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## Adroddiad

Ymweliad â safle a wnaed ar 11/06/20

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

**Arolygydd a benodir gan Weinidogion Cymru**

**Dyddiad: 20.07.2020**

## Report

Site visit made on 11/06/20

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

**an Inspector appointed by the Welsh Ministers**

**Date: 20.07.2020**

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COMMONS ACT 2006

APPLICATION TO DEREGISTER PART OF GELLIGAER AND MERTHYR COMMON, (CL38) AND  
PROVIDE REPLACEMENT LAND

Cyf ffeil/File ref: COM/3246848

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**File Ref: COM/3246848**

**Site Address: Gelligaer and Merthyr Common, Merthyr Tydfil**

**Register Unit: CL38**

**Registration Authority: Merthyr Tydfil County Borough Council**

- The application, dated 7 February 2020, is made under Section 16 of the Commons Act 2006 to deregister and exchange land registered as common land.
- The application is made by Dŵr Cymru Cyfyngedig.
- The Release Land comprises 1.65 hectares of land, and forms part of Pengarnddu Service Reservoir lying to the north of Pengarnddu Industrial Estate.
- The Replacement Land comprises 3.99 hectares of land located to the north west of Blaen Rymney Reservoir Llechryd Rhymney Tredegar.
- The application is made to enable the extension of the existing water service reservoir.

**Recommendation: That the application be refused and a Deregistration and Exchange Order not be made.**

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### **Procedural Matters**

1. Section 16 of the Commons Act 2006 (the 2006 Act) provides, amongst other things, that the owner of any land registered as common land may apply for the land (the Release Land) to cease to be so registered. If the area of the Release Land is greater than 200m<sup>2</sup> a proposal must be made to replace it with other land to be registered as common land (the Replacement Land).
2. The application, the subject of this report, is made under Section 16 of the 2006 Act and was advertised in the Merthyr and Rhymney Valley Express on 13 February 2020 and the Western Mail on 11 February 2020. Notices were posted at the main entry points to the lands and sent to various consultees. Relevant documentation was deposited at Dŵr Cymru Head Office Reception, Pentwyn Road, Nelson, Treharris, CF46 6LY and a copy of the application could be obtained by writing to the applicant's agent. Copies were also sent to all registered commoners and other relevant parties<sup>1</sup>.
3. I undertook an unaccompanied site visit on 11 June 2020 to both the Release and Replacement Lands.

### **The Site and Surroundings**

4. The common that this report relates to is the Gelligaer and Merthyr Common and overall comprises some 3090 hectares of land. The common is subject to rights for grazing cattle, sheep and horses, to cut and haul fern for bedding and other uses, to bale fern, to take and haul stone for road improvement, to take surface stone for walls and to take rushes for thatching. The rights are distributed between over 80 rights holders. There are no public rights of access to the release land for air and exercise under section 193 of the Law of Property Act 1925 and it is not subject to an Order of Limitation or scheme of management.

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<sup>1</sup> Letter from Aaron & Partners solicitors dated 18 February 2020

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5. Dŵr Cymru Cyfyngedig are the landowners for both the Release and Replacement Land.
  6. The Release Land comprises 1.65 hectares of the overall common and is located adjacent to the existing covered water reservoir. It is predominantly open grassland.
  7. The Replacement Land is some 3.99 hectares of land and is moorland consisting of upland unimproved grassland. Boundaries are predominantly concrete posts with stockproof fence and barbed wire with a stone wall to the east. The land is open access land under the provisions of the Countryside and Rights of Way Act 2000 (the CROW Act).

