

CYNGOR SIR POWYS COUNTY COUNCIL.

**CABINET EXECUTIVE
20th June 2017**

REPORT AUTHOR: County Councillor Jonathan Wilkinson
Portfolio Holder for Housing and Countryside Services

SUBJECT: Determination of 'Corrective' applications under sections 19 and 22 and Schedule 2 of the Commons Act 2006

REPORT FOR: Decision

1. Summary

1.1 Powys County Council is a Commons Registration Authority. The Welsh Government has brought into effect provisions of the Commons Act 2006, which impose new duties on Welsh Commons Registration Authorities.

1.2 The new duties relate to alleged errors or omissions on the Registers of Common Land, or of Town or Village Greens. Under sections 19, 22 and Schedule 2 of the Commons Act 2006, applications and proposals can now be put forward for correction of these errors and omissions

1.3 If opposed, some applications or proposals must be referred to the Planning Inspectorate for determination. However, the Council is required to determine any applications or proposals that are not referred to the Planning Inspectorate, whether opposed or not.

1.4 The Regulations relating to the processing of these applications are the Commons Act 2006 (Correction, Non-Registration or Mistaken Registration) (Wales) Regulations 2017. They came into force on 5th May 2017.

1.4 The purpose of this report is to consider the options open to the Council for determining applications and proposals under sections 19, 22 and Schedule 2 of the Commons Act 2006. Initial processing can be carried out by officers, but formal determination is currently a function of the Cabinet. This responsibility could be delegated, if it is considered appropriate.

2. Proposal

2.1 It is proposed that formal determination of applications and proposals be delegated, so that this responsibility does not remain solely with the Cabinet.

2.2 Responsibility for determining other applications relating to the Registers of Common Land and of Town or Village Greens is already delegated to the Planning, Taxi Licensing and Rights of Way Committee. Given this, it is

proposed that determination of the new 'Corrective' applications or proposals be delegated to the Planning, Taxi Licensing and Rights of Way Committee.

2.3 If delegated to the Planning, Taxi Licensing and Rights of Way Committee, a panel could be formed. This would allow for applications and proposals to be determined by a smaller number of Committee Members, on a rotating basis, rather than requiring a full Committee to consider them.

2.4 Delegation to officers may be appropriate for unopposed applications that are wholly administrative in nature, with evidence that is not complicated to interpret. An example would be section 19(2)(d) of the Commons Act 2006 under which names and addresses in the Registers can be updated e.g. following a change of residence (but not a change of ownership.)

3. Options Considered / Available

3.1 The Council must make arrangements to determine any 'Corrective' applications or proposals affecting the Powys Register of Common Land and Town or Village Greens that are not referred to the Planning Inspectorate.

3.2 Determination of these applications and proposals is a quasi-judicial role. It requires interpretation of evidence against the relevant legal criteria. The outcome affects the content of legal Registers that impact on property value, land use and other financial interests e.g. farm subsidy payments.

3.3 Even if unopposed, the Council cannot accept a 'corrective' application or proposal at face value; the evidence must still be scrutinised and challenged and it may be necessary to refuse an unopposed application.

3.4 Responsibility for determination of these applications and proposals could remain with the Cabinet. However, this would impact on the Cabinet's time to consider other matters and on the time taken to determine individual applications under sections 19, 22 and Schedule 2 of the Commons Act 2006.

3.5 Determination could be delegated to the Planning, Taxi Licensing and Rights of Way Committee. The Committee already determines other applications relating to Common Land and Town or Village Greens, so has expertise in this area of work. A smaller panel of Members could be formed, to reduce the time and other costs of determination.

3.6 Determination of all applications could be delegated to Portfolio Holder or officer level. However, this would not be consistent with the way in which decisions are made about other, similar evidence-based Commons Registration and public rights of way applications.

4. Preferred Choice and Reasons

4.1 The way in which these applications is determined has an impact on the costs incurred. Responsibility for meeting those costs will fall to the Welsh Government (for 'public interest' applications), to the Council (where the

Commons Registration Authority may have made an error) or to the applicant, for other types of application. The cost incurred needs to be balanced against ensuring the appropriate level of scrutiny and challenge for decisions.

