

Lesley Griffiths AC/AM
Ysgrifennydd y Cabinet dros yr Amgylchedd a Materion
Gwledig
Cabinet Secretary for Energy, Planning and Rural Affairs



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: COM3170168

The Trustees of the Somerset Trust
C/O Persimmon Homes Ltd
Eversheds Sutherland International LLP
1 Callaghan Square
Cardiff
CF10 5BT

9 July 2018

Dear All,

COMMONS ACT 2006 - APPLICATION BY THE TRUSTEES OF THE SOMERSET TRUST c/o PERSIMMON HOMES LTD UNDER SECTION 16 OF THE COMMONS ACT 2006 IN RESPECT OF COMMON LAND AT MYNYDD GARN GOCH COMMON, GORSEINON, SWANSEA.

1. Following your application reference COM/3170168 made under section 16 of the Commons Act 2006 (the 2006 Act) for the deregistration and exchange of common land at Mynydd Garn Goch Common (CL44), Gorseinon, Swansea, I have received the report by the Inspector, Vicky Hirst Ba (Hons) PG Dip TP MA MRTPI, from the Planning Inspectorate (PINs).

Summary of decision

2. The formal decision is detailed at paragraph 27 below. The application is approved.

Procedural Matters

3. Welsh Ministers have appointed PINs to undertake the processing of section 16 applications on their behalf, including the making of recommendations to Welsh Ministers on whether or not an application should be approved.
4. In considering an application to exchange land it is necessary for the proposals to be advertised to allow those with private interests and third party rights the opportunity to make representations on the application. The Inspector's report notes the application was advertised in the South Wales Evening Post on 24 February 2017 and notices were posted at the site and sent to relevant parties.

5. Representations to the application were received as a result of the published notice of the application and pre-application consultation. PINs considered it appropriate to hold an independent public local inquiry, which was held on 5 and 6 September 2017.

Considerations

6. The Welsh Government has issued guidance on 'Common Land Consents'. Welsh Ministers seek to adhere to the guidance in processing and determining applications. I note every application must be considered on its own merits and a determination may, in exceptional circumstances, depart from the guidance if it appears appropriate to do so.
7. Section 16(1) of the 2006 Act provides that the owner of any land registered as common land may apply for the land (release land) to cease to be so registered. If the area of release land is greater than 200m² a proposal must be made to replace it with other land to be registered as common land (replacement land).
8. In determining this application, regard is to be had to:
 - i) the interests of persons having rights in relation to, or occupying, the release land (and in particular persons exercising rights of common over it);
 - ii) the interests of the neighbourhood;
 - iii) the public interest;
 - iv) any other matter considered to be relevant.
9. Section 16(8) of the 2006 Act sets out that 'public interest' includes the public interest in nature conservation, the conservation of the landscape, the protection of public rights of access to any area of land, and the protection of archaeological remains and features of historic interest.
10. Welsh Government's aim is to protect common land as part of its strategic objectives in relation to biodiversity and for the sustainable use of natural resources to improve the benefits to local communities, the economy and the environment. The 2006 Act provides for the safeguarding of commons for current and future generations, helping the Welsh Government to ensure the stock of common land is not diminished.

Inspector's Report

11. Consideration has been given to the Inspector's report. The Inspector's conclusions are set out at paragraphs 143-146 of her report, a copy of which is enclosed. The Inspector, at paragraph 147 of the report, recommends 'the application to deregister and exchange common land at Mynydd Garn-Goch Common, Garden Village, Gorseinon, Swansea, is granted in accordance with the terms of the application Ref COM/3170168 dated 22 February 2017 and the plans submitted therewith and an Order pursuant to Section 17 of the 2006 Act be made'.
12. The Inspector in making her recommendation considered a range of issues; including statutory requirements, policy guidance issued by the Welsh Government and the representations received as a result of the published notice of the application and pre-application consultation.

Conclusions reached by the Inspector

13. The application is made to facilitate the construction of a new roundabout and access to serve a proposed development for a residential-led, mixed use development. The planning application has been made, but not determined.
14. In considering the application the Inspector applies the statutory tests under section 16(6) of the 2006 Act, and I consider these below.
15. Section 16(6)(a) requires me to have regard to the interests of persons having rights in relation to, or occupying, the release land (and in particular persons exercising rights of common over it). The Inspector concludes the release land has not been used for grazing for a considerable period of time, the replacement land offers better potential for grazing and is of the view the graziers will gain a benefit from the proposal in that a more suitable area of land for grazing would be provided with improved access. I am satisfied the land proposed as replacement land is of at least equal benefit, and there will be a positive impact on the commoners and members of the public for the reasons expressed by the inspector and due to the small increase in land being made available.
16. When considering the interests of the neighbourhood (section 16(6)(b)) the Inspector concludes in terms of the exchange, the Inspector is satisfied it would not unacceptably impact on the interests of the neighbourhood. When addressing the public interest considerations, as required under section 16(6)(c) of the 2006 Act, her overall conclusion is 'overall, I conclude in relation to matters of public interest, there would not be any unacceptable impacts'. The Inspector was satisfied the proposal for an exchange of common land would not result in harm to the public interests in nature conservation terms. The Inspector considered the evidence relating to the ecological significance of the release land and the replacement land and commented 'woodland is not a typical feature of the wider registered common and due to the fragmented nature of the release land from the overall common, I do not find the loss of the woodland would have a significant harmful impact on the character of the wider common'. The Inspector concluded there would be no harm to the public interest in landscape terms. The inspector was also satisfied, following an assessment of the arguments made in connection with public rights of access and archaeological remains, the replacement land would offer the potential for better public access than the release land, and the exchange would have no impact on archaeological remains. Having reviewed the Inspector's considerations, and considered the statutory requirements and the representations received, I agree with this assessment.
17. When considering 'any other matter considered to be relevant', as required under section 16(6)(d) of the 2006 Act, the Inspector concluded: 'In the absence of any planning permission any associated harm/benefits which might arise from any future development cannot be taken into account in assessing the section 16 application. There is no certainty the development will go ahead and therefore there can be no balancing exercise to be carried out between any harm/benefits arising from the common land exchange weighed against the harm/benefits of the development. In this context, I find no reason to consider whether the Order should be made for deregistration and exchange of the common land in the absence of the planning permission and the section 16 application before me should be considered on its own merits and with regard to the criteria set out in the 2006 Act'.
18. I consider the Inspector was correct to refrain from assessing the overall benefits and harm of the proposed development as the planning application had not been

