

# **NEATH PORT TALBOT COUNTY BOROUGH COUNCIL**

## **CABINET**

21 November 2018

### **Report of the Head of Legal Services – Mr Craig Griffiths**

#### **Matter for Decision**

#### **Wards Affected:**

All wards

Proposal for introduction of fees for applications in relation to common land

#### **Purpose of the Report**

1. To obtain approval of Members of the proposed fee structure for applications under the Commons Act 2006 (Correction, Non-Registration or Mistaken Registration) (Wales) Regulations 2017 (“the Regulations”).

#### **Executive Summary**

2. This report will explain the current legislation in relation to common land in Wales and the processes that we need to put into place as a Commons Registration Authority to implement this legislation in terms of the fee structure.

#### **Background**

3. As Members may be aware, the registration of common land was undertaken under the remit of the Commons Registration Act 1965. The 1965 Act was intended to establish definitive registers of common land

and town and village in England and Wales, rights of common and to record details of ownership of the commons. Applications were invited for provisional registration, objections were made if appropriate and dispute provisional registrations were referred to a Commons Commissioner for determination. Unopposed provisional registration automatically became final registrations.

4. In practice, however, the task of establishing registers was complex and the 1965 Act proved to have deficiencies. For example, some land provisionally registered under the Act was wrongly struck out by the Commons Commissioner, other common land was overlooked and not registered and many greens were registered incorrectly as common land. The scope for correcting such errors was limited.
5. The Commons Act 2006 was passed by the UK Government in order to correct deficiencies of the 1965 Act. The 2006 Act is gradually being implemented in Wales through the introduction of numerous statutory regulations.
6. The Commons Act 2006 (Correction, Non-Registration or Mistaken Registration) (Wales) Regulations 2017 came into force on 5 May 2017. These regulations enable applications and proposals to be made to amend the commons registers from this date. The Authority, acting as the Commons Register Authority (CRA), is permitted to charge application fees for some of the applications made under the Regulations. The proposed fees and the decision- making process behind the proposal of such fees are attached under Appendix 1.
7. It should be noted that there is no statutory fee structure cited within the Regulations. Following training provided by the Welsh Government, it has been recommended by the Welsh Government that each CRA sets their own fee structure, having regard to suggested fees proposed by Defra in 2015 but doubling them to make them up-to-date and with reference to current fees being charged by a number of pioneer authorities within England who have been dealing with these applications to date and therefore can confirm what level of costs have been incurred by them in doing so. The proposed fee structure is therefore based upon such figures provided by other authorities and this will account for some figures not being 'round figures'. It should be noted that the CRA is not permitted to make a profit and the costs need to be reasonable, based on the work incurred. It should also be noted that there are some types of applications that application fees are not permitted by the Regulations

and that is why these are shown as no fee within the proposed fee structure. .

8. Please refer to Appendix 1 for the proposed fee structure and the decision-making process for setting such fees.

### **Financial Impact**

9. Implementing such a fee structure would allow the Council, under its remit as the CRA, to charge the appropriate application fees in order to cover the costs incurred by the CRA for processing and determining applications under the Commons Act 2006.
10. It should be noted that the fee structure can be reviewed and amended following receipt of applications and the CRA having evidence of the actual time spent by officers on such applications. However, the fee structure must reflect a cost recovery position only and the CRA is unable to profit from such fees.

### **Integrated Impact Assessment**

11. An Equality Impact Assessment screening form was completed to assist the Council in complying with its public sector equality duty. The screening indicated that there was no requirement to carry out a full equality impact assessment. Please see Appendix 2.

### **Workforce Impacts**

12. Once the fee structure has been approved by Members, there will be work required by officers to publicise the fee structure on the Council's website and to monitor the payment of such fees. However, it is not envisaged that there will be any substantial implication on the Council's workforce.