4.2 The preferred option is that determination of 'Corrective' applications and proposals under sections 19, 22 and Schedule 2 of the Commons Act 2006 be delegated to the Planning, Taxi Licensing and Rights of Way Committee, with opportunity for further delegation to a panel or to officer level. This will allow for a sufficient level of scrutiny and challenge, but would reduce the cost of determination when compared to full Committee or Cabinet involvement.

4.3 The Council can opt to hold a public inquiry and appoint an independent inspector for any opposed 'Corrective' application that it must determine, so additional scrutiny can be put in place if needed.

5. Impact Assessment

5.1 Is an impact assessment required? No

6. Corporate Improvement Plan

6.1 The outcome of these applications and proposals impacts on property value, land use and other financial interests and there is risk of legal challenge to any decision made. It is anticipated that many applications will be routine and not attract a high level of public interest. However, others may be contentious and raise significant concern for the public or the applicant(s.)

6.2 Determining a duly made 'Corrective' application under the Commons Act 2006 is a legal duty; it contributes to the Corporate Improvement Plan objective 'Meet statutory provision of rights of way and countryside access.'

7. Local Member(s)

7.1 None - this proposal has equal force across the whole County.

8. Other Front Line Services

Does the recommendation impact on other services run by the Council or on behalf of the Council? No

9. Communications

Have Communications seen a copy of this report? Yes

Have they made a comment? Communications comment is that no proactive communication action is required.

10. Support Services (Legal, Finance, Corporate Property, HR, ICT, Business Services)

- 10.1 Legal - The Professional Lead-Legal notes the recommendations in section 4 of this report and recognises the reasons given as being appropriate in the circumstances. The Legal Services will continue to give advice and support when and where required.
- 10.2 Finance – The contents of the report are noted. There will be no budgetary implications where applicants or the Welsh Government pay for determination as long as we set fees to cover full costs.

It could impact though where we are required to meet costs in cases where there may be a Commons Registration Authority error. In these rare events, it is suggested that the directorate find these additional costs within their existing budgets.

- 10.3 Corporate Property – Not applicable;
- 10.4 HR – Not applicable;
- 10.5 ICT – Not applicable.

11. Scrutiny

Has this report been scrutinised? No

12. Statutory Officers

- 12.1 The Solicitor to the Council (Monitoring Officer) has commented as follows: “ I note the legal comment and have nothing to add to the report.”
- 12.2 The Strategic Director Resources (S151 Officer) notes the comments made by finance.

13. Members’ Interests

The Monitoring Officer is not aware of any specific interests that may arise in relation to this report. If Members have an interest they should declare it at the start of the meeting and complete the relevant notification form.

Recommendation:	Reason for Recommendation:
That determination of ‘Corrective’ applications and proposals under sections 19, 22 and Schedule 2 of the Commons Act 2006 be delegated to the Planning, Taxi Licensing and Rights of Way Committee, with opportunity for further delegation if appropriate.	To ensure an adequate level of scrutiny and challenge in determining these applications and proposals whilst balancing this against the cost of determination.

Relevant Policy (ies):	N/A		
Within Policy:	Y	Within Budget:	Y

Relevant Local Member(s):	N/A (applies county wide)
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Person(s) To Implement Decision:	Planning, Taxi Licensing and Rights of Way Committee
Date By When Decision To Be Implemented:	With immediate effect

Contact Officer:	Stuart Mackintosh, Head of Leisure and Recreation
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Background Papers used to prepare Report:

- The Commons Act 2006 (Correction, Non-Registration or Mistaken Registration) (Wales) Regulations 2017 (Appendix 1)
- Guide to the Commons Act 2006 (Correction, Non-Registration or Mistaken Registration) (Wales) Regulations 2017 - Welsh Government Guidance for Commons Registration Authorities May 2017 (Appendix 2)
- Guide to the Commons Act 2006 (Correction, Non-Registration or Mistaken Registration) (Wales) Regulations 2017 - Welsh Government Guidance for Applicants May 2017 (Appendix 3)