

Carl Sargeant AC / AM
Y Gweinidog Tai ac Adfywio
Minister for Housing and Regeneration



Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref P-04-343
Ein cyf/Our ref CS/01333/13

William Powell AM
Chair Petitions Committee
Ty Hywel
Cardiff Bay
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August 2013

Thank you for your letter dated 23 July to John Griffiths AM concerning the protection of common land. Your letter has been passed to me as ministerial responsibility for commons falls within my portfolio.

You refer to a letter issued on the 2 December 2011 by John Griffiths AM, the former Minister for Environment and Sustainable Development. The provisions contained under section 194 of the Law of Property Act 1925 referred to in this letter, have now been repealed. The current protection for common land in Wales is contained under section 38 of the Commons Act 2006 which came into force in Wales on the 1 April 2012.

As far as works on common land is concerned, section 38 of the Commons Act 2006 provides that a person may not, except with the consent of the appropriate national authority (in Wales, the Welsh Ministers), carry out any restricted works on land to which section 38 applies. The land to which section 38 applies is, essentially, land registered as common land under the Commons Registration Act 1965 and 'restricted works' are defined as:

- (a) works which have the effect of preventing or impeding access to or over any land to which section 38 applies;
- (b) works for the resurfacing of land.

Section 38 also provides that works are for the resurfacing of land if they consist of the laying of concrete, tarmacadam, coated roadstone or similar material on the land (but not if they consist only of the repair of an existing surface of the land made of such material).

Ultimately it is up to the potential applicant to decide whether or not to apply for consent under section 38, but if a consent is necessary for works, but has not been obtained, then those works, if carried out, would be liable to enforcement action being taken under section

41 of the Commons Act 2006. Such action would be taken in the county court and could result in an order made by the court requiring the removal of the works and the restoration of the land to its condition before the works were carried out. This action could be taken by the County (Borough) Council, Community Council, National Park Authority (if the land is within a National Park), a registered commoner, the land owner or indeed a member of the

public. Action could also be taken by the Welsh Ministers but, in their view, action should be taken by those whose rights have been directly affected.

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 consider it appropriate to do so. This does not mean that the local planning authority would, or should take action in this situation. Any decision in this instance would be a matter for the local planning authority to consider.

If planning permission had been granted for the works then the developer would be required to implement the permission subject to compliance with any conditions that may have been attached to it. If any of these conditions were not complied with then the local planning authority could take enforcement action if they considered it expedient to do so.

A consent under section 38 of the Commons Act 2006 or a grant of planning permission would only provide the consents and permissions under those pieces of legislation. For any works to be lawful all necessary consents and permissions should be obtained.

It is considered that common land is sufficiently protected by the provisions of the 2006 Act but as referred to above, action should be taken by those whose rights have been directly affected.



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