



Penderfyniadau
Cynllunio ac
Amgylchedd **Cymru**

Planning &
Environment
Decisions **Wales**

Adroddiad

Ymweliad â safle a wnaed ar 04 May 2022

gan J Burston BSc MA MRTPI AIPROW

**Arolygydd a benodir gan Weinidogion
Cymru**

Dyddiad: 18/07/2022

Report

Site visit made on 04 May 2022

by J Burston BSc MA MRTPI AIPROW

**an Inspector appointed by the Welsh
Ministers**

Date: 18/07/2022

COMMONS ACT 2006

APPLICATION BY: CELTIC ENERGY LIMITED

COMMONS REGISTRATION AUTHORITY: NEATH PORT TALBOT COUNTY BROUGH
COUNCIL

APPLICATION TO DEREGISTER AND EXCHANGE PART OF GWAUN CAE GURWEN
(CL25A)

REFERENCE: COM-3277079

Ref: COM-3277079

Site address: Gwaun Cae Gurwen Common

Register Unit: CL25A

Registration Authority: Neath Port Talbot County Borough Council

The Welsh Ministers have transferred the authority to decide this appeal to me as the appointed Inspector.

- The application, dated 14 June 2021, is made under Section 16 of the Commons Act 2006 to deregister and exchange land registered as common land.
- The application is made by Celtic Energy Limited as landowner.
- As described in the 'Notice' advertising the proposal "*the Release Land comprises 100.26 ha of land, the Exchange Land comprises 102.34 ha of land, within the communities of Gwaun Cae Gurwen, Lower Brynamman, Tairgwaith, Cwmllynfell and Rhiwfawr.*"
- The application is made to enable the implementation of planning permission reference P2021/1073, for "*Matters of Outline with all matters reserved: leisure facilities to include: a 120-bedroom hotel (Use Class C1); 78 holiday lodges (Class C3) of 2, 3 and 4 bed-units; a campsite (Sui Generis) of 6.35ha. with facilities block of 210m² and Visitors Centre (Class D1) of 300m²; dive centre with ancillary dive centre shop (Class D2) of 1630m²; all to include appropriate parking provision, recreational open space, internal access routes, services and drainage provision; and associated works including access, footpaths, cycle routes and bridleways, landscaping and layout details; Matters of Detail (as set out in the application at Annex 1: Mineral Extraction and Processing) the proposed north eastern extension to East Pit East Revised for the purposes of coal extraction along with the completion of coaling at the existing site and the retention of associated ancillary development and Gwaun-Cae-Gurwen Railhead together with the development of a Country Park and recreational lake.*"

Recommendation: That the application be granted and a Deregistration and Exchange Order made.

Background and 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 200sqm 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 'South Wales Guardian' on 16 June 2021. Notices were posted at the main entries to the lands and sent to various consultees. Given the COVID-19 pandemic and the closure or reduced capacity of certain facilities a copy of the application form and plan showing the location of the lands was available for inspection online and a paper copy of the application could also be obtained from the applicant. Copies were sent to all registered commoners and other relevant parties.
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3. The applicant advised in a letter dated 26 January 2022 that the application was to be amended in order to remove land referenced as 1, 2 and 3 in Upper Brynamman as 'proposed Release Land' on plan E/2891. I do not consider that anyone's interests have been prejudiced by this amendment and I have taken this into account when reaching my recommendation. As a consequence, the Release Land figure should be adjusted to state 99.08ha. The exchange land would remain the same as stated in the application at 102.34ha.
4. An executed Unilateral Undertaking has been submitted, dated 16 June 2022. This provides an obligation restricting the landowner, and any successors in title, from erecting fencing on a particular parcel of land. I have taken this into account when making my recommendation.
5. I carried out an accompanied inspection of the Release Land and the Replacement Land on 04 May 2022.

The Site and Surroundings

6. The overall common land unit (CL25A) amounts to some 875.91 ha and is interspersed with villages and hamlets. It is located within an upland area, known locally as the 'Black Mountains', and is predominantly of rough grassland, scrub and tree copse. The wider area was subject to major coal extraction and is currently undergoing restoration in accordance with planning permission P2021/1073.
7. The common is subject to rights of pasture for the grazing of sheep, cattle and horses and a right of estover (to take wood). These rights are distributed between a number of Commoners as set out in the Common Land Register.

The Proposal

8. The deregistration is proposed to enable the applicant to implement planning permission P2021/1073, granted on 18 June 2015, as set out in the banner heading to this report.

