

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	Gelligaer and Merthyr	CL/VG No.	CL38
2. Located in the:			
(a) Community/Town of	Dowlais, Merthyr Tydfil		
(b) Borough/County Borough/City/County of	Merthyr Tydfil		
3. Commons Registration Authority	Merthyr Tydfil County Borough Council		

Section A2 – The owner (see Note 1):

4. Title (e.g. Mr/Mrs/Miss/Ms/Dr)	
(a) Forename (s)	
(b) Surname	
(c) Position/Organisation (if appropriate)	Dowlais Top Investment Company Limited
5. Full Postal Address	
First Floor 24 St. Andrews Crescent Cardiff	

Postcode	CF10 3DD
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 Swindon Limited

Section A3 – Area of common and common rights:

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

6,543 acres

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 CL38 is included with the application.

Details of the rights are set out in the Register. These are given in terms of rights of pasture for the numbers of cattle, sheep or horses specified and the right to cut and take fern for bedding, rushes for thatching and to take stone for maintenance of roads and/or boundaries and/or other walls. The Register includes a total equivalent of 55,533 sheep equivalent grazing rights on CL38 distributed between 86 rights holders.

Please see section 5 of the supporting Common Land Report prepared by Christopher Hadley (the "Common Land Report") (document reference: Pen March COM_Section_16_&_38_Report on Common Land and Appendix) for full details.

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)?

The Register and Common Land Report submitted with this application record the allocation of grazing rights over the Common. During 2021/2022, there were six active graziers on that part of the Common north of the A465 (the "Northern Section"). Further details of the extent to which the registered rights are exercised can be found within paragraphs 5.17 to 5.25 and Appendix 2 of the Common Land Report (document reference: Pen March COM_Section_16_&_38_Report on Common Land and Appendix).

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 known leaseholders over the Release Land. The Dowlais Pony Improvement Society use the Common, please see paragraphs 5.43 to 5.48 of Section 5 of the Common Land Report (document reference: Pen March COM_Section_16_&_38_Report on Common Land and Appendix) for further details. There are easements in place in respect of statutory undertakers' gas pipelines that run under the Common. However, it is not proposed that these would be affected by the Proposed Development.

Section A5 – Description of the release land:

11. Area of release land (m² or hectares)

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

The Release Land is open common grassland with grass species typically found on extensively grassed upland. The Release Land is an irregular shape on the Eastern portion of the Northern Section above the Common Road. Please see paragraphs 7.4 to 7.7 of the Common Land Report (document reference: Pen March COM_Section_16_&_38_Report on Common Land and Appendix) for full details.

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:

(a) Community/Town of

Dowlais, Merthyr Tydfil

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

Merthyr Tydfil County Borough Council

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

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

(a) Forename (s)

(b) Surname

(c) Position/Organisation
(if appropriate)

Dowlais Top Investment Company Limited

16. Full Postal Address

First Floor 24 St Andrews Crescent
Cardiff

Postcode

CF10 3DD

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 (hectares)

34.72

(m² or

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

The Replacement Land is immediately adjacent to and adjoining the Eastern boundary of the common land on the Northern Section. The Replacement Land is unimproved grassland and has been grazed in a similar manner to the Common. For further details, please see paragraphs 7.9 to 7.17 of the Common Land Report (document reference: Pen March COM_Section_16_&_38_Report on Common Land and Appendix).

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 Replacement Land is not designated as public open space but is open access land pursuant to the Countryside and Rights of Way Act 2000.

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

We are not aware of any formal occupiers but the land is unfenced on its boundary with the Common and consequently the land is grazed by the livestock that is on the Common.

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

Public access is available over the Common under section 193 of the Law of Property Act 1925.

(b) The replacement land

There is public access over the Replacement Land as it is open access land pursuant to the Countryside and Rights of Way Act 2000.

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

(a) The release land

During construction access will only be restricted when health and safety regulations require, where there will be construction compounds and welfare facilities.

