297. Monmouthshire County Council notes that in practice the Replacement Land at Wentwood is available for public access and is crossed by a number of bridleways. It urges that, if the application is approved, early dedication of this Replacement Land as access land under section 16 of the CROW Act 2000 should be considered in advance of the next 10 year review¹⁰⁰.
298. Mr Embling objects to the length of the consultation period, the location of the site notices at Wentwood, and notes that this Replacement Land is a long way from the Release Land and is already open to the public. He does not understand the claimed benefit to biodiversity at this site, is of the view that private land should be purchased to provide Replacement Land, and questions NRW's involvement. Ramblers Cymru object because the 7 geographically dispersed areas of exchange land are not comparable to the cohesive, open aspect Release Land and they all have existing

⁹⁹ 'Reps + Objections' folder in Planning Inspectorate's file

¹⁰⁰ Inspector's Note: The Applicants letters of 1st December 2014 (in 'Applicant Response to Reps/Objs' folder), in Planning Inspectorate's file, assumes that it would become access land on registration, but if not it is likely that the landowner would be prepared to dedicate in advance of the next review. I raised this at the PIM, but no further progress had been made by the close of the Inquiry.

access rights across them. It is particularly concerned about the Wentwood Replacement Land because of the distance from the Release Land and its different physical nature.

299. The BBNP Authority queries how new rights of common for the Replacement Land would be established given the character of the Replacement Land parcels with some being adjacent to existing commons with pre-existing rights and practices. It is of the view that all the Replacement Land lies outside the neighbourhood of the Release Land. Given that the Release Land is part of the neighbourhood of the National Park, the loss of this relationship needs to be evaluated and compensated for. The application needs to demonstrate how it has evaluated impacts on Habitats of Principal Importance to Wales on the Release Land and why it is acceptable to replace one large contiguous block of habitat with several, smaller and ecologically different sites which are already designated for nature conservation and/or landscape reasons. The application fails to consider the impact on the National Park's landscape character and ecological integrity. The topographic and land-use characteristics of the replacement sites are such that the extent and quality of public access would be reduced. The application fails to evaluate the impacts on features of historic/archaeological interest and how any loss would be compensated. It is requested that Ministers consider the regularity of Replacement Land being offered by the local planning authority and Welsh Government.
300. Subsequently representations were received from Dr H D Lewis¹⁰¹, Ms Kirsty Williams AM¹⁰² and Coleg Gwent¹⁰³. Dr Lewis objects to the application on the basis that brownfield land should be used, he would no longer be able to walk over the Release Land, use of adjoining areas for walking, running and riding would be affected, and the ashes of Aneurin Bevan and Jenny Lee are scattered nearby and it is doubtful if they would have chosen an area next to a racing track as their final resting place. Further objections relate to additional traffic through Llangynidr, noise impacts, and the use of public funds, and he questions the number of jobs that would be created.
301. Ms Kirsty Williams AM raised a query on the availability of relevant documentation on behalf of Mr William Gibbs.
302. Coleg Gwent has responsibility for the majority of post 16 education and training in Blaenau Gwent. It notes that high unemployment is a massive hurdle for its students on completion of their studies and considers that the CoW represents a very significant opportunity for the area to lift itself out of the serious deprivation that exists. The college also undertakes to be flexible enough to meet the project's training needs.
303. At the Inquiry, documentation from Jeffreys & Powell, Mr Ian James, Merthyr Tydfil County Borough Council, Mr Brian Bowen, Mr Colin Greeves, Prof. Karen Holford (Cardiff University), Powys County Council, Mr Dylan John Hurter, Tai Calon Community Housing, Blaenau Gwent Business Forum, South Ebbw Fach Cluster, Mr &

¹⁰¹ e-mail 5th February 2015 in Planning Inspectorate's file

¹⁰² e-mail of 25th February 2015 in Planning Inspectorate's file

¹⁰³ Letter of 23rd February 2015 in Planning Inspectorate's file

Mrs D L & J M Price, Mr T G & Mrs A M Edwards, Mr W & Mrs E Langford, Mr Reginald Skinner, Mr Robert Davies, Mr Julian Rees and Mr David Mantle was submitted¹⁰⁴.

304. Mr James, Merthyr Tydfil County Borough Council, Prof. Holford, Powys County Council, Mr Hurter, Tai Calon Community Housing, Blaenau Gwent Business Forum, South Ebbw Fach Cluster, and Mr & Mrs Price all support the application because of the substantial socio-economic benefits that would come from the CoW. Those involved in higher and further education highlight the opportunities to create working relationships with the CoW.
305. Jeffreys & Powell, Solicitors, provided a position statement on behalf of the commoners with rights over BCL015. This confirms that the rights holders have collectively entered into conditional agreements to surrender a proportion of their rights so that the Release Land would be free of such rights. It also addresses the sub-section 17(2)(b) of the *Commons Act 2006* issue referred to in paragraph 6 above, noting that the surrender would take place before the relevant date such that on the relevant date there would be no rights to transfer. Their letter addresses a number of further matters including the extent of their instructions. The author attended the 18th February 2015 meeting of the Commoners Association and notes that the outcome was that whilst there was recognition of the need to improve the Additional Mitigation Land, not enough detail was available to proceed with an agreement in principle. It is also reported that the landowner's agent advised the meeting that the landowner would give consent to the improvement works and that there was sufficient surplus grazing available to accommodate the works. It is now understood that the applicants have come to an agreement with individual active graziers.
306. Mr Bowen is Chairman of the Commoners Association, but writes in a personal capacity as a long standing grazer. He considers that the Release Land is poor quality suitable only for light summer grazing and no amount of additional grazing would improve its quality. It is very boggy and there is a history of animals being lost in these areas which also render them unsafe to walk on. He has rarely witnessed any horse riding across the Release Land. The proposals to enhance the Mitigation Land and Additional Mitigation Land are welcomed. Mr Greeves is the Secretary of the Commoners Association, but also writes in a personal capacity echoing the views expressed by Mr Bowen.
307. Mr James is a member of the GWT but feels that the Trust's opposition is misguided and he considers that the Release Land is unsuitable for any recreational purpose and supports very little wildlife. Although Mr & Mrs Price only live 1 to 1.5 miles away, they are not concerned about the noise impact. Mr & Mrs Edwards both enjoy walking the mountainsides and forestry areas around Ebbw Vale and have been actively involved with the local Air Training Corps Squadron with the cadets carrying out many adventure training exercises. The only area not used was the Release Land because they were informed that it was positively dangerous and they have not seen any sheep, horses or cattle grazing on it.

