

From: [Richard Fearnall](#)
To: [AwelyMor](#)
Subject: Awel Y Mor - ExQ2 - Responses and Updates on behalf of GBL and IM Kerfoot
Date: 06 February 2023 19:15:29
Attachments: [image001.png](#)
[KerfootAyMStatConsultationResponse111021.pdf](#)
[RegisterPlanWA859967 - GBLandIMKerfootTrust.pdf](#)

Dear Sirs,

Please accept this email in response to the ExA's second written questions and requests for information (ExQ2) on behalf of the Trustees of the GBL and IM Kerfoot Discretionary Trust (the Trustees). The numbered paragraphs below relate to the corresponding questions in the ExQ2 document issued on the 23rd January 2023.

2. Biodiversity, Ecology and Natural Environment

2.2 With regard to the potential mitigation measures in the Schedule of Mitigation (REP2-024, now superseded by Rep4_021) the following issues are raised:

Ref 82 – The proposed ECC (and substantial temp mitigation areas) pass through a block of farmland owned by the Trustees. The route runs centrally through the Holding as shown on the attached plan (RegisterPlanWA859967 – GBLandIMkerfootTrust.) The impact on the Holding will be significant, both during and post construction. Despite requesting the assessment of alternative routes or design iterations pre-statutory consultation, through statutory consultation (s42 Consultation Response attached for reference) the Applicant has provided little evidence of any detailed analysis of these alternative options that has led to their final site selection. The Applicant has provided a response to the Trustees submission of 11 October 2021 (attached) in Report 5.1, Annex 1: Consultation Report Appendices Part 2 (E to H) Date: April 2022 Revision: A The entry relating to the GBL and IM Kerfoot Discretionary Trust can be found under reference MOP_27_11102021 on page 74 of the Appendix H1: Section 42 Responses and Applicant Regard namely:

“The chosen route has been selected as a compromise between all constraints in the region including combined with engineering, ecological, landscape and visual interaction and PRoW management.

The Applicant shall endeavour to negotiate a voluntary agreement with the landowner in respect of the rights required, through which compensation for losses will be addressed. In the event that the Applicant and the landowner fail to agree such a voluntary agreement, the Compensation Code shall apply and as such compensation for any sterilisation and for any sterilisation from development shall be paid on a proven loss basis.”

In response to the Representation received on behalf of the GBL and IM Kerfoot Discretionary Trust on 30 June 2022, the Applicant provided the following Response:

“As noted in Report 5.1: Consultation Report (APP-024), the chosen route has been selected as a compromise between all constraints in the region including combined with engineering, ecological, landscape and visual interaction and PRoW management. Nature conservation designations and sensitive ecological features located to the east of the onshore cable corridor meant that the requested re-location to the east was not adopted by The Applicant.”

The entry can be found under RR-037-3 “Compulsory Acquisition of Land...” at page 64 of the Applicant's Response to Relevant Representations Deadline 1 dated 24 October 2022.

The Trustees do not feel that the Applicant provided enough clarity on their assessment

of the alternative design options in this location (and possibly wider through the overall ECC design) or given correct weighting to a hierarchy of constraints and contests that this commitment has been, and will continue to be, properly and duly implemented by the Applicant.

Ref 480 – The Trustees Holding will host a haul road from the main entrance off the Dyserth Road (B5119). It is likely that this haul road will be in situ for the ‘complete construction period’ – anticipated to be upwards of 5 years from the initial installation and management of the proposed Mitigation Areas to a point where the project is energised. As the ECC bisects the Holding and a number of individual field parcels the Trustees would request that exact location and specification of haul roads are agreed with landowners (through the projects appointed land agent) in order to mitigate the impact on the ability to commercially farm the land or to comply with any agricultural support or environmental schemes.

