

**CYNGOR SIR POWYS COUNTY COUNCIL**

**PLANNING, TAXI LICENSING AND RIGHTS OF WAY COMMITTEE**

**11<sup>th</sup> November 2021**

**REPORT BY: HEAD OF HIGHWAYS, TRANSPORT AND RECYCLING**

**SUBJECT: Application to correct the Register of Common Land**

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**REPORT FOR: DECISION**

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**Application to correct the Register of Common Land, sections 22 and Schedule 2 of the Commons Act 2006 – Application 20-002CA, Register unit RCL026, Bryngwyn and Newchurch Hills, community of Painscastle**

**The application:**

1. Application 20-002CA was made by GFT & DM Edwards of Church House, Bryngwyn, Kington HR5 3QN. The application was received on 22<sup>nd</sup> May 2020 and was assessed as having been duly made. A copy of the application can be found at appendix 1.
2. The effect of this application, if granted, would be to remove a parcel of land at High Park, Bryngwyn, comprising O.S. County Series Plan field number 666, also referred to as IACS field parcel SO1849 6672 and amounting to 0.44 hectares of land from the Register of Common Land. The land affected is part of registered common RCL026 (known as Bryngwyn and Newchurch Hills.)
3. A location plan showing the site can be found at appendix 2. A more detailed plan showing the area affected can be found at appendix 3.
4. The land that is subject of this application is all within the ownership of Mr GFT & Mrs DM Edwards (the applicants.)
5. The documents that were supplied to accompany the application are as follows:
  - A supporting statement in the form of a letter written by Mrs S Owen, County Advisor for NFU Cymru (appendix 4);
  - An extract from a current Ordnance Survey map, showing the land subject of the application (appendix 5);
  - Extracts from the Tithe Map for Bryngwyn dated 1844 taken from the Places of Wales website (appendix 6);
  - Aerial photograph to match the tithe map overlay taken from the Places of Wales website and snapshots from Radnorshire Ordnance Survey Maps taken from the National Library of Scotland of website (appendix 7);
  - Snapshot taken from the Places of Wales website showing the application land edged in red on an O.S Map overlay (appendix 8);
  - Letter from the Acting Chairman of the Newchurch & Bryngwyn Hills Commoners Association (appendix 9);

- Copy of the CR Form 9 1968 Application for the registration of a right of common (appendix 10);
  - Extracts from the Register of Common Land Ownership and Rights Sections for RCL026 (appendix 11);
  - An extract from the Land Registry title for the land affected by the application (appendix 12);
  - An extract from the Land Registry title plan for the land affected by the application (appendix 13);
  - A copy of the 1904 transfer of mortgage for the freehold messuage and lands known as 'High Park' or 'Dods' Farms from Mrs Watkins to Misses Mary Janes Jones & Rosa Ann Jones (appendix 14);
  - A copy of the 1904 conveyance, from Walter de Winton and others to Mrs Eliza Watkins of the freehold messuage and lands known as 'High Park' or 'Dods' (appendix 15);
  - A statutory declaration by George Watkins, formerly of High Park, Bryngwyn, (appendix 16);
  - Copy of Land Charges Search dated 26/09/1935 (appendix 17);
  - A copy of the 26<sup>th</sup> September 1935 conveyance through which Mr George Watkins transferred title to the land known as 'High Park' or 'Dods Farm' and 'Weavers Plot' to R. Trevor Griffiths (appendix 18);
  - A copy of the 19<sup>th</sup> March 1970 conveyance whereby Mr R Trevor Griffiths sold the land known as High Park' or 'Dods Farm' and 'Weavers Plot' to F J Edwards and E M M Edwards (appendix 19);
6. The documents that were later supplied in response to a representation are:
- A statement from Mr L A Miles and Mr J C Jones (appendix 20)
  - A copy of the Land Section for RCL026 (appendix 21);
  - A copy of the CR Form 10 'Application for the registration of a claim to ownership of land' dated June 1968 and accompanying plan F (appendix 22);
7. 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.
8. The evidence accompanying this application is almost entirely documentary. For this application, witness evidence is not key to meeting the legal criteria; the legal criteria are described below. As a result, it is proposed that the application be determined on the basis of the documentary evidence supplied, without a hearing.

**Legal criteria:**

9. This application has been made under the provisions of section 22 and Schedule 2 to the Commons Act 2006. Section 22 relates to non-registration or mistaken registration of land under the Commons Registration Act 1965. Paragraphs 1 to 9 of schedule 2 set out the circumstances under which an application may be made under section 2.