¹⁰⁴ Documents IP6 – IP22

308. Ms Langford lives in Nant-y-Bwch and has regularly ridden the area for a number of years. Although she rides along the bridleway and occasionally in drier weather the ridge of higher land which crosses the Common¹⁰⁵, she would never ride over the remainder of the Release Land which is very boggy and uneven and not safe to ride, even in the Summer. Her mother also used to ride, but would not do so in this area because of the ground conditions. This land is not used by horse riders as no local person would risk their own safety or that of their horse by riding across it.

CONCLUSIONS

309. Bearing in mind the submissions and representations reported and having regard to the environmental information and the likely environmental effects of the proposal, I have reached the following conclusions.

Procedural/legal matters

310. I am unable to settle points of law, but my views on a number of procedural/legal matters raised are given below.

311. The *Deregistration and Exchange of Common Land and Greens (Procedure) (Wales) Regulations 2012 (Core Document CD04)* include requirements for publicising the application. On the basis of the evidence before me, I am satisfied that these have been complied with.

312. Subject to the surrender of rights taking place before the relevant date, there would be no rights of common to be transferred from the Release Land such that there would be no conflict with sub-section 17(2)(b) of the *Commons Act 2006*. I also accept the applicants' submissions explaining that it is now possible to have a common with no rights of common registered over it.

313. The OSS is correct to state that access to the Replacement Land would be under the provisions of the *Law of Property Act 1925*, rather than the CROW Act 2000. However, I have no reason to believe that BGCBC would have come to a different decision had the members been informed of this. Furthermore, its decision has not been challenged and the Council approved the relevant terms and conditions whilst the Inquiry was sitting.

314. A number of objectors refer to NRW and the Welsh Government's role in respect of Wentwood. Nonetheless, NRW makes it clear that in acting as land agent for Welsh Government's Woodland Estate it has not formed a view as to the suitability or otherwise of the proposed Replacement Land and its agency role is entirely

¹⁰⁵ Inspector's Note: The public footpath broadly follows this ridge

independent of comments made in connection with the application. It is not uncommon for public bodies to carry out a number of different functions and there is no reason to believe that it would be inappropriate for Welsh Ministers to determine the application in line with the powers given to them by Parliament.

315. Likewise, I have no reason to believe that BGCBC's agreement to the use of its land did not follow the appropriate procedures. The use of public funds to support the project is not relevant to whether or not a section 16 consent should be granted.

Main considerations

316. Based on the provisions of the *Commons Act 2006*, the main issues appear to be:

- The effect of the proposal on 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 effect of the proposal on the interests of the neighbourhood;
- The effect of the proposal on the public interest, including that 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; and,
- Whether the socio-economic benefits of the proposed development on the Release Land are sufficient to outweigh any adverse impacts identified in respect of the other three main issues.

317. At the PIM, I noted that the main issues would include the first three set out above and that the Act requires the appropriate national authority to have regard to any other matters considered relevant and this may include the wider public interest. I also indicated that whether such matters would result in a further main issue would be dependant on the detailed evidence yet to be submitted. There is, therefore, no justification for stating that the fourth main issue was inserted at the last-minute.

318. Of itself deregistration would have little or no effect on such matters as nature conservation, landscape, and archaeological remains and features of historic interest. Nevertheless, a public interest in a development project facilitated by deregistration is capable of being an important material consideration. The development that would be facilitated in this case has the potential to have a much greater affect on these matters than simple deregistration. I will proceed on the basis that, in reaching my conclusions and recommendation, it is appropriate to consider the impacts of this development (be they positive or negative).

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

319. As all of the relevant commoners on CL015 have agreed to surrender their rights voluntarily in return for appropriate compensation, as allowed for by the *Commons Act 2006*, there is no reason to believe that their private interests would be adversely affected. This surrendering of rights would mean that there were no rights to be transferred to the Replacement Land, but they would retain their rights to graze the remainder of the Common which is currently significantly under-grazed. The proposals

to improve grazing on the Mitigation Land, which I consider under the Nature conservation sub-heading below, would actually benefit CL015 graziers. Furthermore, it is inconceivable that the owner of the land would have agreed to be a joint applicant if he considered that his private interests would be prejudiced by the application.

