



Eich cyf/Your ref: see-wel10-371  
Ein cyf/Our ref: COM/3246848

Simon Ellis  
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26 March 2021

Dear Mr Ellis,

**COMMONS ACT 2006- APPLICATION BY DŴR CYMRU CYFYNGEDIG UNDER SECTION 16 OF THE COMMONS ACT 2006 IN RESPECT OF COMMON LAND AT GELLIGAER AND MERTHYR COMMON, MERTHYR TYDFIL.**

1. Following your application reference COM/3246848 made under section 16 of the Commons Act 2006 (the 2006 Act) for the deregistration and exchange of common land at Gelligaer and Merthyr Common (CL38), Merthyr Tydfil, I have received the report by the Inspector, Vicki Hirst BA (Hons) PG Dip MA MRTPI, from the Planning Inspectorate Wales (PINS).

**Summary of decision.**

2. The formal decision is detailed at paragraph 25. 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 Merthyr and Rhymney Valley Express on 13 February 2020 and the Western Mail on 11 February 2020. Notices were posted at the site and sent to relevant parties.

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

5. Three representations were received from the Open Spaces Society, Ramblers Cymru and Cadw as result of the published notice. PINS did not consider it necessary to hold an independent public local enquiry. An unaccompanied site visit was carried out on 11 June 2020.

## 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 200m<sup>2</sup> 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 and the grant of Planning Permission

11. Consideration has been given to the Inspector's report. The Inspector's conclusions are set out at paragraphs 40- 43 of her report, a copy of which is enclosed. The Inspector, at paragraph 44 of the report, recommends *'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.'*
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.

13. The application is made so as to enable Dŵr Cymru to improve the local water supply and meet improving drinking water standards for the future needs and requirements of the local area, by extending the existing water service reservoir. At the time the application was made, planning permission had not been applied for, and the application did not contain details of the proposed scheme. The Inspector recognises at paragraph 37 of the report that *'Improvements to ensure a clean and adequate water supply to the local population are clearly in the public interest'*, however concluded at paragraph 38 that, *'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 Inspector did not, therefore, take the improvements to the local water supply into account when considering the criteria set out in section 16 of the 2006 Act.
14. Since the Inspector's report, planning permission for the scheme was granted by Merthyr Tydfil County Borough Council on 13 January 2021 and I have been able to consider the nature of the scheme alongside the Inspector's report, and in the context of the considerations set out in section 16. The construction is required on the grounds of public health and will improve the local water supply and meet improving drinking water standards. The additional reservoir is necessary for Dŵr Cymru to address a requirement from the Drinking Water Inspectorate to increase the storage capacity of the existing facility and avoid potential water shortages in the future. I consider there to be strong public health reasons underpinning the application by Dŵr Cymru.

### **Conclusions reached by the Inspector and further considerations**

15. As set out above, the application is made 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 reservoir facility to increase its storage capacity with the construction of a new reservoir.
16. In considering the application the Inspector applies the statutory tests under section 16(6) of the 2006 Act, and I consider these below.
17. 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 notes existing rights would be transferred to the Replacement Land. No objections were received from the individual graziers or the Merthyr and Gelligaer Commoners Association and the Inspector notes that the replacement land is a larger area of grassland for grazing. She is satisfied that the proposal would provide additional land for grazing that would be of equal or better value for grazing than the Release Land, and concludes the proposal would not unacceptably interfere with those who have rights over the land. I agree that the land proposed as Replacement Land will result in either equal or better value land being available for the commoners, for the reasons expressed by the Inspector.

