



## Report of the Head of Planning and City Regeneration

Planning Committee – 6 July 2021

### **Commons Registration - Application for the Removal of Land from the Register of Common Land (application no. 003/19) Register Unit CL53, Mynydd Lliw Common**

<b>Purpose:</b>	An application has been received from the Welsh Government to amend the Register of Common Land by removing an area of 50,862 square metres from Register Unit CL53, Mynydd Lliw Common.
<b>Policy Framework:</b>	None. Relevant legislation – Commons Registration Act 1965, Section 22 Commons Registration Act 1965, Section 13 Commons Registration (General) Regulations 1966, Regulation 27 Acquisition of Land (Authorisation Procedure) Act 1946
<b>Reason for Decision:</b>	The land identified on the accompanying plan has ceased to be common land by virtue of a Compulsory Purchase Order.
<b>Consultations:</b>	Legal, Finance and Access to Services and all the statutory consultees, including local members, landowners, commoners, community councils and the prescribed organisations.
<b>Recommendation:</b>	That the application be accepted and the land identified on the plan annexed hereto be removed from Register Unit CL53 (Mynydd Lliw Common)
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## **Introduction**

- 1.1 An application has been received to amend the Register of Common Land by removing approximately 50,862 square metres from Register Unit CL53, Mynydd Lliw Common, as shown on the attached plan (Application No: 002/18).
- 1.2 The application is dated 18<sup>th</sup> January 2018 and was submitted by the law firm Eversheds Sutherland LLP acting on behalf of the Welsh Government, Department for Economy and Infrastructure on the basis that the land ceased to be common land on 26<sup>th</sup> June 1973 by virtue of The Welsh Office Highways Compulsory Purchase Order (No.13) (Swansea-Manchester-London-Fishguard Trunk Roads, Pontarddulais By-Pass and Connecting Roads) 1973 (“the Order”).
- 1.3 The land in question now forms part of the M4 motorway near Pontlliw and Pontarddulais. No land was given in exchange.

## **Legal Principles**

- 2.1 Section 22 of the Commons Registration Act 1965 sets out the definition of common land. (see Appendix 1)
- 2.2 Under s.13 of the Commons Registration Act 1965 (the “Act”), provision is made for the amendment of the Register of Common Land where any land registered under the Act ceases to be common land. (See Appendix 2).
- 2.3 The procedure to be followed in determining the application for such a removal is set out in regulation 27 of the Commons Registration (General) Regulations 1966. (See Appendix 3)
- 2.4 In order to make an application, the applicant must show that the land had already ceased to be common land at the date of the application. Consequently, this Council does not need to consider whether the land should cease to have common land status as the events leading to any change will have already taken effect. This Council must instead decide whether the application to remove the land is well founded and whether the necessary procedures for removal have been complied with.
- 2.5 There are a number of ways that land may cease to be common land within the meaning of Section 22 of the Commons Registration Act 1965. For the purposes of this application, the applicant relies on the procedures associated

with Compulsory Purchase, a summary of which can be found in Paragraphs 2.6 and 2.7 below.

- 2.6 Where a compulsory purchase order authorises the purchase of any land forming part of a common, the order is subject to the procedures set out under either the Acquisition of Land Act (Authorisation Procedure) Act 1946 (where the purchase was before 30<sup>th</sup> January 1982) or the Acquisition of Land Act 1981 (for purchases after 30<sup>th</sup> January 1982). The Compulsory Purchase Order upon which the applicant seeks to rely is dated 26<sup>th</sup> June 1973 and therefore the procedures set out under the 1946 Act will apply.
- 2.7 Under the 1946 Act, where a Compulsory Purchase Order authorises the purchase of any land forming part of a common, the order is subject to Special Parliamentary Procedure unless the Secretary of State is satisfied that either:
- (i) exchange land has been or will be given in exchange; or
  - (ii) that the land in this case is required for highway purposes and the giving of exchange land is unnecessary, whether in the interests of the rights holders or in the interests of the public.

### **Consultations**

- 3.1 Consultations were undertaken on 12<sup>th</sup>-13<sup>th</sup> June 2018, and 9<sup>th</sup> October 2018 in accordance with Regulation 27 of the Commons Registration (General) Regulations 1966 (See Appendix 3).
- 3.2 No objections were received.

### **Grounds for Removing Land from Register**

- 4.1 The land in question forms part of the M4 motorway and was acquired by the Welsh Office under compulsory acquisition powers by virtue of ss.214 and 215 of the Highways Act 1959, as extended and supplemented by ss.44, 47 and 51 of the Highways Act 1971 and s.1 of the Acquisition of Land (Authorisation Procedure) Act 1946.
- 4.2 The order was subject to the procedures set out in the Acquisition of Land (Authorisation Procedure) 1946 (see paragraphs 2.5 - 2.6 above).
- 4.3 Consequently, the applicant claims that the land has ceased to be common land within the meaning of s.22 of the Commons Registration Act 1965.

### **Conclusion**

- 5.1 The application is in the correct form.
- 5.2 No objections have been received.