The interests of the neighbourhood

320. Neighbourhood is not defined in the Act and must be established in the particular context of the individual site. The settlements to the north of the existing A465 are clearly within the neighbourhood of the Release Land and it would not be unreasonable to include the northern parts of Tredegar, Ebbw Vale and Brynmawr as well.
321. The impact on the ability of those living in the neighbourhood to use and enjoy the Common is ordinarily the key consideration under this heading. I have considered the protection of public rights of access under a separate heading below. The neighbourhood would suffer the same permanent loss of the right of access as the public in general. However, it would only benefit from new rights in respect of those parcels of Replacement Land which are within the above neighbourhood being limited to Bryn Farm, Crown Avenue, Sirhowy Woodlands and Waun-y-Pound. Whilst the OSS did not accept the inclusion of Bryn Farm within the above, it is particularly well located to the northern parts of Brynmawr.
322. In the section on protection of public rights of access, I come to the view that overall the proposal would be detrimental to the public interest in the protection of public rights of access. Given that only some of the Replacement Land would be accessible to the neighbourhood and the points made in respect of tree cover, fencing, other obstructions, existing access and designations apply to varying degrees, it follows that the proposal must also be detrimental to the ability of those living in the neighbourhood to use and enjoy the Common.
323. I agree that the wider interests of the neighbourhood which would flow from the application are a relevant consideration. The socio-economic aspects of the proposal are considered under a separate heading below. However, given that the wards and towns closest to the release site are generally even more deprived than the wider neighbourhood, the extensive socio-economic benefits that I identify, with the commitments to local employment and training, would be of particular advantage to the neighbourhood.
324. It should also be remembered that the CoW could have a negative impact on those living in the neighbourhood through such matters as noise and traffic, although one pair of residents at least is not concerned about noise. Nonetheless, I also note that these are material planning considerations which were fully considered by the local planning authority when determining the outline planning application when it was recognised in the committee report that there would be negative noise impacts and local disruption at times.
325. Insofar as Rassau is concerned, the Motorsport Noise Statement, which has not been challenged in any material way, gives predicted noise levels in the range 25 to 45 dB(A) for the majority of scenarios, rising to just below 55 dB(A) for the noisiest activities considered. The World Health Organisation describes 55 dB(A) as the value

above which serious annoyance is likely to occur. Predicted levels at Trefil are somewhat less. The Statement also refers to the requirement for a Noise Management Plan and highlights effective and responsive liaison with the local community as being fundamental to the successful operation of the Plan. In my view, such a Plan would facilitate BGCBC's regulatory duties and enable the CoW to operate in a reasonable way.

326. In my opinion, the socio-economic benefits to the neighbourhood would be of a scale that would outweigh the detriment to the ability of those living in the neighbourhood to use and enjoy the Common and any negative impact on residential living conditions. As a result, the overall impact on the interests of the neighbourhood would be positive.

Nature conservation

327. The Release Land comprises a mosaic of acid grassland, marshy grassland, wet and dry heath, bog and acid flushes with a small area of calcareous grassland which supports a variety of species. Around 64% of it is section 42 NERC Act 2006 and priority BAP habitat, and it qualifies as a SINC on numerous counts and features. The proposal would result in the total loss of some 244 ha of such priority habitat. With the right management it also has the potential to be managed to a more favourable condition than that currently existing and that potential would be lost forever. However, without the CoW, I see no prospect of appropriate management being instigated for the foreseeable future, especially as the commoners have recently elected to join a 'Glastir' lower stocking scheme. Even if funding could be made available from other sources, there is no evidence of a willingness to submit applications or the longevity of any measures so secured. Whilst there could also be an 'edge effect', such an effect is equally likely to exist at the moment, albeit at the boundary with the Industrial Estate.
328. GWT raises various concerns regarding the proposed development on the Release Land. However, the extent and nature of any tree-planting in this exposed upland location would be controlled by BGCBC through planning conditions. The principles proposed in the current versions of the management and strategy documents appear to be in keeping with the ecosystem service approach. Subject to peak flows not exceeding the existing greenfield runoff rate, the use of attenuation ponds should not adversely affect the quality of water that would be discharged from the site and NRW raises no concerns in that respect.
329. The relevant statutory requirement is to have regard to the public interest in nature conservation. I see nothing in the *Commons Act 2006* or Welsh Government Guidance that restricts such consideration to the Release and Replacement Lands. Thus if a proposal would facilitate improvements to nature conservation interests elsewhere, that would be in the public interest and it would be entirely appropriate to take such improvements into account in the decision making process.
330. The evidence clearly demonstrates that the Mynyddoedd Llangattock and Llangynidr Commons are significantly under-grazed, resulting in the open moorland deteriorating in condition. The only way of reversing this structural decline is for them to be grazed by cattle in significant numbers and the proposals for the Mitigation Land and Additional Mitigation Land would facilitate such grazing.