3. Compulsory Acquisition (CA) and Temporary Possession (TP)

3.4 The Trustees object strongly to Applicants requirement for acquisition of permanent rights for both the Temporary Mitigation areas and to facilitate delivery of the ECC. The Trustees Holding is located on the recently developed residential fringe of Rhyl. The DCC LDP process has been stalled for a number of years due to the outbreak of Covid 19, but is due to re-commence later in 2023 through a recently agreed delivery programme. Representations for the inclusion of the Trustees Holding as a strategic development site as part of an updated LDP are ongoing. With the delivery problems faced by significant allocations of strategic development sites across North Wales, the importance to regional housing delivery targets of this area south of Rhyl has increased. This has been reflected by approaches to the Trustees from a number of regional and national housebuilders looking to partner on the future promotion of the Holding, through both the next and subsequent LDP periods. The rights and restrictions sought by the applicant will render the majority of the holding undevelopable – particularly with the requirement to pass ownership and management of the EC’s to an OFTO and in consideration of necessary re-alignment of the Dyserth Road or upgraded access requirements to serve any future development of the Holding. These permanent restrictions and rights will also sterilise the Holding for any sort of agricultural or diversified developments that have been explored.

The Trustees welcome the following wording in Applicants Statement of Reasons with regards to ***Mitigation work rights and restrictive covenants*** at para 123 that states *‘It is intended that the exercise of mitigation rights and effect of restrictive covenants will be time limited to the period required to deliver the mitigation secured in the Order, after which only access rights will be exercised.’* However, the Applicant does not go so far as to say the rights will be removed or surrendered and the mere fact that they will endure on the property register is blight enough and considered unnecessary by the Trustees. The Applicant should be made to surrender all rights after their useful requirement period and the Trustees would welcome further dialogue with the ExA as to how this could be incorporated into the draft DCO.

Likewise, with permanent rights, the Trustees maintain that these rights and requirements for the installation and operation of the EC’s could be limited (by surrender/removal) at the end of the decommissioning period for the project. The Trustees maintain that taking and impacting on landowners’ rights in perpetuity is not balanced with the needs to deliver a time limited energy generation project. Beyond the life the initial project any rights will no longer be fit for purpose, but will remain a significant legacy constraint for landowners. The Trustees seek comfort that rights and restrictions will only be taken for a period as is necessary, with provision made within the DCO for time limited removal.

Notwithstanding the points made in 2.2 above, the Trustees request that Work Plans (REP1-032) Plots 145 and the Southern element of Plot 142 (south from Plot 141) are removed from the DCO as this separate access right is not required outside of the main ECC. There are existing rights and farm tracks within Plot 140 that will provide the access necessary without the need to inflict disturbance on a greater area than necessary.

3.17 Negotiations with the Applicant are not progressing positively. The Trustees undertaken detailed and timely engagement with the Applicant at all stages of the pre and post submission process. The Applicants have been slow to respond to material points raised throughout the development process and responses to engagement and suggested alternatives have been briefly dismissed and poorly communicated. The Trustees are aware of another offshore wind farm proposal being prepared for submission by RWE – the Rampion 2 project – that has recently undertaken a second round of formal consultation to address and mitigate a wide number of landowner related requests and requirements – these are reflected in the changes highlighted through the Rampion 2 further consultation booklet on the project website. The Trustees are concerned by the seeming lack of consistency between the two approaches with regard to landowner impacts and the resultant burden for compulsory acquisition and would encourage the Applicant to give greater weight to localised landowner concerns.

Whilst a draft Option agreement has kindly been provided by the Applicant for consideration a draft Easement Agreement would also be appreciated to allow the possibility of negotiated agreements to progress.

Many thanks for your consideration on these points.

Yours faithfully

Richard
Richard Fearnall MRICS
RICS Registered Valuer



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Awel Y Mor Offshore Wind Farm
RWE Renewables
Windmill Hill Business Park
Whitehill Way
Swindon
Wiltshire
SN5 6PB

11TH October 2021

Dear Sirs

**Proposed Awel Y Mor Offshore Wind Farm
Trustees of the GBL and IB Kerfoot Discretionary Trust – WA859967 – Land
South of Dyserth Road, Rhyl
S42 Planning Act 2008 – Consultation Response**

I am writing to set out the Trustees formal response to the consultation documents you have produced in association with the proposed Awel Y Mor project.

The Trustees own land comprising Land Registry title WA859967 (the Land) which will be directly affected by your proposals.