The Statutory Requirements and Guidance

9. 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 (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.); and
 - d) any other matter considered to be relevant.
10. The Welsh Government's Common Land Consents Guidance, August 2014 (the Guidance) 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 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. I have taken it into account in making my recommendations.

Representations

11. Thirteen local residents have submitted letters of objection and one 61-signature petition objecting to the proposal was received. In summary, the objections were based on matters including; that the Release Land is not required to facilitate the hotel

development, particularly that at Banwen Place and Siloam Chapel; the proposed Release Land will be developed for housing; the geology of the area raises concerns about flooding/stability of the lake; future maintenance of the common; continuing use of the Canolfan Maerdy community centre; protection of individual access rights to property; the exchange land is poor quality; and the application would limit access to common land within local settlements (as opposed to the wider common) which is used for recreation.

12. It is noted that in response to the objections the applicant removed sections 1 – 3 at Banwen Place and Siloam Chapel from the areas of common land to be released. Thus, these areas will remain as common land.
13. The Gower Society submitted a letter of representation raising concerns that parcel ref 18 of the Release Land would cause the common to be divided in half and potentially fenced, thus reducing accessibility. The Society advised that if this section was to be a road then a Section 38 common land application should be submitted so that the land would be retained as common land, albeit a roadway. The Society is also concerned about the proposed removal of small areas of 'urban common' which are currently enjoyed by the public and there is no advantage to their removal from the common.
14. No objections were received from either the Open Spaces Society or Cadw.
15. One letter of support was received from the 'Caeguiwen and Penllerfedwen Commoners Association' who state that the proposal will: enhance the opportunities of our members to effectively graze livestock; create a larger block of continuous Common Land which will be to the benefit of the public in terms of walking and enjoyment of the countryside; and create much needed employment.

Assessment

Release Land

16. The Release Land includes a number of parcels of land as shown on plan E/2890. Given the amendments to the Release Land the relevant sections include 4 to 26 as described in table 1.

Table 1

Section	Hectare(s)	Description
4	0.08ha	Pastureland south east of Heol Leyson, Lower Brynamman
5	0.27ha	Pastureland south of Hermon Chapel, Lower Brynamman
6	0.61ha	Pastureland south east of Heol Leyson, Lower Brynamman
7	1.15ha	Pastureland to the east of Brynamman Road, Lower Brynamman
8	0.67ha	Permanent pastureland slightly rising from south to north, to the east of Amman Valley Fire Station, New Road, Gwaun Cae Gurwen
9	4.70ha	Permanent pastureland and dense scrub to the south of Ysgol Gymraeg Gwaun Cae Gurwen, New Road, Gwaun Cae Gurwen

10	2.42ha	Permanent sloping pastureland and dense scrub south of New Road and west of Gorsto Road, Gwaun Cae Gurwen
11	4.08ha	Sloping permanent pastureland and dense scrub north of Twynrefail Place and west of Clwyd Road, Gwaun Cae Gurwen
12	0.11ha	Sloping permanent pastureland and dense scrub north of Twynrefail Place and west of Clwyd Road, Gwaun Cae Gurwen
13	0.05ha	Sloping permanent pastureland east of Twynrefail Place, Gwaun Cae Gurwen
14	0.08ha	Sloping permanent pastureland and trees north of Gorsto Road and south of New Road, Lower Brynamman
15	28.03ha	Land north of New Road, Gwaun Cae Gurwen that includes the main Celtic Energy office entrance and workshop areas. Also comprising a large car park surrounded by some pasture land and scrub.
16	6.67ha	land south of New Road and north of the Amman Valley Trotting Club and Track, previously used as a coal railhead including a large concrete area.
17	1.12ha	Well maintained level pasture land south/south east of New Road and north east of Tairgwaith Primary School, Tairgwaith
18	12.13ha	Land incorporating an access track and pasture land. To the east, the land incorporates an area of purple moor grass and newly planted acid grassland. A large pond is located to the north of the access with the drainage outlet passing underneath the track. This outlet connects to a flat valley which outfalls down a cascade to the newly formed lake, within the Celtic Energy surface mine site, Tairgwaith
19	29.70ha	Situated on the eastern side of the newly created lake, containing high, steep cliffs sloping downwards towards the waterline. Also includes pasture land within the Celtic Energy surface mine site, Tairgwaith. Located south west of the Gorshelyg, Rhosamman
20	0.82ha	Sloping pastureland north of the houses at Ochr-y-Waun, Cwmllynfell
21	0.14ha	Relatively level pastureland and previously developed land, north of the houses at Ochr-y-Waun, Cwmllynfell
22	0.84ha	Level permanent pastureland north of Cwmllynfell Rugby Ground at Penybryn, Cwmllynfell
23	4.314ha	Level permanent pastureland west of Bryn Road and south and west of Cwmllynfell Rugby Ground, Cwmllynfell
24	0.51ha	Level land covered by dense scrub east of Bryn Road, Cwmllynfell
25	0.07ha	Level land covered by dense scrub north of Gwilym Road, Cwmllynfell
26	0.07ha	Level land covered by dense scrub south of Gwilym Road, Cwmllynfell