331. In principle, NRW supports the proposed Mitigation Land and Additional Mitigation Land strategies as compensation for the loss of habitat on the Release Land, with Mr Reid having had a major role in the selection of the Additional Mitigation Land. Subject to their management to a favourable condition using a common standards monitoring approach, NRW is satisfied that the benefit to the nature conservation value of the remaining common land should be enough to offset the nature conservation value that would be lost from the Release Land. In the SOCG NRW also agrees that successful implementation of the agreed principles would be likely to enhance species diversity, including those listed under section 42 of the NERC Act 2006, result in benefit to the SSSI and have no adverse effects on the integrity of the SAC. Given its statutory role, NRW's position is of some importance to the decision making process.
332. The BBPS also accepts that there could be some biodiversity benefit from these strategies. The strategies would also address concerns regarding a knock-on reduction in grazing on the Common adjacent to the release land.
333. However, NRW also emphasises that delivery is key with much to be done to capture all the mitigation and the BBPS and GWT raise relevant concerns. As the key steps and hurdles in that regard also apply in part to the Replacement Lands, I will consider them after the following paragraphs on the Replacement Lands.
334. The Replacement Lands only comprise around 13% section 42 NERC Act 2006 and priority BAP habitat, although some are LNRs and/or SINCs. The poorer habitats means that the species supported are also likely to be of a lower conservation value than on the Release Land. Furthermore, there is a degree of overlap between the existing ecological management plans for the Replacement Land parcels which are LNRs and the proposed Management Plans with the prescribed management being similar. I also note that BGCB has a duty to have regard to the purpose of conserving biodiversity and LDP policies provide a degree of protection to SINCs and LNRs.
335. Nonetheless, it is noteworthy that NRW agrees that successful implementation of the principles set out in the Replacement Land Management Plans should result in net enhancement to habitats and species diversity, including those listed under section 42 of the NERC Act 2006, although that might not be quantifiable at this stage. These plans would have the advantage over existing ecological management plans of being subject to the section 106 agreement, as modified by the Deed of Variation, such that their implementation would be effectively guaranteed.
336. Turning to the seven critical steps identified by NRW. The plans for the Mitigation Land and Additional Mitigation Land are currently unapproved, require further iterations (including consideration of the need for consents under section 38 of the CROW Act 2000) and are currently at the strategic level with the detail to be developed. However, these matters would be addressed through the planning system and it is right to assume the proper functioning of that system. The Deed of Variation has been completed and, amongst other matters, it prevents the development and pre-enabling works from commencing until the Ecology Management Plan and Mitigation Strategy have been approved by BGCB and includes provisions in respect of the Ecology Charitable Trust.

337. As the landowner is a signatory to the Deed of Variation, I see no difficulty in demonstrating legal capacity to undertake the work on the Additional Mitigation Land. The Deed of Variation also requires assurances that funding is in place. The full details of how cattle grazing would be facilitated are somewhat sketchy and it is clear that all graziers are not on-board. Nonetheless, interest has been demonstrated by sufficient graziers to make the system work and no commoner can bar the grazing rights of another. In any event, the surplus available to the landlord could be used as a fallback. The plans for the Replacement Land (apart from Wentwood) are currently in draft, but provide sufficient information to show that there would be a net enhancement to biodiversity and would be secured through a formal agreement with BGCBC.
338. Further benefits would result from the mitigation strategy now remaining in place for the lifetime of the development beyond 30 years and the potentially large sums of money from green levy surpluses being used for nature conservation work beyond that subject of the strategy.
339. From my experience, it is not unusual to see cattle and sheep grazing together and Mr Robert Davies noted that they mix very well. He also confirmed that cattle could be contained in a particular area without the need for electric fencing and that TB was not a particular concern. Loose dogs can pose a hazard to all grazing stock, but cattle are more able to protect themselves than sheep. Whilst I appreciate that sheep have been killed by traffic on the B4560, the Mitigation Land and Additional Mitigation Land where it is proposed to graze cattle are not adjacent to the B4560 and the implications of the proposal on traffic levels thereon are considered elsewhere in these conclusions.
340. For the above reasons, I conclude that the likely out-turn of deregistration would be an overall enhancement of nature conservation interests on the wider Commons and on the Replacement Lands resulting in an overall nature conservation benefit as a result of the proposal as a whole.
341. In determining the application Welsh Ministers will need to have regard to the duties to conserve biodiversity and to further the conservation of features of principal importance for conserving biodiversity under the NERC Act 2006. Given my conclusions in the preceding paragraph and NRW's position in respect of habitats and species listed under section 42 of the Act, with which I take no issue, these duties would be complied with.
342. Furthermore, subject to the detailed considerations addressed above, NRW is content that the proposal would benefit the Mynydd Llangatwg (Mynydd Langattock) SSSI and have no adverse effects on the integrity of the Usk Bat Sites SAC; I have no reason to disagree. Given that the hydrological and hydrogeological regimes in the area of the Mynydd Llangynidr SSSI are completely different to and segregated from those within the Release Land, I am satisfied that there would be no effect on that SSSI's karstic geomorphological interest.

Landscape conservation

343. Based on the evidence submitted and what I saw on my site visits, I am of the view that the Release Land has landscape and visual attributes which are similar to those of the adjacent parts of the BBNP, which is of the highest landscape value and to which it

provides a buffer. The landscape value of the Release Land is recognised through its inclusion within a SLA, with the SLA Report describing the whole SLA as being essentially a part of the BBNP and, for the bulk of it that lies to the north of the line of pylons, the LANDMAP assessments.

344. Whilst the Rassau Industrial Estate currently provides a hard edge to the Release Land and this part of the SLA, I agree that the wide expanse of rising ground to the north is not characterised by urban influences. The impact of the industrial estate and A465 generally diminishes rapidly as one moves north. Although the pylons and wind turbine do exert an influence for some distance, such man-made structures are also found in rural areas and cannot necessarily be described as urban in nature. The proposal would provide a softer edge to the open moorland, but in so doing it would take up the whole of the buffer and result in a very large development hard up against the BBNP boundary.
345. Placing a development of the scale and nature represented by the CoW in such a location would have a significant and irreversible detrimental effect on the character and appearance of the site itself and the surrounding area. The surrounding area includes part of the BBNP and the CoW would erode the sweeping grandeur and sense of remoteness experienced within part of the National Park. Any landscape benefits resulting from the proposals for the Mitigation Land and Additional Mitigation Land would not come anywhere near to offsetting this effect. I note that BGCBC's Head of Planning & Building Control emphasised the importance of having regard to the impact on the special qualities of the BBNP, but did not consider the fact that the site abuts the National Park to be of such significance as to lead to a refusal of planning permission.
346. Insofar as the Replacement Land parcels are concerned, they differ widely in character, location, topography and the range of landscape experience from the Release Land and from each other. None have LANDMAP scores that compare with those of the Release Land and only Bryn Farm benefits from close proximity to the BBNP.
347. I conclude that the proposal would not provide land of 'at least equal benefit' and it would cause significant harm to the public interest in landscape conservation. Nevertheless, I acknowledge that in the context of Blaenau Gwent, it would be virtually impossible to provide Replacement Land that reflects the open moorland that would be lost and the sites probably represent the best possible suite.