### **Legal Powers**

13. As referred to above, there is a legislative framework that needs to be implemented by the Council acting in its capacity as a Commons Registration Authority. Therefore, procedures for implementing this framework need to be put into place. A fee structure, whilst not legally required, would allow the Council to recover its costs for dealing with such applications.

## **Risk Management**

14. Should we not implement the legislative framework as set out above, the Commons Registration Authority would not be complying with its statutory duties. There is therefore the potential that the Council's decision not to implement the legislative framework could be open to judicial challenge, the result of which could also result in financial penalties.
15. Whilst there is no risk to the Council in terms of reputation should we choose not to implement a fee structure alongside the legislative framework, clearly the Council should be seeking to recover its costs wherever possible and not do so would place the Council at risk of incurring further costs with no financial recovery.

## **Consultation**

16. There is no requirement under the Constitution for external consultation on this item.

## **Recommendations**

17. It is recommended that Members, as outlined in Appendix 1, approve the proposed fee structure for applications under the Regulations

## **Reasons for Proposed Decision**

18. To enable the Council, as the Commons Registration Authority, to meet its statutory requirements under the Commons Registration Act 1965, Commons Act 2006 and associated statutory regulations, comply with its duties accordingly and

## **Implementation of Decision**

19. The decision is proposed for implementation after the three day call in period.

## **Appendices**

20. Appendix 1 - Proposed fee structure for applications under the Regulations and accompanying notes.
21. Appendix 2 - Equality Impact Screening Assessment

## **Officer Contact**

22. For further information on this report item - please contact:

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APPENDIX 1 – TABLE OF FEES

23. SEARCH FEES

Type or search or enquiry	Fee
CON29(O) form (stand alone search)	£26.40 (inc VAT)
Personal inspection of the commons register at the Council premises	Free
Grazing rights searches	£80

32. FEES FOR PURCHASING A COPY OF A COMMON LAND REGISTER OR ITS REGISTER MAP

Copies required	Fee
Each Extract of register map	£10
Full register map	£30
Commons text register	£11.50 for first 10 pages and £0.75 per page

	thereafter
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## APPLICATION FEES

Various applications can be made to the Commons Registration Authority including those to register a new town or village green and those to correct errors in the registers of common land.

A list of possible applications and the relevant fee appears below.

STATUTORY PROVISION	NATURE OF APPLICATION/INQUIRY	FEE
Formal Apportionment under the 1965 Act	To apportion rights in the register when the land to which rights are attached is split	No fee
Section 15 Commons Act 2006	Registration of a new town or village green	No fee
Section 19 (2) (a) or (c) of the 2006 Act	Correction of a mistake made by registration authority or removing a duplicate entry from the register	No fee
Section 19 (2) (b) of the 2006 Act	Correction, for a purpose described in section 19(2)(b) i.e. correcting any mistake, where the amendment would	

	<p>not affect—</p> <p>(i) the extent of any land registered as common land or as a town or village green; or</p> <p>(ii) what can be done by virtue of a right of common;</p> <p>Initial fee applicable to every application</p> <p>Where the Authority holds a hearing or public inquiry with regards to the application</p> <p>Where the application is referred to the Planning Inspectorate</p>	<p>£350</p> <p>The Authority's further reasonable fees based upon time spent at an hourly rate of £100/hour and disbursements incurred</p> <p>Such further fees as are charged by the Planning Inspectorate</p>
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Section 19 (2) (d) or (e) of the 2006 Act	Correction, to update the details of any name or address, or to take account of accretion or diluvion.	£51
Schedule 2, paragraph 2 or 3, to the 2006 Act	Non-registration of common land or town or village green (i.e. not registered and should have been)	No fee
Schedule 2, paragraph 4, to the 2006 Act	Waste land of a manor not registered as common land (i.e. not registered and should have been)	No fee
Schedule 2, paragraph 5, to the 2006 Act	Town or village green wrongly registered as common land	No fee
Schedule 2, paragraphs 6 - 9, to the 2006 Act	Deregistration of certain land registered as common land or as a town or village green in error	£2,040