18. When considering the interests of the neighbourhood (section 16(6)(b)) the Inspector believes – as regards location - the Replacement Land would not offer the same benefits to the public and would have a negative impact. This is because the Replacement Land is located some distance from the local neighbourhoods whereas the Release Land is closer to the community, reservoirs and existing paths which means it is an important amenity for recreation and leisure. I have considered the Inspector's views under this heading and recognise the Release Land provides connections with other paths around the reservoir, which would be lost if the application were granted. I have also considered the planning permission which was granted after the application was made, and the beneficial impact the associated works will have on the interests of the neighbourhood. This is considered in greater detail in paragraph 24.
19. When addressing the public interest considerations, as required under section 16(6)(c), the Inspector was satisfied the proposal for an exchange of common land would not impact on the public interest in nature conservation, and there would be no harm to the public interest in landscape terms. She noted the potential for the proposed works to have effects on the wider common, but did not offer a view on this, as no details of the proposed works were provided as part of the application. Having considered the planning permission and details of the planned works, including the proposals to minimise the impact on the landscape with the planting of grass and vegetation at the boundary, and the construction of the reservoir predominantly below ground, I am satisfied minimal harm to the public interest in landscape terms would arise as a result of the application. The Inspector was also satisfied that any archaeological remains or features of historic interest would not be affected by the proposals. I have considered the views of the Inspector, alongside the Planning and Regulatory Committee Report, the subsequent decision to grant planning permission, and details of the proposed works, and am of the view that there will be a limited visual impact on such features given their separation distance from the development, where views of the proposal would likely be indiscernible within the landscape.
20. As regards the public interest in the protection of public rights of access, the Inspector explains that the deregistration of the release land would remove the public's rights of access onto the release land, which is well connected to other paths around the existing reservoir. This would remove a key area of common used for local recreation and leisure and would not be sufficiently compensated for by the replacement land. The replacement land is already accessible to the public. The Inspector therefore concludes, as regards the public interest considerations, *'there would be harm arising from the proposals in relation to public rights of access'*. I agree that, for the reasons set out by the Inspector, the proposal would not be beneficial in terms of public rights of access. I consider improvements to the existing water service reservoir and the local water supply to also fall under the public interest heading, and have considered the planning permission and the associated works in the context of the public interest. This is considered in greater detail in paragraph 24.
21. When considering 'any other matter considered to be relevant' as required under section 16(6)(d) of the 2006 Act, the Inspector notes the proposal 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'*. She notes that *'the Release Land is considered to be the optimum location for the development'*.

22. At paragraph 40 of the report she concludes '*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 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,*' the Inspector has not taken them into account in the consideration of this section 16 application. The Inspector notes no other relevant matters have been raised.
23. The Inspector recommends the application to deregister and exchange common 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. I consider the Inspector was correct to refrain from assessing the overall benefits and harm of the proposed development as the planning application had been neither made nor determined at the time the application was submitted, and the correct mechanism for assessing relevant considerations is the planning system. The Inspector did not have details of any proposed works. I consider, however, it would have been appropriate to consider any impacts of the possibility of development on the Release Land which could be enabled by deregistration, qualified by the level of detail available at the time of any consideration.
24. I have considered the report, the representations made and the issues considered by the Inspector. As noted above, since the Inspector's report, planning permission for the reservoir extension has been granted. It is therefore appropriate that I consider the planning permission, associated documentation, and the works that are linked to this application. The works have been designed to satisfy the requirements of a Drinking Water Inspectorate (DWI) audit that followed supply interruptions and discoloured water incidents in 2016 and 2018. In 2018, Drinking Water Inspectorate gave notice to Dŵr Cymru stating it must increase storage capacity at Pengarnddu by 9MI in order to mitigate risks associated with potential loss of supply, turbidity, iron and manganese. I attach great weight to the public health benefits that would result from improvements to the water supply, and the meeting of improving drinking water standards and avoidance of water shortages. These comprise significant benefits to the neighbourhood and the broader public interest. On balance, I believe an improved water supply to the local neighbourhood outweighs the loss of a percentage of accessible common in the vicinity of the neighbourhood. These benefits support a decision to deregister the Release Land in exchange for the Replacement Land and a departure from the recommendation made by the Inspector in her report dated 20 July 2020. The application should therefore 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.

## Formal decision.

25. I have considered the Inspector's report, noted the case for the applicant, the representations, the Inspector's conclusions and the grant of planning permission. In conclusion, for the reasons given above, and in exercise of my authority as Minister for Environment, Energy and Rural Affairs, one of the Welsh Ministers, I hereby grant the application COM/3246848 to deregister and exchange common land at Gelligaer and Merthyr Common, Merthyr Tydfil, CL38, in accordance with the terms of the application COM/3246848 dated 20 July 2020 and the plan submitted there with, and an order pursuant to section 17 shall be made.
26. 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 Merthyr Tydfil County Borough Council.
27. 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.
28. 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.
29. A copy of this letter has been sent to Merthyr Tydfil County Borough Council for information.

Yours sincerely.

A handwritten signature in black ink, reading 'Lesley Griffiths'. The signature is written in a cursive, flowing style.

**Lesley Griffiths AS/MS**

Gweinidog yr Amgylchedd, Ynni a Materion Gwledig, un o Weinidogion Cymru  
Minister for Environment, Energy and Rural Affairs, one of the Welsh Ministers