10. The applicant has chosen to make their application under the provisions of paragraph 7 of Schedule 2. Under that paragraph, an application may be made to remove 'Other land wrongly registered as common land' from the Register.
11. Under paragraph 7, the legal requirements are that:
- (a) the land was provisionally registered as common land under section 4 of the 1965 Act;
  - (b) the provisional registration of the land as common land was not referred to a Commons Commissioner under section 5 of the 1965 Act;
  - (c) the provisional registration became final; and
  - (d) immediately before its provisional registration the land was not any of the following—
    - (i) land subject to rights of common;
    - (ii) waste land of a manor;
    - (iii) a town or village green within the meaning of the 1965 Act as originally enacted; or
    - (iv) land of a description specified in section 11 of the Inclosure Act 1845 (c. 118).
12. The task of proving the case in support of the correction of the register rests with the person making the application, and the burden of proof is the normal, civil standard, the balance of probabilities.

**Publicity for application:**

13. 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 and site notices. Notice of the application must also be served on statutory consultees.
14. The public notice of application and a plan of the land appeared on the Council website on 14<sup>th</sup> May 2021. The same notices were put up on site the same day. To allow the required period of not less than 42 days, the deadline for receipt of objections and representations was Friday 25<sup>th</sup> June 2021.
15. In line with statutory requirements, notice of the application was served on:
- (a) The owner of the land to which the application relates, being Mr & Mrs Edwards;
  - (b) Every other local authority for that area, being Painscastle Community Council.
  - (c) The persons who have requested that notice of application be emailed to them.
16. Notice of application should also be served on any owner of rights of common 'in gross' that are exercisable over the area of land affected by the application. However, no person is registered as owning rights of common in gross over RCL026.
17. There is a requirement to serve notice on Commons Councils 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 at the moment, so there are no Commons Councils or holders of declarations on whom notice can be served.

18. In addition, a copy of the notice was sent to Ms R O Miles as registered owner of the majority of RCL026, Mr T P Probert, who is acting chairman of the Bryngwyn and Newchurch Grazier Association and Cllr J Gibson-Watt as Local Member.

### **Representations:**

19. Representations have been received to this application, from Mr H Craddock of the Open Spaces Society. As the Open Spaces Society does not have a legal interest in the land subject of the application, it must be determined by the Council, as the Commons Registration Authority.

20. The emails from and to Mr H Craddock, are as follows:

- Email dated 18<sup>th</sup> June 2021 from Mr H Craddock, OSS (appendix 23);
- Email dated 23<sup>rd</sup> June 2021 response to Mr H Craddock, OSS (appendix 24);
- Email dated 24<sup>th</sup> June 2021 from Mr H Craddock, OSS (appendix 25);

### **Assessment of the evidence against legal criteria:**

#### Whether the land was provisionally registered as common land under section 4 of the 1965 Act:

21. Section 4 of the Commons Registration Act 1965 required that a registration authority should “..register any land as common land or a town or village green or, as the case may be, any rights of common over or ownership of such land, on application duly made to it and accompanied by such declaration and such other documents (if any) as may be prescribed for the purpose of verification or of proving compliance with any prescribed conditions.”

22. The Land section of the Register of Common Land records that registered common RCL026 was provisionally registered under section 4 of the Commons Registration Act 1965 on 29<sup>th</sup> December 1967. An extract from the written Land section of the Register can be found at appendix 21.

#### That the provisional registration of the land as common land was not referred to a Commons Commissioner under section 5 of the 1965 Act:

23. The registration of Land as common land in relation to registered common RCL026 was not disputed and so it was not necessary to refer the provisional registration to a Commons Commissioner.

24. This is evidenced by a lack of reference to a Commons Commissioners decision on the land section sheet of RCL026.

#### Whether the provisional registration became final:

25. The Land section of the Register records that the registration of unit RCL026, became final on 1<sup>st</sup> October 1970.

#### That immediately before its provisional registration the land was not land subject to rights of common:

26. Section 22 of the Commons Registration Act 1965 sets out the criteria under which land was eligible for registration as common land. The first of these is that the land was subject to rights of common, at the time of registration.
27. Rights of common are registered as being exercisable over the whole of RCL026, however the applicants claim that the inclusion of the 'High Park' land as common land was by accident. In support of their case, the applicants have provided a number of documents, as described below.
28. The conveyances relating to the application land dating from 29<sup>th</sup> January 1904 make no reference to the application land ('High Park') being common or subject to rights of common but being in private ownership. The 1904 Conveyance and Transfer of Mortgage both refer to the application land having benefit to a right of common on Bryngwyn Hill. This infers that the land was not subject of a right of common itself.
29. The conveyance dated 26<sup>th</sup> September 1935 states that 'the property' was sold as fee simple in possession free from encumbrances. That description is also used in the 1970 conveyance. Given that conveyances were compiled to record rights of property it is likely that any right which had a significant effect on the property would have been recorded.
30. In addition, the application land forms part of the land to which a right of common registered as exercisable over RCL026 Bryngwyn & Newchurch Hills is attached. The right is recorded at entry no. 9 in the rights section and was described as attached to a number of O.S fields at Church House & Apostles Land, High Park, Bryngwyn including the application land (O.S. no. 666). It is considered an anomaly for the land to be both dominant tenement (the land to which the right of common is attached) and servient tenement (the land subject to rights of common).