Replacement Land

17. The Replacement Land includes a number of parcels of land as shown on plan E/2900. The Replacement Land includes sections 1 to 6 as described in table 2.

Table 2

Section	Hectare(s)	Description
1	27.07ha	Permanent pastureland, sloping from the south towards the River Amman, east of Gorsto Farm, Brynamman and south of the A4068 at Brynamman
2	2.84ha	Permanent pastureland, east of the A4069 at Cannon Street, Lower Brynamman and south of Park Lane, Lower Brynamman
3	0.40ha	land which is part regraded tip within the Celtic Energy surface mine site.
4	17.19ha	Recently regraded land within the Celtic Energy surface mine site located west / south west of Ochr Y Waun, Cwmllynfell. The area includes pasturelands, woodland and water features.
5	15.08ha	regraded tip within the Celtic Energy surface mine site containing pasturelands. Located south west of Pen Y Bryn, Cwmllynfell
6	39.76ha	pastureland at the former smallholdings of Bryndu and Blaen Nat Hir located south east of King Edwards Road, Tairgwaith

The interests of persons occupying or having rights over the land

18. There are rights to pasture and estovers extant over CL25A. It is not known which commoners exercise their rights over the common but the applicant has stated that this does occur.
19. The Release Land is owned by the applicant who now wishes to develop / restore the former mine workings site. The applicant submits that it is seeking de-registration of the minimum amount of registered common land in order to be able to meet that aim.
20. The Commoners Association support the application given that the Replacement Land will create a larger block of continuous common land which can be grazed more efficiently. Moreover, internal fencing can be removed and the stock can then roam freely. I acknowledge that a letter of representation was received which stated that the areas of Replacement Land are of poor quality. Nonetheless, as I observed on my site visit the Replacement Land is contiguous with the wider common and offers very similar grazing potential.
21. Whilst there are various rights of common exercised, I have no substantive evidence to indicate that the proposal would have an adverse impact on any person with an interest in the land. As such, the proposed deregistration and exchange is in the interests of the applicant and the commoners.

The interests of the neighbourhood

22. The guidance indicates that the issues to be considered in this context includes whether the exchange would prevent local people from using the common in the way they are used to, and whether or not there would be an interference with the future use and enjoyment of the common.
23. Common land is not owned by the public however it may have a right of public access or the public may be allowed to use it. In this respect, the Countryside and Rights of Way Act 2000 extends public rights of access to all registered common land in Wales. This includes the 'right to roam' and is essentially confined to a right of access on foot only. Horse riding, cycling, use of motor vehicles, camping and other activities are not permitted as of right (although the landowner may permit them).
24. Many of the smaller areas of the common which are proposed for release are effectively within or on the edge of villages and close to roads. Whilst much of this land would appear to be of little value for recreational use, local residents have stated that this land is used by those who are elderly or with limited mobility who cannot access the wider common for dog walking or exercise. As such the common as a whole is valued by the 'neighbourhood'.
25. I agree that the smaller parcels of common land have recreational value and the proposal would do little to enhance access locally. Nevertheless, the wider common is within walking distance of local houses and as I saw on my site visit many areas of open space would remain within settlements.
26. The Release Land contained in parcels 15, 18 and 19 is centrally located within the common and its removal from the register could potentially lead to fencing thus essentially splitting the common in half. I accept that the applicant states that the Release Land would remain open and accessible to the public after the access road (and other developments) are constructed. However, this cannot be guaranteed, circumstances may alter, or the property might change hands and public access could be restricted in some way.
27. To negate such circumstances the applicant has submitted a legal obligation to restrict fencing within land registered under title CYM246915, and I have taken this document into account as appropriate mitigation when making my recommendation. Overall, I am satisfied that the legal obligation would overcome the concerns relating to splitting the common with fencing.
28. The Replacement Land would fill 'gaps' in the expanse of the wider common and this would open up the area for long distance and circular walking, cycling and horse-riding routes. Existing fences would be removed, and the areas would be restored given the past mining hereabouts. This is a positive benefit of the application.
29. Overall, the more continuous nature of the whole common and the restoration of historic mining operations would outweigh the harm to the localised neighbourhood through the loss of small pockets of common land.