The protection of public rights of access

348. The proposal would result in the permanent loss of the public right of access, including on horseback, to some 244 ha of open common. Whilst in practice the ability to exercise that right is restricted somewhat by the presence of wet and boggy areas, there are drier areas which can be traversed. Nonetheless, the evidence of actual use is quite limited with the Rassau Industrial Estate and realigned A465 representing physical and psychological barriers.

349. The proposal would also see the creation of public rights of access, including on horseback, to approximately 307 ha of newly designated common, but in the region of 19 ha of that is already designated as open access land. Furthermore, Waun-y-Pound, Garden City Woodlands, Sirhowy Woodlands, Crown Avenue and Wentwood are densely wooded; NRW estimates that around 60% is wooded and that figure was not challenged by the applicants. That would impose a severe limitation on the public's ability to benefit from the newly created rights.
350. The presence of fences and other obstructions at most of the sites and the steep nature of Garden City Woodlands would represent further impediments, particularly to those on horseback. The possibility of additional fencing to facilitate grazing and ecological objectives at some locations, which would also require separate consent under section 38 of the *Commons Act 2006*, would represent even more impediments. Internal fencing would also be contrary to the objective of preserving the unenclosed nature of common land. Whilst equine access could be improved, access to much of the land could still not be provided because of its wooded nature, remaining obstructions, and steepness of Garden City Woodlands.
351. Apart from Waun-y-Pound, all the Replacement Land sites are crossed by public rights of way. With the possible exception of Crown Avenue, those in BGCB's ownership are also subject to further informal access arrangements. Whilst these cannot be guaranteed in perpetuity, the SLA, SINC, LNR and Green Wedge designations provide a degree of protection against development for the lifetime of the LDP at least, and beyond in the case of the LNRs. The covenant in respect of Garden City Woodlands also safeguards the current use, although it could be lifted with the agreement of those deriving benefit from it. One advantage would be that BGCB would be provided with funding that would enable it to better manage these sites for public access in the long term.
352. Wentwood is accessible to and well used by a significant number of people with public access thereto currently being actively promoted, albeit in contravention of lease provisions. Although there might be no immediate threat to that public access, the landlord is now aware of the situation and designation as a common would ensure that such use could continue in perpetuity. I accept that this would represent a gain with respect to the key aim of access provision to the Welsh Government's Woodland Estate. Early dedication in advance of the next 10 year review might be beneficial, but not absolutely essential as my understanding is that it would become access land on registration.
353. On balance, having considered the above matters and notwithstanding the relevant parts of the two SOCGs, I am of the view that overall the proposal would not provide land of 'at least equal benefit' and it would be detrimental to the public interest in the protection of public rights of access. Nevertheless, again I acknowledge that in the context of Blaenau Gwent, it would be virtually impossible to provide Replacement Land that reflects the open moorland that would be lost and the sites probably represent the best possible suite for the neighbourhood and the public in general.

The protection of archaeological remains and features of historic interest

354. The applicants' accept that the proposal would harm the public interest in the protection of archaeological remains and features of historic interest with the Release Land containing four sites of national importance, two of which are SAMs, and eighteen sites of regional importance.
355. I consider the significant adverse impact on the setting of the Twyn Bryn March Round Cairn IV, as identified by Cadw, to be of particular concern and am of the view that preservation in situ would not reduce the residual impact to a minor one. Nonetheless, BGCBC's Head of Planning and Building Control was of the view that this was not of itself sufficient reason to prevent development. Cadw's subsequent letter of 25th September 2014 merely notes that this impact has already been addressed through the planning permission and it has no further observations.
356. Given that the archaeological features on the Replacement Land do not appear to be generally under any real threat and there are no proposals for their upkeep, investigation or interpretation that would be of public benefit, I would also question the purpose of scoring them against those on the Release Land. In any event, none are of national or regional importance.

Socio-economic aspects

357. The communities of Ebbw Vale, Tredegar and Brynmawr are amongst the most economically disadvantaged in the whole of the UK with recent research describing Blaenau Gwent as "the most difficult job market in the whole of Wales and possibly the UK". Several of those who appeared at the Inquiry spoke of deprivation, unemployment, lack of opportunities, negativity, poor health, use of food banks, businesses closing etc. They painted a bleak picture which put a human dimension to the bare data published in official statistics. Against such a background, it is not surprising that, of the possible areas considered, the Blaenau Gwent area is the one that would benefit most from a socio-economic point of view. The appellants have requested that Ministers visit the area before coming to a decision, but I do not consider that to be absolutely necessary as the evidence on deprivation levels is uncontroversial.
358. The evidence demonstrates that the CoW would provide 4,000 – 6,000 FTE person years of work during the construction phases. The evidence also shows that the operational phase would result in 4,000 – 6,000 FTE direct jobs in technology, engineering, research management, hospitality and event management with further spin off and multiplier jobs. The provisions of the s 106 agreement and the training facilities, with various institutions and bodies involved in higher and further education showing a willingness to co-operate, would maximise the benefit to local communities and Blaenau Gwent as a whole, although there would also be wider benefits to the South Wales economy. The above socio-economic benefits are acknowledged by NRW and the GWT recognises the importance of job creation.
359. Some are sceptical that the above benefits would materialise. Nonetheless, the project has been thoroughly scrutinised, probably more so than any other inward investment opportunity, including open book access to business plans, financial models

and bank details. As a result, Ministers can have every confidence that, if the project proceeds, then the employment levels generated and economic benefits would be likely to be within the ranges suggested in the evidence. In my view, given the dire economic circumstances of the area, it is not an overstatement to suggest that the impact of these job opportunities would be of generationally transformational importance.

