

John Griffiths AC /AM
Gweinidog yr Amgylchedd a Datblygu Cynaliadwy
Minister for Environment and Sustainable Development



Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref P-04-343
Ein cyf/Our ref JG/06946/11

William Powell AM
Chair Petitions Committee
Ty Hywel
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2 December 2011

Dear William,

P-04-343 Prevent the Destruction of Amenities on Common Land

Thank you for your letter of 15 November 2011, asking for the views of Carl Sargeant AM, Minister for Local Government and Communities, on the issues raised by the following petition:

"We call upon the Welsh Government to examine ways to prevent the destruction of amenities on common land, including for example the Marian Common in Llangoed, Ynys Mon"

As issues relating to the control of works on common land rest within my portfolio your letter has been passed to me for reply.

It is not clear from the petition what 'amenities' are being destroyed on common land but my officials advise me that, from the reference to the Marian Common in Llangoed, it appears that the petitioners are concerned about works being carried out on common land and their effects.

There is protection under section 194 of the Law of Property Act 1925, where the consent of the Welsh Ministers is required to make lawful the erection of any building or fence, or the construction of any other work, which would impede or prevent access to common land in respect of which rights of common applied at 1 January 1926 (the commencement date of the 1925 Act). The relevant commons registration authority will be able to offer advice on whether any particular land was subject to rights of common on the 1st January 1926.

The Welsh Ministers cannot require an application to be made under section 194, but if a consent was required, or not obtained, the persons or organisation undertaking the works could run the risk of having the soil owner, the county (borough) council, community council or any other person applying to a county court to have the works removed and the land restored. Anyone considering this course of action would be advised to take their own

independent legal advice. The view of the Welsh Government is that action should be taken by those persons whose rights are directly affected by such works.

The provisions of the Commons Act 2006 are being implemented in phases and it is anticipated that those provisions relating to access to common land will be brought in to force sometime in 2012. The new provisions will result in controls being available over works on any registered common land rather than just land which was subject to rights of common on 1 January 1926.

Whether or not the 'destruction of amenities' which generated the petition was brought about by development that required planning permission is a matter for the relevant local planning authority in the first instance. If planning permission should have been sought, or was sought and not granted, then it would be open to the local planning authority to take enforcement action should it feel it appropriate to do so. The fact I have mentioned this course of action does not mean that the local planning authority would, or should, take action in this situation. I have mentioned it for completeness of information and any decision in this respect would, as I say, in the first instance be a matter for the local planning authority to consider.

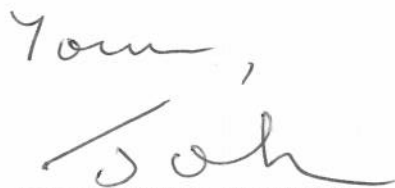
If planning permission were granted for the works then the developer would be able to implement the permission subject to compliance with any conditions that may have been attached to it. If any of those conditions were not complied with then the local planning authority could take action as indicated above.

A consent under section 194 of the Law of Property Act 1925 or under the forthcoming provisions of the Commons Act 2006 or a grant of planning permission would only provide the consents required under those pieces of legislation. To make any works carried out lawful would require all necessary consents and permissions to be obtained

Other consents or permissions could include a screening direction required from the Welsh Ministers under the Environmental Impact Assessment (Uncultivated Land and Semi-Natural Areas) (Wales) Regulations 2007 – required by farmers carrying out agricultural improvements on uncultivated land or semi natural areas. The Wildlife and Countryside Act 1981 protects animals, plants and certain habitats in the UK, including birds, their nests and eggs, and the carrying out of actions which could adversely affect them would be an offence unless a licence had been issued by the Welsh Ministers authorising those actions. If works are to be carried out on common land which is within a specially designated area eg a Site of Special Scientific Interest or a Natura 2000 site, then consent may be required from the Countryside Council for Wales.

Failure to obtain the consents required in the paragraph above can result in enforcement action and even prosecution.

In the light of the information provided above it seems to me that there is a wide range of controls over the use of common land and the carrying out of works on common land already in existence to protect the amenity of common land.



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