

Application to deregister and exchange common land or town or village greens

Commons Act 2006: Section 16

Return completed application to:

Planning and Environment Decisions Wales
Cathays Park
Cardiff
CF10 3NQ

Tel: 0300 0604400

E-mail: pedw.casework@gov.wales

Application to deregister and exchange common land

- Answer all the questions on this form in full and only use a separate sheet where there is insufficient space for your answer.
- Refer to the separate “**Notes for completing an application to deregister and exchange common land or town or village greens**” (the “Notes”) when applying.
- Consult informally and widely about your ideas before developing a formal proposal.
- References throughout this form to ‘Common Land’ apply equally to ‘town or village green’

SECTION A – The common land (or village green) – to be deregistered – the “release land”

(see Notes 1, 2, 3, 4 and 5)

SECTION A1 – The Common:

1. Name of Common

Aberedw Hills Common

CL/VG No.

CL46

2. Located in the:

(a) Community/Town of

Aberedw

(b) Borough/County Borough/City/County of

Powys County

3. Commons Registration Authority

Powys County Council

Section A2 – The owner (see Note 1):

To be completed on submission of the DNS application.

4. Title (e.g. Mr/Mrs/Miss/Ms/Dr)

(a) Forename (s)

(b) Surname

(c) Position/Organisation
(if appropriate)

5. Full Postal Address

Postcode

Telephone number

Mobile No

Fax Number

E-mail address

I prefer to be contacted by

☐

Email

☐

Post

Please note that unless you tell us otherwise, we will send all correspondence to the person named above – not to the owner of the replacement land shown in Section B2.

Please tick as appropriate:

Please send all correspondence to the owner above in question 4.....

☐

Please copy all correspondence to the person named in question 15...

☐

Please copy all correspondence to Cathryn Tracey of Burges Salmon LLP at One Glass Wharf, Bristol, BS2 0ZX or Cathryn.Tracey@burges-salmon.com as the agent for the Developer, RWE Renewables UK Onshore Wind Limited

Section A3 – Area of common and common rights:

6. What is the total area of common as registered?
(see Note 2)

2,858.66 acres / 1156.85 hectares

7. What common rights, if any, are registered (e.g. number and type)? If the land is a town or village green, to what recreational use is it put?

A full copy of the Common Land Register (the “Register”) and map for CL46 (the “Common”) is included with this application.

Details of the rights are set out in the Register. These are given in terms of rights of pasture for the numbers of sheep specified, and rights to take bracken for bedding and fern for the benefit of farms. There are a total of 67 sets of rights registered on the Common, including:

- 1 common right to graze 150 sheep and 20 cattle on Llanfraith Hill;
- 65 common rights to graze sheep, cows or horses across the whole common area, with a combined right to graze 12,837 Sheep Units*;
- 4 of the above common rights include the right to graze one weaning lamb per grazing sheep (this right applies to a combined 798 sheep);
- 2 of the above common rights include the right to graze the suckling young of grazing animals, including ponies (this applies to a total of 195 Sheep Units); and
- 48 common rights include the right to take bracken off the Common for bedding or reasonable agricultural purposes, and 2 include the right to take fern for the benefit of the farm.

Please see paragraph 3.27 and Appendix 4 of the supporting Common Land Report prepared by John Eirian Davies (the “Common Land Report”) for full details.

*Sheep Unit: a sheep unit is a number of livestock equivalent to 1 sheep. 1 cow or 1 pony would be equivalent to 10 sheep units.

8. If common rights are registered, are they ever exercised?

Yes

☒

No

☐

9. If **Yes**, to what extent (e.g. which commoners are active, which rights are exercised, and how frequently)?

Consultation with the registered commoners has confirmed there are ten active graziers of the Release Land. There also rights to take bracken from the Common, which are exercised by custom. Further details of the extent to which the registered rights are exercised can be found at Appendix 4 of the Common Land Report.

Section A4 – Other rights over the common:

10. Give details of any relevant leaseholders, other occupiers, or those holding any relevant charges over the release land (**see Note 4**) and enclose copies of their written consent to this application (**see Note 3**).

There are no leases or relevant charges over the Release Land.