### **The Proposal**

8. The deregistration is proposed to enable Dŵr Cymru to improve the local water supply and to meet improving drinking water standards for the future needs and requirements of the local area by extending the existing water service reservoir. It is Dŵr Cymru's view that the network configuration in the area results in the Release land being the optimum location to achieve the improvements as it is located adjacent to the existing reservoir. Planning permission will be required for the works<sup>2</sup>.
9. It is intended to fence the Release Land from the wider common with security fencing. The Replacement Land would be fenced on its southern and part of its eastern boundaries with timber posts, stock fencing and barbed wire with an access gate in the south. The northern, western and eastern stone wall boundary would be retained as stock proof<sup>3</sup>.
10. However, such works are not before me as part of an application under section 16 of the 2006 Act (and may require consent under section 38 of the 2006 Act). Accordingly, I have not had regard to such possible future works in making my recommendations.

### **The Statutory Requirements and Guidance**

11. Section 16(6) of the 2006 Act requires that in determining this application regard should be had to the following:
  - a) the interests of persons having rights in relation to, or occupying, the Release Land;
  - b) the interests of the neighbourhood;
  - c) the public interest<sup>4</sup>;
  - d) any other matter considered to be relevant.
12. The Welsh Government has published guidance for the Welsh Ministers, the Planning Inspectorate Wales, commons registration authorities and applicants for consent (the Guidance). It provides advice in relation to the determination of casework in relation to common land in Wales and, amongst other things, seeks to ensure that the stock of

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<sup>2</sup> Application form

<sup>3</sup> Application form

<sup>4</sup> 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.

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common land is not diminished and that any deregistration of registered land is balanced by the registration of other land of at least equal benefit<sup>5</sup>. I have taken it into account in making my recommendations.

## **Representations**

13. Three representations were received as a result of the published notices of the application.
14. The Open Spaces Society (the OSS) objects on the grounds that whilst the Replacement Land is larger than the Release Land it is a significant distance away and will serve different people. It is also further from the population centre and therefore of less utility. It notes that it is very difficult to reach the far side of the common from the Release Land as it is wet and tussocky. It believes that walkers and riders will be disadvantaged by the proposal and there is other potential exchange land that would be better.
15. Ramblers Cymru objects as the Release Land is in close proximity to local communities and is easily accessed by two of the few public access points onto the common. In contrast it states that the Replacement Land is situated approximately 1.5 miles from the Release Land and has no paths leading to it.
16. It also states that the landscape character of the Replacement Land is much less attractive for public recreation use than the Release Land and with no rights of way or established paths across the common the proposal has the effect of reducing the stock of conveniently useable land for public access. Ramblers Cymru wants to see more use of open land to local people for their health and wellbeing. It would be more suitable to identify Replacement Land in the immediate vicinity of the Release Land, ideally to bring the border of the common closer to the residential population of Dowlais and Pant. As such it does not find the proposal to be in the public interest.
17. Cadw states that the land is located inside the registered Merthyr Tydfil Landscape of Outstanding Historic Interest and within 3km of several scheduled monuments. However due to the scale of the land concerned it is satisfied that there would not be a significant impact on the registered landscape. Due to the intervening topography and buildings which block views of the scheduled monuments Cadw does not consider that the proposal would have a significant effect on the settings of scheduled monuments.

## **Assessment**

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

18. The overall common is subject to grazing rights and rights to take ferns, stone and rushes. The applicant contends that the rights for the taking of ferns, stone and rushes are not known to be exercised in the vicinity of the deregistration land and I have no reason to disagree.
19. It was evident on my site visit that the Release Land is used for grazing with several horses present at the time of my visit. The vegetation had the appearance of being regularly grazed. The proposal would result in the loss of the use of the land for exercising grazing rights.

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<sup>5</sup> Paragraph 3.4, Welsh Government Common Land Consents Guidance, August 2014

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20. The commoners' rights would be transferred to the Replacement Land. It is a larger area of grassland for grazing and is contiguous with the wider common. It consists of unimproved upland grassland and provides appropriate habitat for grazing animals. It has recently been used for grazing by a tenant farmer who also holds commons rights and at the time of my visit cattle were grazing the land.
21. No objections have been received from the individual graziers or the Merthyr and Gelligaer Commoners Association. I am satisfied that the proposal would provide additional land for grazing that would be of equal or better value for grazing than the Release Land. As such I conclude that the proposal would not unacceptably interfere with the interests of those having rights over the land or exercising their right of common over it.