Post construction of the Proposed Development, rights for access and grazing will be granted over that part of the Release Land where there is no physical infrastructure situated, for example the turbines themselves and the electrical control room and battery storage compound. For further details, see paragraphs 7.23 to 7.27 of the Common Land Report (document reference: Pen March COM_Section_16_&_38_Report on Common Land and Appendix).

(b) The replacement land

The rights for access under s193 of the Law of Property Act 1925 can transfer pursuant to the Order. In the event that this is not provided for in the Order access will automatically be maintained pursuant to the Countryside and Rights of Way Act 2000. No works are required to facilitate this access. For further details, see paragraphs 7.23 to 7.27 and 7.47 to 7.53 of the Common Land Report (document reference: Pen March COM_Section_16_&_38_Report on Common Land and Appendix).

Section C2 – Current condition of the lands:

24. Describe the current condition and use of the:

(a) release land

The Release Land is open common grassland with grass species typically found on extensively grazed upland and is currently used by some commoners to graze their livestock. Please see the Common Land Report (document reference: Pen March COM_Section_16_&_38_Report on Common Land and Appendix) at paragraph 7.10 for further details.

(b) replacement land

The Replacement Land is unimproved grassland and has been grazed in a similar manner to the Common. As noted in paragraph 7.10 the Common Land Report (document reference: Pen March COM_Section_16_&_38_Report on Common Land and Appendix), in terms of botanical composition and grazing potential, it is a like for like exchange.

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

(a) release land

There are no physical features on the Release Land.

(b) replacement land

There are no physical features on the Replacement Land.

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 are no boundary features on the Release Land except for a fence along the edge of the Common Road to the south.

(b) replacement land

There is a fence on the eastern boundary of the Replacement Land. Please see paragraph 5.7 of the Common Land Report (document reference: Pen March COM_Section_16_&_38_Report on Common Land and Appendix) for further details.

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

(a) release land

None.

(b) replacement land

The boundary fences on the Eastern side of the Replacement Land may be replaced and extended to fence the entire boundary.

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

(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:

Part of the Release Land is subject to rights for the benefit of water undertakers (currently being Wales and West and Welsh Water) to lay, construct and maintain a water main. Additional easements grant rights to gas undertakers (currently being National Grid) for the construction and maintenance of gas mains. The approximate locations of this infrastructure is shown on Figure 2.2(a,b,c) in the Environmental Statement (document reference: Pen March_ES_Vol3_Ch2_Fig_2_2a_Constraints, Pen March_ES_Vol3_Ch2_Fig_2_2b_Constraints, Pen March_ES_Vol3_Ch2_Fig_2_2c_Constraints).

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 and being promoted under 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.

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 serve a 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 proposed deregistration and replacement of common land is set out in the planning statement (document reference: Pen March Wind Farm - Planning Statement) that accompanies the DNS application.

The site selection process is set out in Chapter 2 of the Environmental Statement ("ES") (document reference: Pen March ES_Vol2_Chapters 1 to 4 Introduction) that accompanies the DNS application.

The Release Land is required for the construction and operation of the Proposed Development comprising turbine bases, crane pads, access tracks, drainage, underground cabling, working areas, and their limited micro-siting. The design of the Proposed Development has considered the fact that it is located on common land as well as other constraints, including archaeological, nature and amenity considerations. A detailed description of the Proposed Development is set out in Chapter 3 of the ES (document reference: Pen March ES_Vol2_Chapters 1 to 4 Introduction) with the design evolution being at Chapter 2 (document reference: Pen March ES_Vol2_Chapters 1 to 4 Introduction).

The developer, RWE Renewables UK Swindon Limited, has sought to minimise the land to be deregistered as part of the application and is offering Replacement Land on a 1:1 basis.

Due to the location of the common and the fact that it is effectively bisected by the A465 to the south and borders the Bannau Brycheiniog National Park to the north there is limited land that could be offered as suitable replacement land which is adjacent to that part of the common affected by the Proposed Development. While it may be that land is available to the south that would not mitigate the impact on the commoners who graze the common land to the north of the A465.

