



Report of the Head of Planning and City Regeneration

Planning Committee – 2 August 2022

Commons Registration – Application for the Removal of Land from the Register of Common Land and the Registration of Exchange Land

Register Unit CL49, Llangyfelach Common (Application No. 001/18)

Purpose:	An application has been received from the Welsh Government to amend the Register of Common Land by removing land from Llangyfelach Common which was compulsorily purchased in 1969 for highway construction and the registration of other land that was provided in exchange.
Policy Framework:	None.
Consultation:	Legal, Finance and Access to Services and all the statutory consultees, including local members, landowners, commoners, community councils and prescribed organisations.
Recommendation:	It is recommended that the application be accepted and the Register of Common Land be amended as follows: <ol style="list-style-type: none">1) the land identified in this report as the “Substituted Land” be added to Register Unit CL49: Llangyfelach Common; and2) the land identified in this report as the ‘Taken Land’ be removed from Register Unit CL49: Llangyfelach Common.
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1. Introduction

- 1.1 An application was made under Section 13 of the Commons Registration Act 1965 on the 8th December 2017 by the Welsh Government's Department for Economy and Infrastructure ("the Application") to amend the Register of Common Land ("the Register"). The Application can be viewed in full at Appendix 1.
- 1.2 The Application seeks to amend the Register of Common Land ("the Register") by giving effect to the changes to Llangyfelach Common brought about by virtue of the Welsh Office Highways Compulsory Purchase Order (No. 9) (London-Fishguard Trunk Roads, Morrision By-pass) 1969 which was confirmed on the 20th June 1969 ("the Order")
- 1.3 Given that any land ceasing to be common land or becoming new common land by virtue of the Order would have been effected in 1969, the procedure for this application is set out in the Commons Registration (General) Regulations 1966 ("the General Regulations") which came into operation on 2nd January 1967.
- 1.4 The Application was made in Form 29 as an application to register land "which became common land after the 2nd January 1970" and this form only became available when the Commons Registration (New Land) Regulations 1969 came into effect on 3rd January 1970. The Application relates to land becoming common land in 1969 and therefore on the face of it does not appear to be covered by Form 29.
- 1.5 However, the General Regulations 1966 whilst providing a Form 17 for land ceasing to be common land, did not provide a specific form providing all the required information to give effect to an application for de-registration of common land and registration of other land in exchange. It is considered that Form 29 provides all the information necessary to determine such an application and would have been the correct form if the Order had been made six months later; therefore it is considered the application should be processed in accordance with the General Regulations regardless of the form used in this instance.

2. The Land

- 2.1 The "Substituted Land" is the land provided in exchange for the common land taken by virtue of the Order and is shown edged green on the application plan shown at Appendix 2 ("the Plan"). It is described in the Application as:

"A parcel of land east of the brook called Nant y Gors, north of the M4 and west of Llangyfelach Tunnel in the locality of Llangyfelach, Swansea"

- 2.2 The "Taken Land" is the land that formed part of Llangyfelach Common that was acquired by the Order for the construction of the trunk road and is shown edged red on the Plan. It is described in the Application as:

"That part of Llangyfelach Common and half bed of Nant y Gors in the locality of Llangyfelach, Swansea"

However, Taken Land could be better described as the land forming part of Llangyfelach Common which now forms part of the M4 corridor and junction 47 roundabout”

3. Procedure

3.1 Where an application is made to a Commons Registration Authority (“CRA”) for the removal of land which has ceased to be common land and it appears to the CRA that by virtue of an enactment that:

- (1) the said land the land has ceased to be common; and
- (2) that certain other land not registered as common has become common land in substitution therefor,

the CRA shall not give effect to the application to remove the land until the substituted land has been registered under the Act.

3.2 An enactment for these purposes by virtue of which land has ceased to be common and other land has become registrable as common land include any enactment which:

- (1) Is made under sections 147 and 148 of the Inclosure Act 1845;
- (2) Is made under paragraph 11 of the First Schedule to the Acquisition of Land (Authorisation Procedure) Act 1946; or
- (3) Otherwise provides, on an exchange of land, for the transfer of rights trusts or incidents attaching to the land given in exchange from that land to the land taken in exchange and vice versa.

3.3 Where an application is made by the owner of the land in the above terms, the procedure for determining the application is set out in the 1966 General Regulations.

3.4 On receipt of an application under these provisions and where the CRA does not reject the application following its preliminary considerations, the CRA must publish in a newspaper circulating in the area concerned and shall send the notice to all owners of the land other than the applicant and any persons appearing from the Register of Common Land to currently possess rights of common which are exercisable over the area of common land concerned.

3.5 The CRA must allow a period of 40 days from the date of publication of the notice for any persons to make any written objections or representations on the application.

4. Preliminary Considerations

- 4.1 All the information required from the applicant was submitted with the Application which was supported by the Order of the Welsh Office dated 20th June 1969. There is a question over the prescribed form used given the date of the Order but the Council has received evidence suggesting the register should be amended and therefore it is considered that a complete rejection of the application would be counterproductive.
- 4.2 There is no reason to question the validity of the Order which was confirmed on 20th June 1969 following which the compulsory purchase was initiated. The Taken Land has been built upon and now forms part of the M4 motorway.
- 4.3 The Order expressly states the following indicating it is an enactment by virtue of which an exchange of common land can take place in accordance with the General Regulations:
- “The Secretary of State has certified in accordance with Paragraph 11 of Schedule 1 to the Acquisition of Land (Authorisation Procedure) Act 1946 that he is satisfied as to the giving of other land in exchange for the common land and as to the adequacy of such other land...”
- 4.4 The exchange of land has occurred by virtue of an enactment made under the First Schedule to the Acquisition of Land (Authorisation Procedure) Act 1946. Further, the Order sets out clearly that the Taken Land is to be exchanged for the Substituted Land.
- 4.5 Therefore, it does appear to the Council that land has ceased to be common land and other land has become common land in substitution therefor as required by the General Regulations. Therefore, the Application meets the initial legal tests and the Application has been progressed to the consultation phase.

5. Consultations

- 5.1 A notice was published in the local press on 10th October 2018 (“the Notice”) setting out the amendments to be made to the Register should the Application be successful. The notice described the Taken Land and the Substituted Land clearly and indicated that any objections or written representations would be required not later than 16th November 2018.
- 5.2 Letters with printed copies of the Notice were sent on the 8th October 2018 to the Local Members for the Llangyfelach Ward, the Community Council, the Open Spaces Society, Natural Resources Wales, the Commoners Association and all those appearing from the Register to have an interest in Llangyfelach Common.
- 5.3 No objections or representations were received.

6. Conclusion

- 6.1 The evidence supplied is sufficient to show that the Taken Land has ceased to be common land and the Substituted Land has become common land by virtue of the Order made in 1969.
- 6.2 The approval of the Application will allow the updating of the Register to reflect the position on the ground with the Taken Land having formed part of the M4 corridor since its construction in 1969.
- 6.3 A full consultation exercise has been conducted and no objections to the Application were received

7. Financial Implications

- 7.1 There are no financial implications to this report.

8. Legal Implications

- 8.1 The legal implications are set out in the body of the report.

9. Integrated Assessment Implications

- 9.1 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.

- 9.1.1 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'.

- 9.1.2 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.
- 9.2 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.
- 9.3 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.
- 9.4 The IIA Screening Form is appended to this report for reference.

Background Papers: None

Appendices:

Appendix 1 - Copy of Application made on 8th December 2017

Appendix 2 - Plan showing Taken Land and Substituted Land

Appendix 3 - IIA Screening Form