5.3 The evidence supplied by the applicant is sufficient to show that the land has ceased to be common land.

### **Integrated Assessment Implications**

6.1 The Council is subject to the Equality Act (Public Sector Equality Duty and the socio-economic duty), the Well-being of Future Generations (Wales) Act 2015 and the Welsh Language (Wales) Measure, and must in the exercise of their functions, have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Acts.
- Advance equality of opportunity between people who share a protected characteristic and those who do not.
- Foster good relations between people who share a protected characteristic and those who do not.
- Deliver better outcomes for those people who experience socio-economic disadvantage
- Consider opportunities for people to use the Welsh language
- Treat the Welsh language no less favourably than English.
- Ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs.

6.1.1 The Well-being of Future Generations (Wales) Act 2005 mandates that public bodies in Wales must carry out sustainable development. Sustainable development means the process of improving the economic, social, environmental and cultural well-being of Wales by taking action, in accordance with the sustainable development principle, aimed at achieving the 'well-being goals'.

6.1.2 Our Integrated Impact Assessment (IIA) process ensures we have paid due regard to the above. It also takes into account other key issues and priorities, such as poverty and social exclusion, community cohesion, carers, the United Nations Convention on the Rights of the Child (UNCRC) and Welsh language.

6.2 The Integrated Impact Assessment (IIA) process has been applied to the subject of this report. No implications have been identified. An IIA Screening Form has been completed with the agreed outcome that a full IIA report was not required for the reasons given in paragraph 6.3 below.

- 6.3 This Application made under the Commons Registration Act 1965 has no impact on any persons or community groups save for the benefit in resulting in an up to date Register of Common Land for the City and County of Swansea. The land subject to the Application now forms the M4 Motorway and has not lawfully been common land since a compulsory purchase order was made in 1973 when the land and rights over it were acquired by the Welsh Office. The land has not been used and has not been available for use as common land since prior to 1973.
- 6.4 The IIA Screening Form is appended to this report for reference.

### **Financial Implications**

None

### **Legal Implications**

None

### **Background Papers**

Documents contained within file D30-00203936.

### **Appendices:**

Commons Registration Act 1965

IIA

Location Plan

## **APPENDIX 1 – COMMONS REGISTRATION ACT 1965**

### **Section 22**

(1) In this Act, unless the context otherwise requires,—  
“common land” means—

- (a) land subject to rights of common (as defined in this Act) whether those rights are exercisable at all times or only during limited periods;
- (b) waste land of a manor not subject to rights of common;

but does not include a town or village green or any land which forms part of a highway;

## **APPENDIX 2 – COMMONS REGISTRATION ACT 1965**

### **Section 13**

Regulations under this Act shall provide for the amendment of the registers maintained under this Act where—

- (a) any land registered under this Act ceases to be common land or a town or village green; or
- (b) any land becomes common land or a town or village green; or
- (c) any rights registered under this Act are apportioned, extinguished or released, or are varied or transferred in such circumstances as may be prescribed;

## APPENDIX 3 - COMMONS REGISTRATION (GENERAL) REGULATIONS 1966

### Regulation 27

Land ceasing to be common land or a town or village green

- (1) Where any land registered under the Act has ceased to be common land or a town or village green, application may be made to the registration authority, in accordance with the following provisions of this regulation, for the amendment of the register.
- (2) An application under this regulation may be made by the person who, at the date of the application, would have been entitled (whether or not by virtue of any provision of these Regulations) to apply under section 4 of the Act for the registration of a claim to the ownership of the land if at that date such an application could have been made
- (3) Every such application must be—
  - (a) in Form 17;
  - (b) signed by [or on behalf of] every applicant who is an individual, and by the secretary or other duly authorized officer of every applicant which is a body corporate; and
  - (c) Supported by a statutory declaration made by every person who has signed the application, and by such further evidence (if any) as, after considering the application and declaration, the registration authority may reasonably require.
- (4) Applications under this regulation shall be numbered in order of receipt by the registration authority, and shall be entitled, unless rejected, to be given effect to on the register in that order.
- (5) The registration authority shall, on receipt of any application under this regulation which it does not, after preliminary

consideration, determine to reject, publish in the concerned area, and shall display, a notice in Form 18, and shall send the notice to—

- (a) every concerned authority;
  - (b) any person other than the applicant who is registered as owner of the land;
  - (c) where a right of common is registered as exercisable over the land, any person appearing from the register to be interested therein, and, where the registration is provisional, the person on whose application it was made and any person whose application is noted under regulation 9(5) above.
- (6) Every authority receiving a Form 18 notice under this regulation shall display copies thereof.
- (7) Upon the expiration of forty days from the date on which paragraph (5) above is complied with, the registration authority shall further consider the application and shall consider any written representations, which it has received, and, if it deems the application well founded, shall amend the register as shown in Standard Entry 6.
- (8) In this regulation “concerned area” means, in the case of a registration authority which is the council of a county borough, an area including the area of the county borough and the areas of every concerned authority, and, in any other case, an area including the areas of every concerned authority