

**CYNGOR SIR POWYS COUNTY COUNCIL**

**PLANNING, TAXI LICENSING AND RIGHTS OF WAY COMMITTEE**  
**21<sup>st</sup> February 2024**

**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 23-002CA, Register unit MCL061, Fawnog Tynybryn, community of Llanfair Caereinion**

**The application:**

1. Application 23-002CA was made by E J & U Griffiths of Waenglapiau, Llanfair Caereinion SY21 0DR. The application was received on 21<sup>st</sup> April 2023 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 the entirety of register unit MCL061 identified as Fawnog Tynybryn comprising 25.2 hectares (62.3 acres) of land from the Register of Common Land.
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 E J & Mrs U Griffiths (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 the applicants (Appendix 4)
  - An extract from a current Ordnance Survey map, showing the land subject of the application and land ownership. Application Document ref: 1. (Appendix 5).
  - Extracts from the Tithe Map for the parish of Llanfair in the County of Montgomery dated 1842 taken from the Places of Wales website. Application ref: 2 with additional information added pursuant to representation from the Open Spaces Society (Appendix 6)
  - Extract from the 1841 Census Application ref: 3. (Appendix 7)
  - Extract from the Finance Act 1910 Land Valuation Schedule and accompanying plan Application ref: 4. (Appendix 8)
  - Indenture of Conveyance dated 3<sup>rd</sup> August 1869. Application ref: 5. (Appendix 9)
  - Letters from Mrs O Owen and Mr R L Jukes. Application ref: 6 & 7. (Appendix 10)
  - Letter from Llanfair Caereinion Town Council. Application ref: 7a. (Appendix 11)

- Copy of the CR Form 9 1968 Application for the registration of a right of common. Application ref: 8. (Appendix 12)
  - Copy of the supplemental map accompanying the CR Form 9 1968 Application for the registration of a right of common. Application ref: 9. (Appendix 13)
  - Copy of letter and plan addressed to the Commons Registration Authority from solicitor for Mr Jones. Applicant Ref 10 (Appendix 14)
  - List of additional supporting documents (Appendix 15). These documents were made available to consultees but have not been included as appendices to this report apart from the 1918 Indenture of Conveyance (Appendix 18) that is referred to by the applicants for the purposes of identifying field parcels in their response to a representation from the Open Spaces Society. (Appendix 17).
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.
7. 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:**

8. 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.
9. 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.
10. 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).

11. 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:**

12. 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.

13. The public notice of application and a plan of the land were put up on site on Tuesday June 6<sup>th</sup>, 2023. The same notices appeared on the Council's website the following day. To allow the required period of not less than 42 days, the deadline for receipt of objections and representations was Thursday 20<sup>th</sup> July 2023.

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

- (a) The applicants as owners of the land to which the application relates, being Mr & Mrs Griffiths;
- (b) Every other local authority for that area, being Llanfair Caereinion Town Council.
- (c) The persons who have requested that notice of application be emailed to them.

15. 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 MCL061.

16. 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.

17. In addition, a copy of the notice was sent to Mr Jukes and the registered owner of the dominant tenement, and Cllr G D Jones as Local Member.

### **Representations:**

18. 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.

19. The emails from and to Mr H Craddock, are found at appendix 16 and as follows:

- Email dated 17<sup>th</sup> July from Mr H Craddock, OSS.
- Email dated 14<sup>th</sup> September 2023 to Mr H Craddock, OSS, containing a response from the applicant and the Council as the Commons Registration Authority.
- Email dated 21<sup>st</sup> November 2023 from Mr H Craddock, OSS.

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

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

20. 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."

21. The Land section of the Register of Common Land records that registered common MCL061 was provisionally registered under section 4 of the Commons Registration Act 1965 on 29<sup>th</sup> June 1968. The application land was registered as common land by the registration authority without application.