Occupiers of the Common have been included as part of the statutory pre-application consultation for the DNS application. However, as their proprietary rights and infrastructure will not be affected by the construction, operation and decommissioning of the Proposed Development on the Release Land, letters of consent have not been obtained at this stage.

Section A5 – Description of the release land:

11. Area of release land Approximately 47.6 (m² or hectares)

12. Description (including location) of release land (**see Note 5**)

The Release Land comprises land across the Common to accommodate the design of the Proposed Development including the wind turbines, access tracks and ancillary infrastructure. The Release Land largely forms one contiguous parcel of land, save for a separate parcel within the central southern spur of the Common where Turbine 7 is proposed, and comprises fridd habitats.

For further details and context to the site layout and Release Land, see Chapter 3: Site Selection and Design Strategy of the Environmental Statement, paragraphs 3.5 to 3.7 of the Common Land Report, the supporting CL46 – Section 16 Application Plan and the Site Infrastructure Plan.

Section B – The land to be given in exchange – the ‘replacement land’ (**see Notes 6,7,8 and 9**)

13. Are you proposing to provide replacement land in exchange for the release land?

☒

Yes

☐

No

If **Yes**, go to question 14. If **No**, please explain here why you are not providing replacement land (see note 6) and then go to Question 22

Section B1 – Location of the replacement land:

14. Name, if any of the replacement land

The replacement land is located in the:

There are 15 parcels of proposed replacement land adjoining different boundaries of the Common (the “Replacement Land”). The Developer’s surveyor has undertaken site visits and informal consultation with the landowners and the commoners to assess the suitability of the Replacement Land, the results of which can be found in Part 4 and Appendix 5 of the Common Land Report. The Replacement Land, together with the area in hectares of each parcel, is shown labelled 1 – 15 on the CL46 – Section 16 Application Plan. These parcels present potential Replacement Land options, and consultees are invited to provide their comments on the same basis. The Replacement Land will then be provided on 1:1 ratio in exchange for the Release Land on submission of the DNS application.

(a) Community/Town of

Graig-yr-Onen, Penarth, Blaenwern,
Pen-y-banc, Clwt Rhyn, Penblaen,
Penberth, Upper Blaenmilo, Pen Blaen
Milo, Cefnhinog, Blaenywern Uchaf, Parc
and Tremaen

(b) Borough/County Borough/City/County of

Powys County

Section B2 – The owner of the replacement land (see Note 1)

To be completed on submission of the DNS application.

15. Title (e.g. Mr/Mrs/Miss/Ms/Dr)

(a) Forename (s)

(b) Surname

(c) Position/Organisation
(if appropriate)

16. Full Postal Address

Postcode

Telephone number

Mobile No

Fax Number

E-mail address

I prefer to be contacted by

☐

E-mail

☐

Post

Please note that unless you tell us otherwise, we will send all correspondence to the person shown in Section A2.

Section B3 – Description of replacement land:

17. Area of land proposed as replacement land

Approximately 60.05

(m² or hectares)

18. Description (including location) of land proposed as replacement land (see Note 5)

As the design of the Proposed Development's access tracks and turbines is distributed across the Common, the Release Land affects different parts of the common land unit. Consequently, the Replacement Land comprises 15 separate parcels of land adjacent to different parts of the Common's boundary to ensure that each commoner that grazes an area of the Common affected by the Proposed Development has access to suitable replacement land. For details of the individual parcels that comprise the Replacement Land, see Appendix 5 of the Common Land Report and the CL46 – Section 16 Application Plan.

19. Please confirm that the proposed replacement land is not already registered as common land or town or village green (**See Note 7**)

20. Is the proposed replacement land subject to any other formal designation (for example, as public open space)?

(**See Note 8**)

..... Yes

☐

No

If **Yes**, give full details:

The northern border of Replacement Land Area 12, and the western border of Replacement Land Area 4 benefit from public access under the Countryside and Rights of Way Act 2000. However, they are not formally designated as public open space.

21. Give details of any relevant leaseholders, or other occupiers, or those holding any relevant charges over the replacement land: (**see Note 9**).

Some of the Replacement Land Areas are subject to registered charges. However, as the Replacement Land Areas are not yet fixed, we have not yet completed this section. This will be completed for submission.