The public interest

Nature Conservation

30. Natural Resources Wales was consulted on the application and made no comment. There would appear to be no known feature of nature conservation value that might be adversely affected by the proposed deregistration. The Release Land comprises habitats from pastureland to dense scrub and the Replacement Land is of similar habitats. I do not consider that the proposed exchange will have any adverse impact upon biodiversity or nature conservation.

Landscape

31. The exchange is sought to facilitate construction works consented by planning application P2021/1073. The consideration of the planning application took into account the impact on the local and wider landscape. In granting permission, the planning conditions imposed seek to minimise any harm.
32. Furthermore, the removal of fencing and mining paraphernalia would have a positive impact on the wider landscape and would restore the open character of the common rather than the current fragmented landscape.

Public Access

33. In respect of the effect of the proposed exchange on public rights of access I refer to my observations in paragraphs 22 to 29 above in relation to the interests of the neighbourhood which are equally applicable to public access interests.

Archaeological remains and features of historic interest

34. Cadw has been consulted on the application and has no comments to make. There are no listed buildings, scheduled ancient monuments or non-designated nationally important archaeological sites on the Release Land. There is no evidence before me that the exchange will have any adverse effect on archaeological remains or features of historic interest.

Conclusions on the public interest

35. In most respects the proposed deregistration will have little adverse effect on the public interest and the Unilateral Undertaking submitted would ensure that public access was not restricted across the central section of the common in the future. Accordingly, from the information provided and my observations of the site, I do not find that there would be any significant impact on the public interest should the land be deregistered.

Other Relevant Matters

36. The 2006 Act, along with a suite of earlier legislation on common land, enables the Welsh Government to safeguard commons for current and future generations to use and enjoy. To achieve this, it is paramount that the stock of common land is not diminished, and any deregistration of registered land is balanced by the registration of other land of at least equal benefit.
37. Collectively, the exchange land to be provided is 102.34ha in area whereas the Release Land is 99.08ha. There will therefore be a net increase in common land as a result of the exchange which accords with Government objectives that the stock of common land should not be diminished.
38. I also acknowledge that the proposed development of a dive centre, country park and other infrastructure would offer social, economic and regenerations benefits, both locally and regionally.
39. The Release Land also includes several parcels of land within the surrounding villages. Many objectors have queried the motives of the applicant, stating that the release of this land will lead to housebuilding. However, this is not something I can take into account in determining this application.
40. Local residents have raised concerns relating to land stability and flooding. It is stated that there is an active fault line, where serious instability has developed in the ground. As a consequence, should there be any further ground movement the large volume of water contained in the lake could move through any fault lines flooding local

communities. Nonetheless, this is not something I can take into account under the Commons Act and, in any event, planning permission P2021/1073 sets out planning conditions to ensure ground monitoring and if any ground instability is found then immediate safety measures should be implemented. To my mind this would ensure the safety of those using the common and of surrounding communities.

41. I note that the Release Land includes the area of land at the Canolfan Maerdy community centre. There is a great deal of community support for the centre and the valuable work that it does. The applicant states that if the exchange was granted it would be able to offer the centre a lease for the building. However, there is no guarantee that a lease would be granted and I can afford this matter no weight.

Overall Balance and Conclusion

42. Having regard to the matters addressed above, the main factors I consider should be put into the balance are the impact of the exchange on public access and the benefits arising from it.
43. On the latter point, the exchange land would provide a wider area of contiguous common land, which would be available to the neighbourhood and commoners alike. Fencing would be removed which would improve the wider landscape and benefit graziers. It would also facilitate the implementation of the planning permission which would assist in regenerating the area and providing a publicly accessible country park. However, the disbenefit of the proposal is that some parcels of Release Land would remove access to areas of common land within local settlements, which are valued by the community.
44. In my view the justification for the exchange does outweigh the limited disadvantage that would arise from the loss of accessibility to common land available for people to use in the future. For these reasons I do find on balance that consent for an exchange of common land should be granted.

Recommendation

45. For the aforementioned reasons and taking into account all matters raised I recommend that the application to deregister and exchange land at CL25A Gwaun Cae Gurwen Common, is allowed and that an Order pursuant to Section 17 of the 2006 Act be made.

J Burston

Inspector