360. Furthermore, I note that a regeneration opportunity of this nature is consistent with the Welsh Government's Regeneration Strategy: 'Vibrant and Viable Places' and a good fit with the Cardiff City Region concept. In locational terms, the release land is identified as being within the Ebbw Vale multi-site Enterprise Zone, which forms a key plank of the Welsh Government's employment and enterprise policy, with the development plan also supporting a large new tourist based regeneration development in the north of Blaenau Gwent County Borough.

361. For the above reasons, I agree that very significant weight should be given to the socio-economic benefits of the proposal.

Any other public interest matter considered to be relevant

362. I have already addressed the landscape impact on the BBNP under the Landscape conservation heading, but objections in respect of noise, lighting, and traffic are also raised. Insofar as noise is concerned, the operation of the CoW would have the potential to impact on the tranquillity of the part nearest to the site. Nonetheless, the Motorsport Noise Assessment, which has not been challenged in any material way, shows that in worst case downwind conditions for the more typical high performance event noise levels of 40dB and above would only extend for 1.5km into the BBNP with intervening topography also ensuring that there would be no appreciable noise disturbance in Dyffryn Cwannon. The World Health Organisation identifies 40dB as being the lowest observed effect level for outdoor noise levels at night. Whilst such events would be likely to take place on weekends and bank holidays, the previously referred to Noise Management Plan would assist in achieving the right balance in managing the limited and occasional impact on the immediately adjacent areas of the BBNP in a responsible manner.

363. The SPG on Light Pollution and Obtrusive Lighting is in draft form and that limits the weight that can be attached to it, but it provides a useful pointer as to the National Park Authority's intended approach to applications within the BBNP. The ISDR also has its own LMP, but that is not statutory guidance and has not been adopted as SPG. The Release Land lies outside the BBNP where the default Zoning is E2. Although it appears that the LMP notes that this is dependent on the degree of threat and will vary according to the nature and intensity of lighting, the evidence demonstrates that the development could meet many of the requirements for Zone E1 in any event. Further detailed work is required to satisfy planning condition 10, but on the basis of the available evidence I am satisfied that the impact on the ISDR would in all probability be minimal.

364. The potential increase in traffic on the B4560 is also raised as a concern, although this was fully considered by the local planning authority when determining the outline planning application. Large events such as Moto GP and World Superbikes would have

a significant catchment area with spectators willing to travel long distances to attend. On this basis the assumed trip distribution is 70% arriving from Newport, England etc. approaching on the A465 from the east, 25% arriving from Cardiff, Swansea, West Wales etc. approaching on the A465 from the west and the remaining 5% arriving from the local area and the Valleys approaching on local roads. Visitors from North Wales are anticipated to use the A470 and approach along the A465 from the west or the A479 and approach via the A465 from the east. Of the 5% approaching on local roads, it is estimated that less than 1% would approach via the B4560.

365. The above figures are only estimates, but they have not been challenged by the trunk road highway authority or the local highway authority with the later confirming that the figures are robust. Whilst most of the B4560 is in Powys not Blaenau Gwent, Powys County Council's Chief Executive, who could reasonably be assumed to have an overview of all the Council's functions, has written in support of the proposal.
366. On the one hand, signage, advance information, the nature of the road (particularly the Usk crossing at Llangynidr), and the lack of direct access to the realigned A465 could serve to keep numbers down. On the other hand, the anticipated congestion on the A465, the use of satellite navigation, and a desire to ride on challenging roads could result in somewhat higher levels. If the CoW is built, it is entirely possible that traffic levels on the B4560 could deviate from that anticipated, but I have no reason to conclude that they would be so significant as to materially affect highway safety or the enjoyment of the BBNP.

Overall balance and conclusion

367. In the preceding sections, I have identified harm to the public interest in landscape conservation, the protection of public rights of access, and the protection of archaeological remains and features of historic interest, as well as certain elements of the interests of the neighbourhood. In respect of the public interest in landscape conservation and the protection of public rights of access, I have also identified that the proposal would not provide land of 'at least equal benefit'. In addition, there would be a limited noise impact on the tranquillity of the BBNP. Notwithstanding my recognition that the replacement land package is probably the best that could be secured, if there was nothing of very significant public benefit to put in the balance, the above would be more than sufficient to justify a recommendation that the application be refused.
368. However, I have also found that the CoW would bring extensive socio-economic benefits to the neighbourhood, Blaenau Gwent and beyond, which should be given very significant weight, as well as overall benefits to the public interest in nature conservation. The CoW would provide an economic turning point with the potential to alter the lives of an enormous number of families who feel left behind by successive Governments and jurisdictions. There is no evidence that other schemes that would have anything approaching such benefits are in the pipeline. It should also be remembered that it has already been determined through the planning process that, in land use terms, the proposed development and use of the land is in the public interest.

369. In view of the current dire socio-economic circumstances in the area, and the real opportunity that would be provided to make an enormous change thereto, I conclude that very significant public benefits exist which are sufficiently compelling to outweigh the identified harm and failure to provide land of 'at least equal benefit'. The overall nature conservation benefit adds further weight to this conclusion. In such circumstances, the wide discretion given to Welsh Ministers by Parliament should be exercised to allow the application.