SECTION C – Access arrangements and current features of the lands (see Notes 10, 11 and 12)

For questions 22 to 28 complete both parts of each question if replacement land is being provided. If no replacement land is being provided, complete part (a) of each question.

Section C1 – Access to the lands:

22. To what extent is there public access over the lands to be exchanged?

(a) The release land

The public have a right of access over the release land under the Countryside and Rights of Way Act 2000.

(b) The replacement land

The public have a right of access over the northern border of Replacement Land Area 12 and the western border of Replacement Land Area 14 under the Countryside and Rights of Way Act 2000.

23. What will the access arrangements be after the exchange?

(a) The release land

During construction of the Proposed Development, access over the Release Land will be restricted where required to protect public health and safety. This may be through the erection of temporary fencing, used on a rolling basis around deep excavations, or through the demarcation of active working areas by the placing of flags or other markers, such as tape. Following the completion of the construction phase, public access will be re-permitted over the Release Land that is not occupied by physical infrastructure, such as turbine bases, enabling the public to benefit from improved access over the Common through the use of the Proposed Development's access tracks, for example.

(b) The replacement land

The existing rights of access under the Countryside and Rights of Way Act 2000 will be maintained over those parts of Replacement Land Areas 12 and 14 that benefit from them. In addition, all the Replacement Land will newly benefit from public access on the making of the Deregistration Order as all common land is subject to a right of access for recreation on foot under the Countryside and Rights of Way Act 2000.

Section C2 – Current condition of the lands:

24. Describe the current condition and use of the:

(a) release land

The Release Land comprises a large grazeable area primarily of moorland and dry upland heathland grass species with extensive bracken. There is some evidence of heather and cross-leaved heath within the Release Land in areas where conservation of bracken for bedding is difficult to achieve. Gorse is present on the western slopes of the Common. The Release Land has historically been extensively and regularly mown for bracken conservation and overgrazed by livestock and ponies. The extensive grazing practice came to an end when the Common was included in the Glastir Scheme with the majority of the Common, including the Release Land, now grazed to a stocking density suitable for maintaining the current habitat. There have historically been incidences of illegal burning, which the active graziers have controlled. For further details, please see paragraphs 3.5 to 3.7 of the Common Land Report.

(b) replacement land

The Replacement Land is currently used for mixed grazing, primarily by sheep. Replacement Land Area 14 is currently open to the Common and sheep sometimes stray into this area to graze. As regards the condition of the Replacement Land:

Replacement Land Area 1 is an area of rough grazing land with a thin medium loam soil over rock. Historic OS Maps show the area as comprising some woodland, which has historically been cleared.

Replacement Land Area 2 is a steep sided area of semi-improved pasture with a thin medium loam soil over rock.

Replacement Land Area 3 is a gently sloping area of rough grazing with a water retentive heavy loam-based soil in most of the area, with some instances of thin medium loam over rock.

Replacement Land Area 4 is an area of semi-improved pasture where it abuts the Common, with the remainder of the parcel comprising of steep slopes of gorse and bracken. The land has a thin medium loam soil over rock.

Replacement Land Area 5 comprises a level area of Sitka Spruce with a thin medium loam soil over rock.

Replacement Land Area 6 is a mainly level or undulatory parcel sloping gently from west to east and includes areas of rough and acid grassland and scrub woodland with a heavy loam-based water retentive soil in some parts of the area.

Replacement Land Area 7 is a gently sloping area of semi-improved and rough grazing land with a thin medium loam soil over rock.

Replacement Land Areas 8, 9 and 11 are sloping areas of rough grassland and bracken with a thin loam soil over rock.

Replacement Land Area 10 is an undulatory area of rough grazing and water retentive heavy loam soil. It includes areas of rough acid grassland with bracken and gorse. The land has historically been enclosed from the Common as a Ty Unnos settlement.

Replacement Land Areas 12 and 13 is a gently sloping area of recently improved rough grazing land with a thin medium loam soil over rock.

Replacement Land Area 14 is a gently sloping area of rough grazing land, with a thin medium loam soil over rock.

Replacement Land Area 15 is a steep sloping area of rough grazing and semi-improved pasture with a thin medium loam soil over rock.

