

CYNGOR SIR POWYS COUNTY COUNCIL

PLANNING, TAXI LICENSING AND RIGHTS OF WAY COMMITTEE

2nd July 2020

REPORT BY: HEAD OF HOUSING & COMMUNITY DEVELOPMENT

**SUBJECT: Commons Act 2006, section 19(2)b
Application to correct the register**

REPORT FOR: DECISION

Application 20-001CA to correct a mistake in the Register of Common Land made under Section 19 (2)b of the Commons Act 2006 in the Register unit RCL036, Rights Section entry number 30 concerning Land at Safn Y Coed, Llangurig, Communities of Rhayader and St. Harmon.

Background:

1. Following the launch of The Commons Act 2006 (Correction, Non-Registration or Mistaken Registration) (Wales) Regulations 2017, the Council, as the Commons Registration Authority (CRA) may now correct mistakes in the registers of common land and town and village greens and remove buildings and land wrongly registered. The function is currently delegated to Planning, Taxi Licensing and Rights of Way Committee.

The application:

2. Application 20-001CA was made by Mr D Morgan, of Safn Y Coed, Llangurig, Llanidloes, SY18 6RY (the applicant). The application was received on 16 January 2020 and was assessed as having been duly made. A copy of the application can be found at appendix A.

3. The application contends that an area of land, as shown coloured blue on the plan found at appendix B and forming part of the holding known as Safn y Coed on the date of registration, was mistakenly omitted from the CR Form 9 application. Due to this, the land was not included in the particulars of land to which the right is attached in column 5 of entry number 30 of the Commons Register Unit RCL036 known as Grange of Cwmteuddwr, Manor of Cwmteuddwr. The land shown in red on the plan at appendix B is the land currently recorded in column 5 of register entry no. 30.

4. The effect of this application, if granted, would be to modify the extent of the dominant tenement concerning land at Safn Y Coed by adding the land shown coloured in blue on appendix B.

5. The documents that were supplied to accompany the application are as follows:

- (a) Official copy of Register of Title and Title Map WA23651 (Appendix C & D)
- (b) Official copy of Register of Title Map of land sold CYM768608 (Appendix E)
- (c) Letter from Cwmdauddwr Commons Association (Appendix F)
- (d) Statement from P.A Bridger, Solicitor (Appendix G)

(e) 2018 Summary of Single Application Form showing 63.24 Ha total land (Appendix H)

6. In addition, the Commons Registration Authority is entitled to consider the statutory documents that it holds in relation to the Register of Common Land, including the original applications for registration and the Register itself. The applicant is not required to provide copies of documents if the Registration Authority issued the document, was a party to it, or the document has been deposited with the registration authority in accordance with any enactment.

Legal Criteria:

7. This application has been made under the provisions of Section 19 (2)b of the Commons Act 2006. This allows any person to make an application to correct a mistake in the commons register, that was not made by the commons registration authority and where the amendment would not affect:

- (i) the extent of any land registered as common land or as a town or village green; or
- (ii) what can be done by virtue of a right of common

8. Section 19(5) allows a registration authority to refuse to correct a mistake if it deems it would be unfair to make the correction.

9. The onus of proving the case in support of the correction of the register of common land rest with the person making the application, and the burden of proof is the normal, civil standard, namely, the balance of probabilities.

Publicity for the application:

10. Under the Commons Act 2006 (Correction, Non-Registration or Mistaken Registration) (Wales) Regulations 2017, publicity must be given to this type of application via the Council website. Notice of the application must also be served on statutory consultees.

12. The public notice of application and a plan of the land appeared on the Council website on 26th February. To allow the required period of not less than 42 days, the deadline for receipt of objections and representations was 9th April 2020.

13. In line with statutory requirements, notice of the application was served on:

- (a) The owner of the land affected by the application.
- (b) The persons who have requested that notice of application be emailed to them.
- (c) The owners of a right of common 'in gross' which is exercisable over the area of land affected by the application.

14. There is a requirement to serve notice on a Commons Council and anyone who has made a declaration of entitlement to rights in the Register of Common Land. However, the provisions to form Commons Councils or make these declarations are not in force in Wales yet, so there are no Commons Councils or holders of declarations on whom notice can be served.