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

22. The registration of the land as common land in relation to registered common MCL061 was not disputed and so it was not necessary to refer the provisional registration to a Commons Commissioner.

23. This is evidenced by a lack of reference to a Commons Commissioners decision on the land section sheet of MCL061.

### Whether the provisional registration became final:

24. The Land section of the Register records that the registration of unit MCL061, 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:

25. 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.

26. A right of common is registered as being attached to land known as Tynybryn and exercisable over the whole of MCL061, however the applicants claim that this was a mistaken registration because the area over which the grazing rights were to be exercised was not correctly identified and recorded as common land. In support of their case, the applicants have provided documents, as described below.

27. The letter dated 10<sup>th</sup> August 1972 from Harrison & Sons Solicitors (Appendix 14) on behalf of Mr John Penri Jones suggests that the area in which Mr J P Jones intended registering his right on was a different area to that identified on the plan accompanying his application to register the right of common made in June 1968 (Appendix 12). Regrettably, the letter was received nearly two years after the undisputed Land and Rights Sections of the register became final and conclusive in October 1970.

28. The conveyances relating to the application land dating from 3<sup>rd</sup> August 1869 make no reference to the application land (part of Bryn Du, part of Waenglapiau) being common or subject to rights of common but being in private ownership.

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

29. 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.

30. The applicants have stated in their supporting statement that the earliest that the land has been traced back to is the Tithe Map records. The Tithe Map for this area is titled 'Map of the parish of Llanfair in the County of Montgomery' and is dated 1842. The map identifies the land subject of this application as being enclosures 2989 to 2993 and 2988. The written apportionment describes these enclosures as being part of 'Brin Du'; the state of cultivation is described as 'arable' or 'pasture'. The occupier at the time of the apportionment was noted as being Evan Davies and the landowner was Sir Watkin Williams Wynn. The land was enclosed, occupied, under cultivation and subject to a tithe payment, hence the Tithe Commissioners did not consider that the application land was waste of a manor as early as 1842.

31. Of interest, is enclosure 2986 on the Tithe Map, situated to the northeast of Brin Du labelled as Pentyreth Township Turbary. No tithe was payable.

32. The Indenture of Conveyance dated 3<sup>rd</sup> August 1869 contains a schedule of parcel numbers 31-37 and refers to a plan numbered 1 showing the application land as being enclosed.

33. The Finance Act 1910 records the application land within hereditament 171 and the use is noted as agricultural land at Waenglapiau. The occupier at that time was Robert Davies.

34. In addition to the above a series of title documents referred to by the applicants provide evidence that in the period from 1842 to 1990, 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> June 1968.

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

35. 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.
36. 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.
37. 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. Llanfair Caereinion Town 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.
38. In her letter, Mrs Owen commented that the land subject of the application, was used only for grazing by her late father from 1935 until 1970.
39. 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).

40. 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.
41. 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:**
42. The representations from the Open Spaces Society concluded that there was no reason to object to the application being granted.
43. 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.
44. 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.

45. 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 23-002CA be granted as made and that the entirety of MCL061 comprising 25.2 hectares (62.3 acres) of land be removed from the Register of Common Land, as shown hatched red on the plan at appendix 3.

**Appendices:**

Appendix number:	Description:
1	Copy of application 23-002CA
2	Location plan showing application land
3	Detailed plan showing application land
4	Supporting Statement
5	Applicants plan, showing the land subject of the application
6	Extracts from the Tithe Map for Llanfair Caereinion dated 1842
7	1841 Census
8	Finance Act 1910 Extract
9	1869 Indenture
10	Supporting Letters from O Owen & R L Jukes
11	Letter from Llanfair Caereinion Town Council
12	CR Form 9 Application for the registration of a right of common
13	CR Form 9 accompanying plan
14	Solicitor letter & map
15	List of additional documents submitted
16	Open Spaces Society representation
17	Applicant response to the Open Spaces Society representation.
18	1918 Indenture