That immediately before its provisional registration the land was not waste land of a manor:

31. Under section 22 of the Commons Registration Act 1965, land was also eligible for registration as common land if it was waste land of a manor. For an application under paragraph 7 and Schedule 2 of the Commons Act 2006, 'waste land of a manor' is land that at the time of provisional registration was both:
- part of a manor; and
  - open, uncultivated and unoccupied.
32. Mrs S Owen, County Advisor for NFU Cymru has referred to a screenshot extract of the Tithe Map and apportionment taken from the Places of Wales website in her letter of 21<sup>st</sup> May 2020.
33. The Tithe Map for this area is titled 'Map of the parish of Bryngwyn in the County of Radnor' and is dated 1844. The map identifies the land subject of this application as being enclosures 590, 591 and 592. The written apportionment describes these enclosures as being part of 'Crop Short'; the state of cultivation is described as 'pasture'. The occupier at the time of the apportionment was noted as being William Price and the landowner was Walter De Winton. The land was subject to a tithe payment, this does not suggest that at that time the land was common land.

34. In contrast, the area surrounding the application land is identified on the tithe map as enclosure 747 and identified as Bryngwyn Hill and labelled as Common Land. No tithe was payable. Bryngwyn Hill was recorded as being in the ownership of Rev Samuel Davies.
35. Given the clear distinction between the two areas of land it would appear that the Tithe Commissioners did not consider that the application land was waste of a manor in 1844. The land at that time was enclosed, occupied and under cultivation and was distinctly separate to Bryngwyn Hill.
36. The screenshots taken from the National Library of Scotland website of the Ordnance Survey Map – which was at a scale of 6 inches to the mile and published in 1888– does show the application land as being enclosed. This boundary is in the same location as the boundary line shown on the current Ordnance Survey maps and on the 1:10,560 scale base map used for the Register of Common land itself; it does not appear to have changed.
37. In a letter, Mr T P Probert, the Acting Chairman of Newchurch & Bryngwyn Commoners Association states that the application land has always been regarded as part of Church House Farm and it has not been used as part of the common. It is surrounded by a hedge to keep it separate. His late father and then his brothers and himself have farmed as neighbours and fellow commoners to Church House since 1955.
38. Furthermore, the modern aerial photograph found at appendix 7 shows the application land surrounded by hedge row.
39. The 1904 transfer of mortgage for the freehold messuage and lands known as ‘High Park’ or ‘Dods’ Farms from Mrs Watkins to Misses Mary Janes Jones & Rosa Ann Jones includes reference to the application land as it identifies the land named as ‘High Park’ or ‘Dods’ as comprising messuage or cottage with buildings and there fields or parcels of land adjoining Bryngwyn Hill in the parish of Bryngwyn numbered **666**, 706, 707 and 709 on the recent Ordnance Survey map.
40. The 1904 conveyance, from Walter de Winton and others to Mrs Eliza Watkins of freehold messuage and lands known as ‘High Park’ or ‘Dods’ records the transfer of land and includes a schedule of the land concerned.
41. First, it is of note that the land was transferred from Walter de Winton – who was recorded as the Landowner of the application land by the Title Commissioners in 1844. This suggests that certainly in the period from 1844 to 1904, the land was not owned by a manor.
42. Second, the Schedule to the conveyance lists the fields subject of the transfer including that of Ordnance Survey parcel number **666**. It is stated as being grass and comprising 1.137 acres.

43. The statutory declaration by George Watkins is dated 26<sup>th</sup> September 1935 and notes that his father was John Watkins and mother Eliza Watkins and that he had lived at High Park.
44. A copy of the 1935 conveyance through which Mr George Watkins transferred title to the land known as 'High Park' or 'Dods Farm' and 'Weavers Plot' to R. Trevor Griffiths includes a schedule with OS field parcel 666 listed. The plan accompanying the conveyance, clearly delineates the boundary of the application land as separated from the adjacent common land.
45. Similarly, the copy of the 1970 conveyance through which Mr R Trevor Griffiths sold title to the land known as 'High Park' or 'Dods Farm' to Mr F J Edwards and Mrs E M M Edwards includes the application land.
46. The Land Registry Title Number CYM156230 records the application land in the ownership of Mr G F T Edwards and Mrs D M Edwards (the applicants).
47. The above series of documents does provide evidence that in the period from 1844 to 1970, the land subject of this application was owned by various individuals, so not part of a manor. It does span the date of provisional registration of this area of common land, which was 29<sup>th</sup> December 1967.