Recommendation

370. I recommend that the application be allowed and that Welsh Ministers make a Deregistration and Exchange Order requiring:

- Powys County Council to remove the Release Land from its register of common land and to register the Bryn Farm Replacement Land as common land subject to a *Law of Property Act 1925* section 193 public right of access for air and exercise;
- Blaenau Gwent County Borough Council to register the Garden City Woodlands, Land Adjacent to Waun-y-Pound Industrial Estate, Sirhowy Woodlands, Land East of Crown Business Park and Greenmeadow Farm Replacement Land as common land subject to a *Law of Property Act 1925* section 193 public right of access for air and exercise; and,
- Monmouthshire County Council to register the Wentwood Forest Replacement Land as common land subject to a *Law of Property Act 1925* section 193 public right of access for air and exercise. [294]

E Jones

Inspector

APPEARANCES

FOR THE APPLICANTS:

Mr Russell Harris QC	Instructed by Ms Karen Howe, Senior Associate, Clarke Willmott LLP
He called	
Mr Charles Morrison MSc MCIEEM	Associate Ecologist, Parsons Brinckerhoff Ltd.
Mr Christofer Smith	Associate Landscape Architect, Soltys Brewster Consulting
Mr Mark Farrar BSc(Hons) DipTP MRTPI	Planning Director, The Urbanists LLP

FOR NATURAL RESOURCES WALES:

Mr Mark Westmorland Smith, of Counsel	Instructed by Mr Emyr Gwyn, Solicitor for Natural Resources Wales
He called	
Mr John Campion BA(Hons) BLD MSc CMLI MCIEEM	Associate Consultant, Anthony Jellard Associates
Mr Richard Jones BSc	District Team Leader, Natural Resources Wales
Mr Stuart Reid BSc(Hons) MSc	Development Planning Adviser, Natural Resources Wales

FOR THE BRECON BEACONS PARK SOCIETY:

Mrs Elizabeth Gibbs BA BSc	Brecon Beacons Park Society
She gave evidence and called	
Mr Roger White CEng MICE MCIWEM	Brecon Beacons Park Society
Mr Peter Seaman MBE	Brecon Beacons Park Society
Mr Jim Wilson	Chair, Brecon Beacons Park Society

FOR THE GWENT WILDLIFE TRUST:

Mr Ian Rappel BSc MSc(Econ) MSc	Chief Executive, Gwent Wildlife Trust
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He gave evidence and
called

Ms Sorrel Jones BSc(Hons)	Conservation Officer, Gwent Wildlife Trust
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FOR THE OPEN SPACES SOCIETY:

Ms Kate Ashbrook IPROW	General Secretary, Open Spaces Society
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She gave evidence and
called

Mr Mark Weston	Director of Access, British Horse Society
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INTERESTED PERSONS SUPPORTING THE APPLICATION:

Mr Nick Smith MP	Member of Parliament for Blaenau Gwent
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Rev. Geoff Waggett	Ebbw Vale Churches Together
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Mr Dai Davies	Local Business Forum
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Mr Robert Davies	One of and on behalf of 5 working farmers and active graziers of the Mitigation Land and Additional Mitigation Land
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Ms Sophie Rose	Local resident
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Mr Aled Davies	Local resident
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INTERESTED PERSONS OBJECTING TO THE APPLICATION:

Mr William Gibbs	Partner in farming business which actively grazes CL16, CL18 & CL19
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Ms Gwyneth Love	Local resident
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DOCUMENTS

CORE DOCUMENTS

Legislation and Guidance

CD01	Commons Registration Act 1965
CD02	Commons Act 2006
CD03	Commons Registration (General) Regulations 1966
CD04	Deregistration and Exchange of Common Land & Green (Procedure)(Wales) Regulations 2012
CD05	Town and Country Planning (Inquiries Procedure)(Wales) Rules 2003
CD06	Common Land Consents Guidance – Wales (August 2014)
CD07	General Overview for Making an Application under Section 16 and Section 38 (PINS May 2013)
CD08	Commons Act 2006 Section 16: Notes for Completing an Application to Deregister and Exchange Common Land or Town or Village Greens (PINS August 2012)
CD09	Commons Act 2006: Procedural Guide for Public Inquiries and Hearings into Applications for Consent for Works on Common Land and Exchange of Land in respect of Common Land and Village Greens (PINS August 2012)

Policy and Other Guidance Documents

CD10	Brecon Beacons National Park Authority Local Development Plan
CD11	Brecon Beacons National Park Landscape Character Assessment – LCA9 and LCA11
CD12	“Proposals for Designations of Special Landscape Areas in Blaenau Gwent” (Final Report March 2009) (Bronwen Thomas Landscape Architect for Blaenau Gwent County Borough Council)

Planning Documents

CD13	Circuit of Wales Design & Access Statement
CD14	Circuit of Wales Transformation Statement
CD15	Circuit of Wales Environmental Statement
CD16	Section 106 Agreement 25 th September 2013

CD17 Decision Notice 25th September 2013 (in 'Additional Information' blue folder)