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

22. There is no definition of neighbourhood in the 2006 Act. However, the Release Land is located to the north east of Merthyr Tydfil and in relatively close proximity to the local communities of Dowlais and Pant and directly adjacent to the Pengarnddu Industrial Estate. It is located adjacent to the existing reservoir and a short distance to the north east of a further larger reservoir which is circumvented by a number of surfaced public paths. Access to the common is available through a pedestrian gateway at the eastern end of these paths. I noted on my site visit that a stile is located to the south east of the Release Land although was largely obstructed by vegetation. At the time of my visit a number of people were walking in the vicinity of the larger reservoir with several walking on the common at a short distance to the south of the Release Land.
23. The Replacement Land is located some distance to the north east of the Release Land. It is situated away from the local population and neighbourhoods and, from my own observations on site, entails a lengthy walk across open and rough terrain and occupies a relatively remote location. Whilst it is larger in area than the Release Land, given its distance from the town and communities it is nonetheless less accessible to the public.
24. I concur with the concerns of the Open Spaces Society and the Ramblers Association that the Replacement Land is not comparable to the Release Land in terms of accessibility. I find the Release Land is situated close to the communities and businesses that are likely to use it and its proximity to the reservoirs and existing paths results in it offering an important amenity for recreation and leisure. Whilst there would be common still available for use near to the Release Land, the proposal would result in the public not being able to enjoy it in the way that they are used to.
25. I do not find the Replacement Land would offer the same benefits to the public of open common in close and accessible proximity to both homes and businesses. Furthermore, I note that it is already subject to the rights of access afforded by the CROW Act. I conclude there would be a negative impact on the neighbourhood arising from the removal of the Release Land from the common and this would not be adequately compensated for by the Replacement Land.

***The Public Interest***

**Nature Conservation**

26. Neither the Release or Replacement Land are located in or near any statutorily designated sites for their nature conservation interest. Whilst no ecological assessment has been provided, I noted on my site visit that both areas are predominantly grassland with the Replacement Land comprising upland moorland with

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unimproved grassland habitat. Both areas are currently grazed and are contiguous with the wider common allowing for ecological connectivity. I am satisfied that the Replacement Land offers land of at least equal benefit in nature conservation terms. As such I conclude that there would not be an impact on the public interest in nature conservation terms.

#### Conservation of the Landscape

27. Cadw has advised that the sites lie within the Merthyr Tydfil Landscape of Outstanding Historic Interest. It is satisfied that the areas of land are not of a sufficient scale to have a significant impact on the registered historic landscape. I concur with this view.
28. In respect of more localised landscape impacts, the intention is to provide a new service reservoir with associated pipework on the Release Land and planning permission will be required. I have not been provided with any details of the proposed scheme and from the evidence before me it would appear that planning permission is yet to be granted. In the absence of any details of the scheme I am unable to reach a view on the landscape impact of the proposal on the remaining part of the common should the Release Land be deregistered.
29. The Replacement Land is currently fenced for much of its perimeter and the intention is to retain the fencing with the provision of a gate to allow access. As the land is currently fenced and is used for grazing, I am satisfied that there would not be any harmful landscape effects arising from the use of the Replacement Land.
30. I conclude that there would not be harm to the public interest in landscape terms arising from the Section 16 application before me. However, there is the potential for the proposed works to extend the reservoir to have effects on the wider common but in the absence of the details of the proposed works I am unable to reach a view on such matters.