Whether immediately before its provisional registration the land was a town or village green within the meaning of the 1965 Act as originally enacted:

48. To meet this requirement, the applicant must be able to demonstrate that at the date of provisional registration, the land was not:
- Land which has been allotted by or under any Act for the exercise or recreation of the inhabitants of any locality; or
  - Land on which the inhabitants of any locality have a customary right to indulge in lawful sports and pastimes; or
  - Land on which the inhabitants of any locality have indulged in such sports and pastimes as of right for not less than twenty years.
49. Recreational allotments, which were later eligible to be registered as Town or Village Greens, were set out in Inclosure Awards. However, no Inclosure Award has been identified which includes the land subject of this application. Neither has any person put forward any evidence that the land has been allotted by or under any other Act for the exercise or recreation of the inhabitants of any locality.
50. No person has put forward any evidence that the land was subject to any customary right to indulge in lawful sports and pastimes, or that they indulged in such sports or pastimes in the 20 years prior to the date of provisional registration. Painscastle Community Council were consulted; notices were placed on site and on the Council website, so opportunity was provided for any such evidence to be put forward.
51. In their statements, Mr Miles and Mr Jones comment that the land subject of the application, has always formed part of the Edwards' holding and has never been used as a village green or regarded as common land locally.
52. The application land is not shown in the register of Town or Village greens.

Whether immediately before its provisional registration, the land was of a description specified in section 11 of the Inclosure Act 1845 (c. 118).

53. Section 11 of the Inclosure Act 1845 describes several classes of land that are not true common land, including regulated pastures. Some of these areas of land were put forward for registration under the Commons Registration Act 1965, although they did not actually meet the definition set out under the 1965 Act for registration as common land. Although these areas should not have been registered pursuant to the 1965 Act, provision has not been made to remove them from the Register now, under the Commons Act 2006.

54. As noted above, no Inclosure Award has been identified that includes the area of land subject of this application. No other evidence has been put forward to indicate that the land subject of this application was of a description specified in section 11 of the Inclosure Act 1845.

**Officer summary:**

55. The representations from the Open Spaces Society concluded that there was no reason to object to the application being granted.

56. The first three legal criteria are matters of fact that are evidenced from the Register of Common Land itself. The Register records that the land was provisionally registered under part 4 of the Commons Registration Act 1965, that the registration became final and that it was not referred to a Commons Commissioner.

57. Having regard to all of the information put forward, it is reasonable to assume on the balance of probabilities, that immediately prior to the provisional registration, the application land was not subject to any rights of common, was not waste of a manor, a town or village green or land of a description specified in section 11 of the Inclosure Act 1845.

58. It is considered that this application meets the criteria set out under paragraph 7(2) of Schedule 2 to the Commons Act 2006 and it is concluded that an error was made and that the land subject of the application was wrongly registered as common land.

**RECOMMENDATION:**

That application 20-002CA be granted as made and that 0.44 hectares of land be removed from the Register of Common Land, as shown on the plan at appendix 3.

**Appendices:**

Appendix number:	Description:
1	Copy of application 20-002CA
2	Location plan showing application land
3	Detailed plan showing application land
4	Covering Letter
5	Ordnance Survey map, showing the land subject of the application
6	Extracts from the Tithe Map for Bryngwyn dated 1844
7	Aerial photograph and OS Maps
8	Snapshot taken from the Places of Wales website
9	Letter from the Acting Chairman of the Grazier Association
10	CR Form 9 – 1968 Application for the registration of a right of common
11	Extract from the RCL026 Register - Land & Ownership Sections
12	Land Registry Title for the application land
13	Land Registry Title Plan extract
14	Transfer of Mortgage dated 1904
15	1904 conveyance
16	Statutory declaration by G Watkins
17	Land Charges Search dated 1935
18	1935 conveyance
19	1970 Conveyance
20	Statement from LA Miles & JC Jones
21	RCL026 Register Land Section
22	CR Form 10 Application Form and Plan
23	Email dated 18 <sup>th</sup> June 2021 from OSS
24	Email dated 23 <sup>rd</sup> June 2021 response to OSS
25	Email dated 24 <sup>th</sup> June 2021 from OSS