Common Land

CD18 Section 16 Application 1st September 2014

DOCUMENTS SUBMITTED AT THE INQUIRY

Documents submitted by the Applicants

- A1 Mr Russell Harris QC's Opening Submissions
- A2 Area of Release Land and Replacement Land
- A3 Section 16 Application Decision Ref: COM 353, referred to in applicants evidence
- A4 Section 16 Application Decision Ref: COM 491, referred to in applicants evidence
- A5 Blaenau Gwent County Borough Council's Head of Planning & Building Control's report in respect of application for outline planning permission
- A6 Blaenau Gwent County Borough Council's Head of Legal and Corporate Compliance's report in respect of use of Council land as Replacement Land
- A7 Blaenau Gwent County Borough Council's Executive Minutes in respect of use of Council land as Replacement Land
- A8 Draft Statement of Common Ground between the Heads of the Valleys Development Company and Blaenau Gwent County Borough Council
- A9 Letter dated 20th March 2015 confirming Blaenau Gwent County Borough Council's agreement to use of Council land as Replacement Land
- A10 Signed Statement of Common Ground between the Heads of the Valleys Development Company and Blaenau Gwent County Borough Council
- A11 Draft Statement of Common Ground between the Heads of the Valleys Development Company and Natural Resources Wales
- A12 Signed Statement of Common Ground between the Heads of the Valleys Development Company and Natural Resources Wales

A13	Draft Deed of Variation and e-mail confirmation of acceptability to NRW
A14	Local Development Plan policies DM 14 and DM 15
A15	Natural Resources Wales – Remit Letter 2013/14
A16	Note on Open Access at Wentwood
A17	Letter dated 17 th March 2015 confirming lease position in respect of public access at Wentwood
A18	Letter dated 17 th March confirming landowner’s position in respect of surplus grazing
A19A & B	Material from Gwent Wildlife Trust’s website
A20A & B	Material from Open Spaces Society website
A21	Written response to Mr Gibbs (Document IP23)
A22	Response to new Landscape and Visual Issues raised by the Brecon Beacons Park Society
A23	Rebuttal on Noise issues
A24	Response to Mr Wilson’s lighting statement (Document BBPS5)
A25	Comments in Response to Gwent Wildlife Trust’s Evidence
A26	OS based plan showing Release Land and Replacement Land
A27	Plan showing Locations of Proposed Ecological Mitigation
A28	Plan showing Site Location and Landscape Policy Context
A29	Plan showing topography of Release Land and surrounding area
A30A & B	Plans showing proposed diversion of public right of way
A31	Note on the operation of Section 17 Commons Act
A32	Mr Russell Harris QC’s Closing Submissions

Documents submitted by Natural Resources Wales

NRW1	Mr Westmorland Smith’s Opening Statement
NRW2	2013 Statement of Common Ground between the Heads of the Valley Development Company Limited and NRW
NRW3	Mr Westmorland Smith’s Closing Statement

Documents submitted by the Brecon Beacons Park Society

BBPS1	Mrs Elizabeth Gibbs' Opening Statement
BBPS2	Mrs Elizabeth Gibbs' speaking notes
BBPS3	Mr Roger White's speaking notes
BBPS4	Mr Peter Seaman's Statement including 5 colour photographs
BBPS5	Mr Jim Wilson's Statement
BBPS6	Mr Jim Wilsons reply to Document A24
BBPS7	Mrs Elizabeth Gibbs' Closing Statement

Documents submitted by the Gwent Wildlife Trust

GWT1	Ms Sorrel Jones speaking notes
GWT2	Extract from 'Waterbirds' around the world referred to in above
GWT3	NRW letter of 7 th July 2014 and 2 e-mails of 18 th August 2014 relating to Wentwood
GWT4	Mr Ian Rappel's comments on Release and Mitigation Land – Ecology Management Plan (Draft)
GWT5	Ms Sorrel Jones' note on 29 th June 2014 'eco-blitz'
GWT6	Mr Ian Rappel's response to matters raised by Mr Nick Smith MP
GWT7	Mr Ian Rappel's Closing statement

Document submitted by the Open Spaces Society

OSS1	Annexes 1 and 2 showing photographs of parts of exchange lands
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Documents submitted by interested persons supporting the application

IP1	Mr Nick Smith MP's speaking notes
1P2	Mr Dai Davies' speaking notes
1P3	Rev Geoff Waggett's speaking notes
1P4	Ms Sophie Rose's speaking notes
1P5	Mr Aled Davies' speaking notes
1P6	Position Statement of registered holders of rights of common over BCL015

1P7	Letter dated 11 th March 2015 from Jeffreys & Powell, Solicitors
1P8	Letter dated 7 th March 2015 from Mr Ian James
IP9	Letter dated 2 nd March 2015 from Merthyr Tydfil County Borough Council's Chief Executive
IP10	Letter from Mr Brian Bowen
IP11	Letter from Mr Colin Greeves
IP12	Letter dated 27 th February 2015 from Prof. Karen Holford, Cardiff University
IP13	Letter dated 4 th March 2015 from Powys County Council's Chief Executive
IP14	Letter from Mr Dylan John Hurter, Youth Ambassador for Circuit of Wales and Blaenau Gwent Youth Mayor
IP15	Not used
IP16	Letter dated 5 th March 2015 from Tai Calon Community Housing's Chief Executive
IP17	Letter from Chairman Blaenau Gwent Business Forum
IP18	Letter from Cluster Manager, South Ebbw Fach Cluster
IP19	Letter from Messrs Wayne Langford, Reginald Skinner, Robert Davies, Julian Rees and David Mantle
IP20	Letter dated 17 th March 2015 from Mr & Mrs D L & J M Price
IP21	Letter dated 16 th March 2015 from Mr T G & Mrs A M Edwards
IP22	Letter from Ms Emily Langford

Documents submitted by interested persons objecting to the application

IP23	Mr William Gibbs' speaking notes
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Documents submitted by the Inspector

I1	'Coed Gwent Wentwood' leaflet from site visit
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