Whilst the Trustees are not opposed to the development of the project in principle, there are strong concerns regarding the current proposed onshore cable route and associated works both within, and within the vicinity of, the Land.

Background

The Land is situated to the south-east of the existing development boundary of Rhyl. It was acquired by the Kerfoot family as a block of good quality agricultural land with strong development potential the given the future growth proposals for Rhyl. The Land was settled in April 2009 and the trust has three beneficiaries.

Wilson Fearnall Ltd

Alkington Hall, Whitchurch, Shropshire SY13 3NG

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The Land is currently farmed in conjunction with a neighbouring dairy farm and regularly grows good crops of grass, maize and cereals.

Representations have been made to the emerging Local Development Plan process for the Land to accommodate residential/ mixed use development and opportunities with development partners are being explored. Neighbouring residential developments on third party land have recently been completed.

Progressing the project in line with the current design envelope will create significant short, medium and long-term disturbance to the interests of the Trustees that could be mitigated by design amendments ahead of the final DCO submission.

The Trustees maintain that alternative route corridors should be utilised for the cables in line with the feedback provided during the first round of consultation to avoid any use of or impact on the Land.

If this is not achievable an alternative route moving the cables further East would be preferred to mitigate the overall impacts. This alternative route is shown on the plan at Appendix 1.

Construction Period

The Trustees do not consider the Indicative Construction Programme from the Onshore Project Description document to be an accurate reflection of the construction period and associated disturbance.

The Land forms part of Route Section C and hosts proposals for a TCC, an ECC access point, a road crossing and a considerable stretch of ECC. The predicted vehicle movements suggest this to be one of the longer and busier sections to service from the proposed access point.

Considering the onsite requirements (including demarcation and necessary H&S measures) to deliver the proposed enabling works, the cable construction programme, commissioning, re-instatement and demobilisation it is likely that proposed works will prevent any reasonable access to, or use of, the Land for the full period of 4 ½ years of construction and possibly longer with supply chain delay risk.

Not only will this result in direct revenue loss to the Trustees, but the loss of forage production may have a catastrophic impact on the viability of dairying business undertaken by the tenant.

Construction Process

A cable depth of between 1.64 to 0.6m is referred to, but no final assessment of likely depths has been provided within the Land. At depths above 1.2m deep any cables are likely to limit regular farming cultivations. With the addition of shallow joint pits and link boxes in situ during, and possibly post, operation of the windfarm ongoing farming uses of the Land will be impeded. A minimum installed cable depth should be considered so as not to interfere with future agricultural use.

Services

Land is crossed by a number of existing utility and private service media. Current proposals do not include adequate information or design tolerance for avoiding or diverting these existing services.

Land Rights

There has been little information provided as to the requirement for temporary and permanent land rights for which the project may seek Compulsory Acquisition powers. Further detail is required for consideration.

Assuming the project will be seeking cable easements with sufficient engineering protections the current ECC will become sterilised for most forms of future development. Not only will development within the ECC be restricted, but any of the Land to the East of the proposed route will also become severed and impossible to develop. Practically, the ECC will form a 'soft' future development boundary for Rhyl from its Western boundary removing any possibility of future uplift in value.

Incorporating suitable provisions to mitigate this impact in all areas of the ECC should be adopted to include:

- 'Lift and shift' provisions
- Limited lifetime of land rights to 25 years in line with operational life of project
- Allow use of easement land for services, infrastructure, gardens etc

The same issue applies to any permanent rights of access that may be required to service the operational cable, but the consultation information is devoid of this information. Detailed proposals should be provided and consulted on with all affected parties prior to final submissions.

Consultation and Engagement

The Trustees do not consider sufficient engagement has been undertaken with landowners to fully inform the project design in or to incorporate relevant mitigation. Further detailed engagement is required before proposals are finalised.

Whilst the statutory requirement for formal consultation under the Planning Act 2008 is 28 days the Trustees do not consider the detail provided by the promotor at consultation is adequate, nor the consultation period long enough for affected parties to meaningfully engage and feedback. Covid restrictions have largely been removed and more public exhibition events should have been incorporated into the consultation process. Whilst online material is a useful addition to the formal consultation process this has not been accompanied by sufficient alternative forms of communication to generate meaningful two-way engagement.