determined and the correct mechanism for assessing the relevant considerations is the planning system. I concur, therefore, with her approach in respect of section 16(6)(d) in paragraph 133 of the report. I also agree the broader impact of the proposed development on habitats and species beyond the release land are not matters for consideration in the section 16 application.

19. I consider, however, it is appropriate to consider any impacts of the possibility of development on the release land itself which would be enabled by deregistration. I do not agree with the Inspector's observations in paragraphs 121 to 122 of the report that the value of the woodland on the release land is a matter for the planning system. I note, however, the Inspector has assessed the value of the woodland on the release land, e.g. at paragraphs 113 and 123 of the report, and concur with her conclusion, having regard to the qualities of the replacement land, there would be no harm to the public interest in nature conservation and landscape terms (see paragraphs 119 and 124).
20. I also agree with the Inspector's conclusion in respect of archaeological remains and features of historic interest. In reaching this conclusion I take into account the possibility of the development of the release land but I am satisfied, having regard to the potential for conditions to be imposed on any planning permission for development, should there be any archaeological remains on the site there would be no harmful impacts of development.
21. I am aware the applicant prepared three undertakings which would take effect should an Order be made. The first includes a contribution of a sum of money to the Garn-Goch Commoners Association, and is more fully set out in the report. I would agree, as a matter of principle, additional management costs would be incurred in order to keep animals safe near residential properties. I am of the view the undertaking (reference 3170168-0) to give £20,000 to the Association is necessary, reasonable and relevant to the proposal.
22. I have considered the second (reference 3170168-1) and third (reference 3170168-2) undertakings, as set out in the report. As set out in paragraph 139 of the report, the second undertaking provides an obligation to pay a further sum of £15,000 to the Garn-Goch Commoners Association to enable any further works that may be required to the replacement land to render it suitable for the exercise of rights. The third is offered as an alternative to the second and provides an undertaking for the landowner to carry out similar works within 12 months of the grant of the Order.
23. At paragraphs 141-142 of the report the Inspector states she finds the undertaking to provide £15,000 to be necessary and appropriate. As the common is already under-grazed, I agree with the Inspector there does not appear to be a necessity to carry out this fencing work in the short term. On the facts I am not satisfied it would be appropriate for the Welsh Ministers to delay the making of the Order in the way suggested by the third undertaking, reference 3170168-2. I am satisfied, however, for the reasons provided by the Inspector, the second undertaking, reference 3170168-1 can be considered to be necessary and appropriate.
24. The Inspector recommends the application to deregister and exchange common land at Mynydd Garn-Goch Common (CL44) is granted in accordance with the terms of the application dated 22 February 2017 and the plans submitted therewith and an order pursuant to Section 17 of the 2006 Act be made.
25. I have considered the report, the representations made and the issues have been considered by the Inspector. I agree with the Inspector's conclusion the application

should be granted and an Order of Exchange should be made. I believe the considerations that form section 16(6) of the 2006 Act support this conclusion.

26. In light of the statement in paragraph 91 of the report 'the applicant has requested an Order be granted even if the planning permission is refused', I have not considered it necessary to consider the issue of a conditional order.

Formal Decision

27. I have considered the Inspector's report and noted the case for the applicant, the representations and the Inspector's conclusions. In conclusion, for the reasons given above, and in exercise of my authority as Cabinet Secretary for Energy, Planning and Rural Affairs, one of the Welsh Ministers, I hereby grant the application (COM/3170168) to deregister and exchange common land at Mynydd Garn-Goch Common, Gorseinon, Swansea, Register Unit CL44, in accordance with the terms of the application [Ref: COM/3170168] dated 22 February 2017 and the plan submitted therewith, and an order pursuant to section 17 of the 2006 Act shall be made.

28. For the reasons provided above, I consider undertaking reference 3170168-0 and 3170168-1 are both necessary and appropriate and should come into effect on the deregistration of the release land and the registration of the replacement land.

29. I enclose a copy of the Inspector's report and a copy of the Order made under Section 17(1) and 17(2) of the 2006 Act, which has today been sent to Swansea Council.

30. The Welsh Ministers' decision on this application will be published as required by regulation 19 of the Deregistration and Exchange of Common Land and Greens (Procedure) (Wales) Regulations 2012.

31. This letter does not convey any approval or consent which may be required under any enactment, by-law, order, regulation or private agreement other than sections 16 & 17 of the 2006 Act.

32. A copy of this letter has been sent to Swansea Council for information.

Yours sincerely
Lesley Griffiths

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Cabinet Secretary for Energy, Planning and Rural Affairs