15. In addition, a copy of the notice was sent to St. Harmon Community Council, Rhayader Town Council and Mr J Pugh, who represents the graziers who are registered as holding rights exercisable over registered common RCL036.

Representations:

16. No objections to the proposed amendment were received, however questions relating to the application were received from the Ramblers Association and the Open Spaces Society. The email communication exchange can be seen in Appendix I and J.

Assessment of the evidence against legal criteria:

The Application

17. The application was deemed to have been properly made and advertised in accordance with the relevant statutory requirements. The application seeks to correct the particulars of the land which the right is attached to. This is a change to the extent of a dominant tenement or farm holding. Such an amendment does not alter the extent of land registered as common land or as a town or village green. Nor does it amend the amount of rights of common exercisable.

Whether a mistake was made by the original applicant such that the register should be corrected

18. The right of common attached to the dominant tenement known as Safn Y Coed was registered following application number 982 on a CR Form 9 received in September 1969 from Mr C P Morgan (grandfather to the applicant). The information contained in part 6 of the form (see appendix L) described Safn Y Coed as 157 acres and by a list of Ordnance Survey County Series field numbers and these were copied and entered into the register on 8th September 1969 (see appendix K). The provisional registration, being undisputed, became final on 1st August 1972.

19. The acreage of the field numbers registered have been cross referenced with the County Series Plan. Their total area does not accumulate to 157 acres.

20. The applicant contends that there was an error made by Mr C P Morgan because the list of O.S. field numbers in his application omits some field numbers that formed part of Safn Y Coed in 1969. Of specific concern to the applicant, is the exclusion of field parcels that he has recently sold. These fields are identified on the Title plan for CYM768608 at appendix D. They are also marked on the OS County Series Plan extract at appendix M as field numbers 99, 100 and 703. The applicant has provided documentary evidence to support his claim.

21. A copy of Register of Title number WA23651:

It is of note as it includes the land in question. The land at Safn Y Coed is also referred to by a root of title date of 8/12/1930 in the property register. The full Title is found at appendix C and D.

22. A copy of a letter from the Chairman of Cwmdauddwr Commons Association

This supports the proposed amendment in the register (see appendix F).

23. A statement from the applicant's solicitor:

This states that the property Safn Y Coed has been owned by the Morgan family since at least 1957 (see appendix G).

24. The applicant's SAF Application 2018 Summary:

It is of note as it refers to a total land area of 63.24 acres. This equates to 156.3 acres.

Whether any party places or has placed reliance upon the register such that the correction of the entry would, in all the circumstances, be unfair

25. The applicant has shown there was a mistaken omission in the CR Form 9 application and subsequent rights entry 30 of RCL036, and it is deemed both fair and just to correct the omission. No evidence has been provided to suggest that any party placed reliance on the register such that its correction as applied for would be unfair.

Officer Summary:

On the basis of the information put forward by the applicant, and to the criteria in Section 19 of the 2006 Act, it is concluded that the application should be approved, as it has been shown, on the balance of probability, that a mistake was made by the original applicant on the CR Form 9 when registering the right of common for Safn y Coed.

Recommendation:

That the application be GRANTED as made and that the particulars of the land to which the right of common is attached in column 5 of entry no. 30 on Register Unit RCL36, be amended to include the 17.9 acres of land, as shown coloured blue on the plan at appendix B.

Appendices:

Appendix Label:	Description:
A	Copy of application 20-001CA
B	Notice Plan
C	Official copy of Register of Title WA23651
D	Title Map WA23651
E	Official copy of Title Map of land sold CYM768608
F	Letter from Cwmduddwr Commons Association
G	Statement from P.A Bridger, Solicitor
H	2018 Summary of Single Application Form showing 63.24 Ha total land
I	Email exchange with the Ramblers Association
J	Email exchange with the Open Spaces Society
K	Copy of RCL036 Rights Section Entry number 30
L	Extract from the original CR Form 9
M	Extract from the OS County Series Plan (circa. 1904)