25. What structures, (e.g. buildings, bridleways, footpaths, walls, fences or other constructions currently exist on the:

(a) release land

There are existing tracks within the Release Land that traverse the whole Common, as shown on the CL46 – Section 16 Application Plan. There is also an existing fence and gate between the Common and its boundary with Hungry Green Common (CL46). There are no other structures within the Release Land.

(b) replacement land

Replacement Land Areas 1, 2, 3, 4, 7, 8, 9, 10, 11, 12, 13, 14 and 15 – there is an existing stockproof fence on the boundary between the Common and the Replacement Land parcels, which will be removed on the making of the Deregistration Order.

Replacement Land Area 6 – at the northern part of this parcel, there is an existing stockproof fencing, which will be removed on the making of the Deregistration Order.

There are no other structures on the Replacement Land, including Replacement Land Area 5.

26. What boundary features e.g. fences, hedges, walls (and access points such as stiles and gates) currently exist on (or on land immediately adjoining) the:

(a) release land

There is an existing fence and gate on the boundary between the Common and Hungry Green Common (CL56).

(b) replacement land

Please see the response provided at Question 25(b) above.

27. What, if any, boundary features are proposed to be removed or erected as part of the exchange?

(a) release land

No boundary features will be removed or erected as part of the exchange on the Release Land.

(b) replacement land

Replacement Land Areas 1, 2, 3, 4, 6, 7, 8, 9, 11, 12, 13, 14 and 15 – a stockproof fence will be erected where required at the boundaries between each of the Replacement Land parcels and the landowners' retained lands, which will not become part of the Common.

For further details, please see Appendix 5 of the Common Land Report.

28. Are any works or other things to be done by any party as part of the exchange?

.....Yes ☐ No ☒

.....
If **Yes**, give details

(a) release land

No other works are proposed as part of the exchange on the Release Land, save for those described in Section D below.

(b) replacement land

29. Are any of the lands subject to any other rights or easements not already mentioned on this form?.....Yes ☒ No ☐

If **Yes**, give full details:

The Release Land is subject to sporting and mineral rights for the benefit of the landowner.

Replacement Land Area 2 is subject to the right to drain foul water and sewerage beneath it and the right to connect supplies of and to receive services through service apparatus laid and installed beneath it. Replacement Land Area 2 is also subject to the right of entry to inspect, maintain, repair and renew service apparatus, the drainage system and the water supply system.

The central part of Replacement Land Area 15 is subject to the rights to install, lay, use, maintain, inspect, renew, replace and remove service media beneath it, and to full and free access by workmen and vehicles, machinery and apparatus upon reasonable prior notice and in emergencies at any time in connection with the service media.

SECTION D – Details of the exchange or deregistration, and any informal consultations (see Notes 13, 14 and 15)

30. What are the reasons for the exchange or deregistration and the circumstances surrounding it?

The Release Land is required for the Proposed Development. The Proposed Development is a Development of National Significance (DNS) for which planning permission is being sought pursuant to the DNS regime. This application is made as a secondary consent to that application and the DNS application documents are also relevant to this application.

The Release Land is required for the turbine bases, crane hardstandings, new access tracks, drainage works, underground cabling, construction working areas and micro-siting areas. In designing the Proposed Development, consideration has been given to the fact it is located on common land in addition to other constraints, for example, ecology, historic assets and amenity. Details of the design of the Proposed Development are set out in Chapter 3: Site Selection and Design Strategy of the ES and details about the construction are in Chapter 4: Development Description of the ES.

Welsh Government's *Common Land Consents Guidance* at paragraph 4.12 provides that some works on common land, which do not benefit the common, have a potential underlying public benefit drawing on "works for the generation of sustainable energy (wind farms)" as an example.

Paragraph 4.13 of the Guidance sets out the Welsh Government's considerations for sustainable energy generation schemes and advises applicants that "applications for such infrastructure projects on common land are more likely to be successful under section 16 of the [Commons] Act, so that an exchange of land is proposed and can be taken into account." It was therefore considered appropriate to deregister the Release Land required for the Proposed Development and to offer Replacement Land in exchange.

The Proposed Development will provide a wider public benefit as it will meaningfully contribute to the generation of renewable energy. Further information about the need for the Proposed Development, and consequently the need for the proposed deregistration and replacement of common land, is set out in the Planning Statement that accompanies the DNS application.