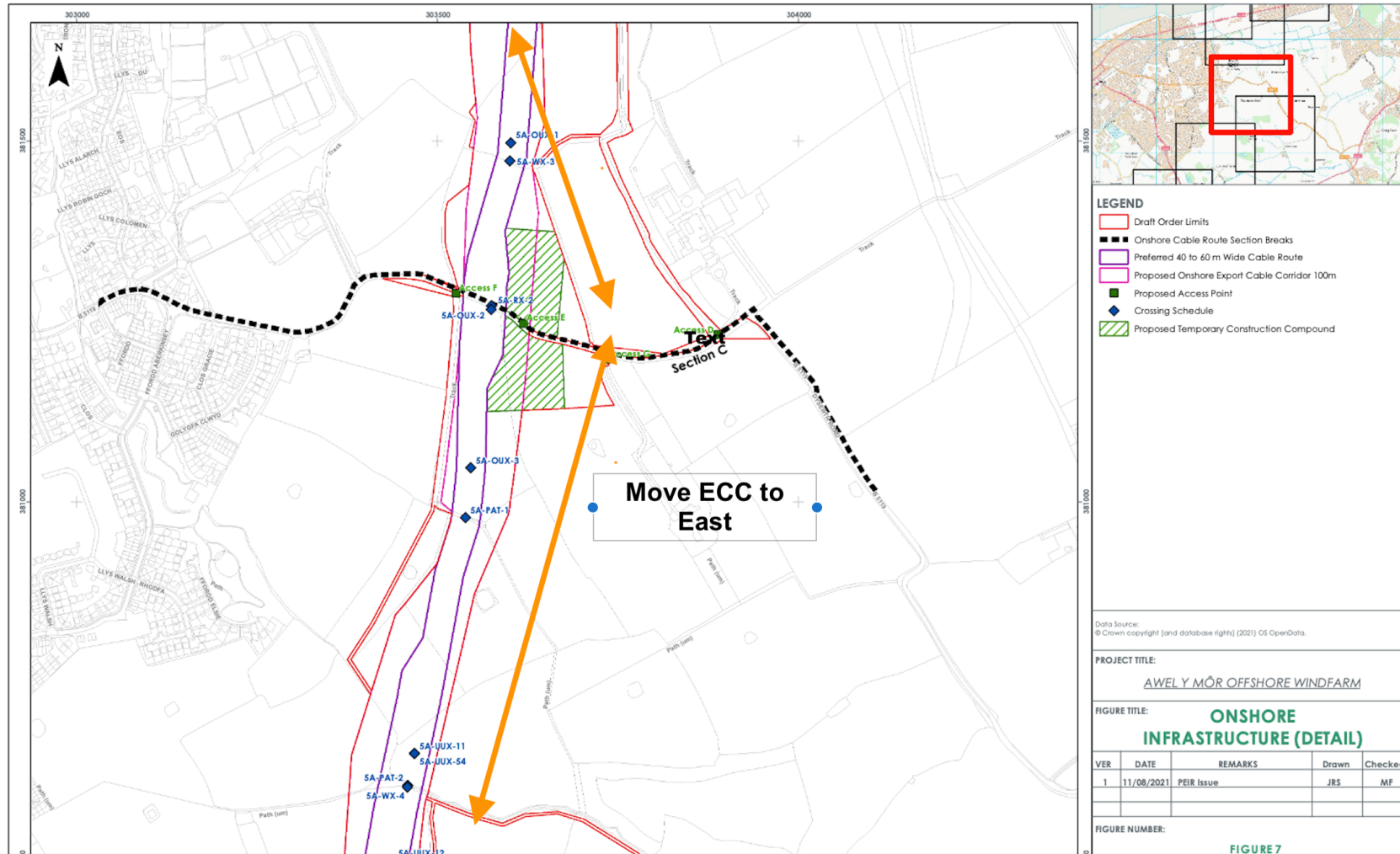
Further detailed engagement should continue with all affected parties to ensure feedback and mitigation is fully considered ahead of any submission for the DCO and we welcome meaningful engagement with RWE going forward.