The developer is therefore offering the Replacement Land. Details of the Replacement Land are set out in Section 7 of the Common Land Report (document reference: Pen March COM_Section_16_&_38_Report on Common Land and Appendix). This area of land has been discussed with the active commoners, the commons association and the Dowlais Pony Improvement Society (see Section 9 of the Common Land Report (document reference: Pen March COM_Section_16_&_38_Report on Common Land and Appendix)).

It is acknowledged that this land is open access land but there is no prohibition in the Commons Act 2006 to open access land being offered as replacement land. Furthermore, the loss of open access as a result of the Proposed Development is approximately 0.51ha and comprises the footprint of the six turbines and the electrical control room and battery storage compound. This represents a negligible loss of open access land which is outweighed by the benefits of the Proposed Development and the improvement in access to the common land (including the Replacement Land) which will occur as a result.

In addition to the Replacement Land the developer is proposing to (re)grant rights over that part of the Release Land that, post construction, does not contain any physical infrastructure. This means that the public and commoners will have rights to graze the reinstated construction working areas and use the access tracks. The use of the access track will improve access to the common land (both existing and replacement).

The Common Land Report, which supports this application, sets out the impacts on the common, the commoners, the public as a result of this application. The report concludes that there are no users of the common that will be disadvantaged as a result of the Proposed Development (paragraph 10.7 of the Common Land Report (document reference: Pen March COM_Section_16_&_38_Report on Common Land and Appendix)).

The ES consider the effects on amenity, nature and archaeological and cultural interests in chapters 5 (Landscape and Visual (document reference: Pen March ES_Vol2_Chapter 5 LVIA)) 6 (Geology, Hydrology, Hydrogeology and Peat (document reference: Pen March ES_Vol2_Chapter 6 Hydrology Hydrogeology Peat)), 7 (Ecology (document reference: Pen March ES_Vol2_Chapter 7 Ecology)), 8 (Ornithology (document reference: Pen March ES_Vol2_Chapter 8 Ornithology)), 9 (Noise and Vibration (document reference: Pen March ES_Vol2_Chapter 9 Noise)), 10 (Access, Traffic and Transport (document reference: Pen March ES_Vol2_Chapter 10 Access Traffic and Transport)), 11 (Cultural Heritage (document reference: Pen March ES_Vol2_Chapter 11 Cultural Heritage)) and 12 (Other EIA topics (document reference: Pen March ES_Vol2_Chapter 12 Other EIA Topics)).

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 has been undertaken as detailed in section 9 of the Common Land Report (document reference: Pen March COM_Section_16_&_38_Report on Common Land and Appendix). The application has been consulted on as part of the DNS regime and the statutory consultees for a common land application have been consulted as part of that process with details set out in the Pre-Application Consultation Report (document reference: Pen March Wind Farm - PAC Report).

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).

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)

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

SECTION F – Adjacent Common Land (see Note 18)

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 Bannau Brycheiniog National Park to the north of the proposed works is designated as common land and shown on Figure 1: Common Land, Release and Replacement Land – Overview (document reference: Pen March COM_Fig1_Common_Land_Release_and_Replacement).

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 ☐

Applicant's Note: The above requirements do not apply where a Section 16 application is submitted as an application for secondary consent in connection with a DNS application.

SECTION L - Declaration

~~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:

Release Land:

Signature of owner

Name
(in BLOCK letters)

DOWLAIS TOP INVESTMENT
COMPANY LIMITED

Date 20/7/2023 .

Signature of co-owner
(if applicable)

Name of co-owner
(if applicable)

Date

Replacement Land:

Signature of owner

Name
(in BLOCK letters)

DOWLAIS TOP INVESTMENT
COMPANY LIMITED

Date 20/7/2023 .

Signature of co-owner (if applicable)

Name of co-owner (if applicable)

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.