The site selection process is set out in Chapter 3: Site Selection and Design Strategy of the Environmental Statement ("ES") that accompanies the DNS application. The ES considers the effects on amenity, archaeological and cultural interests and nature in Chapters 5 (Landscape and Visual), 6 (Archaeology and Cultural Heritage), 7 (Ecology) and 8 (Ornithology).

The developer, Aberedw Energy Park Limited, has sought to minimise the land to be deregistered as part of the application and is seeking views on the Replacement Land offering as part of the DNS pre-application consultation process. Following receipt of consultees' comments, the Applicant will consider the Replacement Land offering and include a 1:1 exchange for the Release Land in the final section 16 application to be submitted with the DNS application. The developer is also making a related section 38 application for restricted works consent on the Common for the Proposed Development's cable route where it is considered inappropriate and disproportionate to include that part of the Common in this application.

The 15 parcels of Replacement Land being considered by the developer are located immediately adjacent to and adjoining the Common. It is generally similar groundcover to that on the Release Land. Details of the Replacement Land are set out in Part 4 and Appendix 5 of the Common Land Report and informal consultation has been undertaken with the commoners in respect of the Replacement Land offering, as set out in detail at Appendix 4 of the Common Land Report.

Once the Proposed Development has been constructed and the working areas restored, only those parts of the Release Land that are occupied by infrastructure, such as turbine bases, will remain unavailable to the commoners and public for access during the operational lifetime of the Proposed Development. Consequently, the commoners and the public will be able to access the overwhelming majority of the Release Land as well as the final offering of Replacement Land, which will become part of the Common, providing an overall net benefit to the land available.

The Common Land Report sets out the impacts of the Proposed Development on the Common, the commoners and the public and concludes that there are no users of the Common that will be disadvantaged as a result of the deregistration of the Release Land and provision of Replacement Land (paragraph 5.9 of Part 5 of the Common Land Report).

31. It is strongly recommended that you consult informally on your proposals at an early stage in their development see 'Common Land Guidance – General Overview' note. What **informal consultation** (e.g. with local inhabitants) have you carried out? Give details below and provide written evidence.

Informal consultation with the commoners was undertaken as detailed in Parts 3 and 4, and Appendix 4 of the Common Land Report. The DNS application will be consulted on prior to submission as part of the DNS regime's statutory pre-application consultation procedure and the statutory consultees for a common land application will be consulted as part of that process. Details of their responses will be presented in the Pre-Application Consultation Report to be submitted with the DNS application.

SECTION E – Designations (see Notes 16 and 17)

32. Are any of the lands subject to this application in or near a site of Special Scientific Interest (SSSI), a Special Area of conservation (SAC), a Special Protection Area (SPA), or Wetland listed in accordance with the Ramsar Convention? Yes ☒ No ☐

If **Yes**, please give details, identify on the map (**see section J**), and provide evidence of any consultation you have carried out with Natural Resources Wales (**see Note 16**).

The most south-western border of the Common is near the River Wye (Tributaries) SSSI/SAC, as shown on the CL46 – Section 16 Application with Designations. However, the Proposed Development does not extend into this area. Neither the Release nor Replacement Land parcels are within or near any designated sites. The impact of the Proposed Development on these designated sites is assessed in Chapter 7: Ecology of the ES. Natural Resources Wales will be consulted as part of the DNS pre-application consultation process.

33. Do any of the lands contain a Scheduled Ancient Monument?

..... Yes ☒ No ☐

If **Yes**, give details, identify on the map (see section J), and provide evidence of any consultation you have carried out with Cadw (**see Note 17**)

There are several Scheduled Monuments on the Common but outside the application boundary, as shown on the CL46 – Section 16 Application with Designations. Replacement Land 12 includes part of a Scheduled Monument, the majority of which is already within the Common. This is not considered an impediment to the suitability of Replacement Land Area 12 as if this parcel is included in the final Replacement Land offering the existing fence atop the Scheduled Monument will be able to be removed, to the benefit of the historic asset. It will also prevent creating an island of land within the Common that would occur if that part of the Scheduled Monument that currently falls outside the Common was not included in the Replacement Land offering. The impact of the Proposed Development on these assets is assessed in Chapter 6: Archaeology and Cultural Heritage of the ES. Cadw will be consulted as part of the DNS pre-application process.