#### Protection of public rights of access

31. The public have rights of access under the CROW Act to both the Release and Replacement Lands. The proposal would remove the public's rights of access onto the Release Land and as I have found above this would remove an area of common important to local recreation and leisure and which would not be compensated for by the Replacement Land.
32. Furthermore, the Replacement Land is already accessible to the public and it would remain fenced as part of the application. Whilst an access gate would be provided, in itself this would have a negligible additional benefit to public rights of access. I find there would be harm to the public interest arising from the exchange of land as a result of the loss of public access to the Release Land and which is connected to other paths around the existing reservoir and which would not be adequately compensated for.

#### Protection of archaeological remains and features of historic interest

33. Cadw has confirmed that there are a number of scheduled ancient monuments in the vicinity of the sites. However, in most cases, due to intervening topography and buildings views between the monuments and the subject areas of land are blocked. Where views are available these are distant, and it is unlikely that the proposed exchange of lands will have a significant impact on the settings of scheduled ancient monuments. As set out above, Cadw's view is that impacts on the historic landscape are not likely to be significant.

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34. On the evidence before me and from my own observations on site, I am satisfied that any archaeological remains or features of historic interest would not be affected by the proposals.

### Conclusion

35. Overall, I conclude that in relation to matters of public interest, there would be harm arising from the proposals in relation to public rights of access.

### ***Other Relevant Matters***

36. The applicant's case for a Deregistration and Exchange Order is predicated on the need to provide a new service reservoir and associated improvements to the existing reservoir to meet improving water standards and the needs of the local area. I note that the Release Land is considered to be the optimum location for the development<sup>6</sup>.
37. Improvements to ensure a clean and adequate water supply to the local population are clearly in the public interest. However, at the time of writing this report, the works require planning permission and will need to run through the planning process<sup>7</sup>. Furthermore, no legal undertaking has been provided with this application to ensure that the common land exchange only goes ahead in the event that the planning permission is granted, and the development takes place.
38. As there is no certainty that the development will go ahead irrespective of the outcome of the Section 16 application, there can be no balancing exercise to be carried out between any harms/benefits arising from the common land exchange weighed against the harms/benefits of the development. The Section 16 application before me should therefore be considered on its own merits and with regard to the criteria set out in the 2006 Act and referred to above.
39. I am satisfied that no other relevant matters have been put forward that should be taken into account.

### **Conclusions**

40. Whilst the application has been made to enable works to be carried out to provide improvements to the local water supply and quality and which I acknowledge would be in the public interest, the works to facilitate this require planning permission. In the absence of certainty that the works will go ahead or the provision of any legal undertaking that the common land exchange would only take place if they are carried out, I have not taken them into account in the consideration of this Section 16 application.
41. I conclude that the proposal would result in harm to public rights of access and the interests of the neighbourhood from the deregistration of the Release Land as common. This would not be adequately compensated for through the registration of the Replacement Land. My conclusion is not outweighed by any other considerations and as such the proposal would not be in conformity with the Welsh Government's policy objectives and Guidance to only allow deregistration of common land where that is balanced by the registration of other land of at least equal benefit or justified through wider public benefits<sup>8</sup>.

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<sup>6</sup> Application form

<sup>7</sup> Application form

<sup>8</sup> Paragraphs 3.4 & 3.9.4, Welsh Government Common Land Consents Guidance, August 2014

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42. I have had regard to all other matters raised but find none that would lead me to a different conclusion. I conclude that the application should be refused and that a Deregistration and Exchange Order should not be made.
43. In making my recommendations I have taken into account the requirements of sections 3 and 5 of the Well Being of Future Generations (Wales) Act 2015 (WBFG Act). I consider that my recommendations are in accordance with the Act's sustainable development principle through their contribution towards one or more of the Welsh Ministers' well-being objectives as required by Section 8 of the WBFG Act.

**Recommendation**

44. I recommend that the application to deregister and exchange land at Gelligaer and Merthyr Common, Merthyr Tydfil, is refused and that an Order pursuant to Section 17 of the 2006 Act not be made.

*VK Hirst*

INSPECTOR