34. Are any of the lands subject to this application in a National Park or Area of Outstanding Natural Beauty?..... Yes ☐ No ☒

If **Yes**, give details any consultation you have carried out with the National Park Authority or Natural Resources Wales

35. Does any area of common land or village green, of a different registration number, adjoin the common land or green subject to this application?..... Yes ☒ No ☐

If **Yes**, give details and identify them on the map (**see Section J**):

The Common adjoins Hungry Green Common (CL56) as shown on the Registered Common Land – CL46 and CL56 plan.

SECTION G – Public Access (see Notes 19, 20, and 21)

36. Do the public have a right of access to the release land for air and exercise under section 193 of the Law of Property Yes ☐ No ☒

37. Is the release land subject to an Order of Limitation made under section 193? Yes ☐ No ☒

If **Yes**, give its date and other details, and send us a copy:

SECTION H – Scheme of management and local Acts (see Note 22)

38. Is there a Scheme of Management for the release land, made under the Metropolitan Commons Act 1866 or the Commons Act 1899? Yes ☐ No ☒

39. Is the release land subject to any other regulatory Scheme or Act (e.g. a Provisional Order Confirmation Act made under the Commons Act 1876)? Yes ☐ No ☒

If **Yes**, to either question, give its date and other details below, and send us a copy of the Scheme or Act. Do you wish to seek any special arrangements to be made in relation to any of these provisions?

SECTION I – Advertisement and Consultation (see Notes 23, 24 and 25)

You **must** advertise your proposal in one main local newspaper and at the main points of entry to the lands **within 7 days** of making your application. Use the draft notice at **Annex B** of the **Notes**.

You must also send a copy of the notice (using the letter at **Annex D** of the **Notes**) to the following:

- the commoners council or association (if there is one)
- all known commoners
- others with an interest in the lands e.g. tenants, those with easements or other rights over the lands
- any relevant community/town, borough/county borough, city or county council
- Natural Resources Wales
- Cadw
- National Park Authority (if the lands are in a National Park)
- Open Spaces Society (**see Note 25**)

40. Which newspaper will the advertisement appear in, and on what date?

Not applicable – addressed as part of the DNS application.

SECTION J – Maps (see Note 26)

You **must** include with your application **two copies** of a map which fully meets the requirements set out in **Note 26**.

41. Two copies of the map that meets the requirements set out in **Note 26** are enclosed



SECTION K – Public inquiry or hearing (see Note 27)

42. Give the name and address of a suitable place in the locality for holding a public local inquiry or hearing, should this be needed.

Not applicable – considered as part of the DNS application as a secondary consent.

Checklist (tick to confirm)

I have read the **Notes** in full



I have:

- answered all the questions on this form in full
- enclosed two copies of the map that meets the requirements of Section J
- enclosed a copy of the commons register in respect of this common (i.e. details of the land, rights, and ownership, and the register map)
- enclosed a copy of any document mentioned in answering the questions on this form (e.g. scheme of management, written permission of any relevant leaseholders, letters from informal committees etc)
- understood that any of the application papers may be copied to interested parties on request, and have informed people as necessary

SECTION L - Declaration

To be completed on submission of the DNS application.

I/We hereby declare that:

- (a) I/We am/are the owner/s of the land/s to be deregistered/exchanged as detailed in this application.
- (b) No person is a relevant leaseholder, or holds a relevant charge, over any of the land/s to be deregistered/exchanged

Or

I/We enclose the written consent of every person who is a relevant leaseholder, or holds a relevant charge, over any of the lands to be deregistered/exchanged

- (c) The contents of this application are true and complete to the best of my/our knowledge and belief.

Signatures of the parties to the deregistration/exchange:

To be completed on submission of the DNS application.

Release Land:

Signature of owner

Name
(in BLOCK letters)

Date

Signature of co-owner (if applicable)

Name of co-owner
(if applicable)

Date

Replacement Land:

Signature of owner

Signature of co-owner (if applicable)

Name
(in BLOCK letters)

Name of co-owner (if applicable)

Date

Date

You must keep a copy of your completed form

Data Protection Act

To process your application, we may need to disclose information we receive from you to others, including other Central Government Departments, public bodies, local authorities, other organisations and members of the public.