Yours sincerely,

A solid black rectangular box redacting the signature of Richard Fearnall.

Richard Fearnall MRICS

Appendix 1 – Alternative Route Proposal



H.M. LAND REGISTRY

TITLE NUMBER

WA 859967

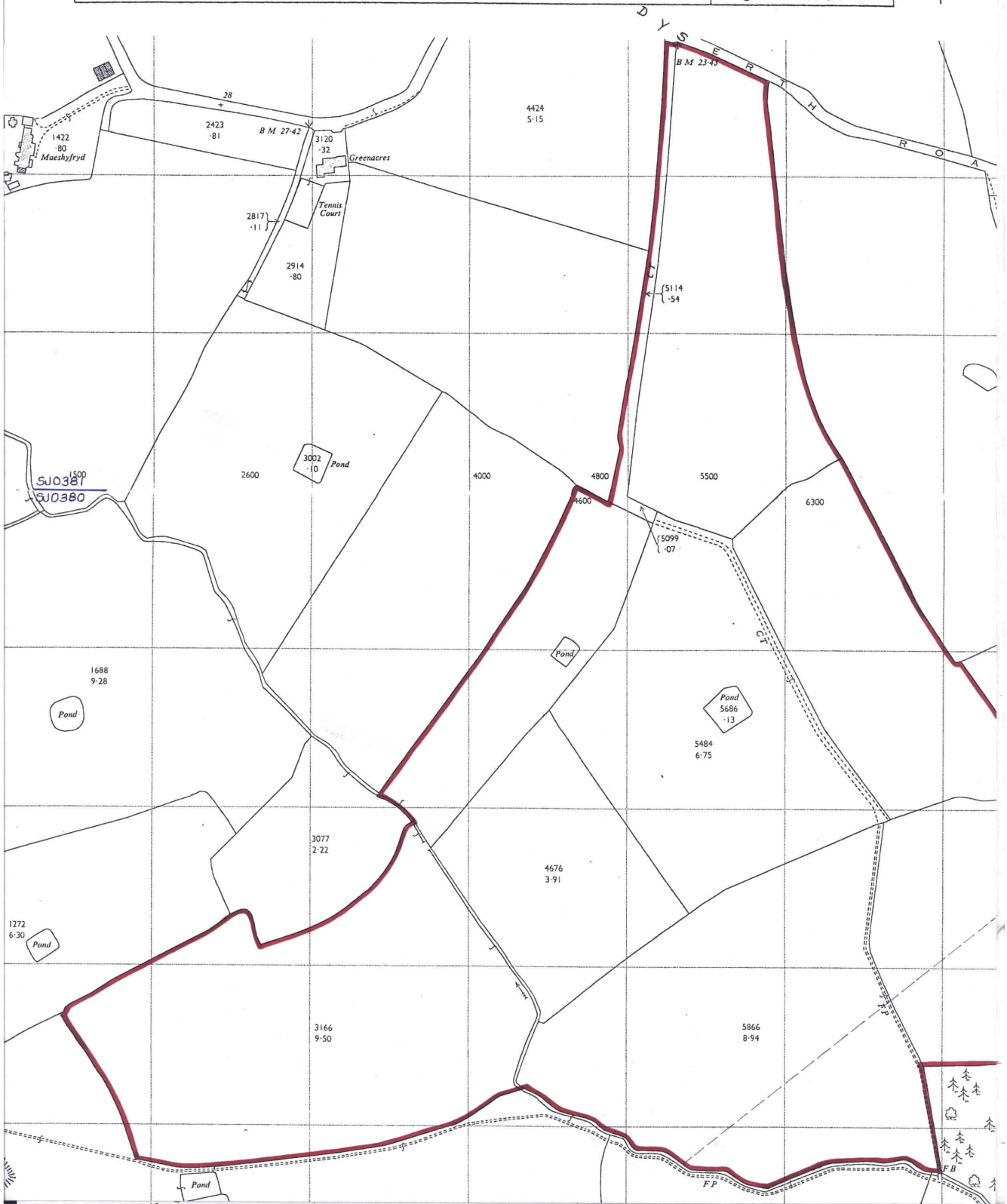
ORDNANCE SURVEY
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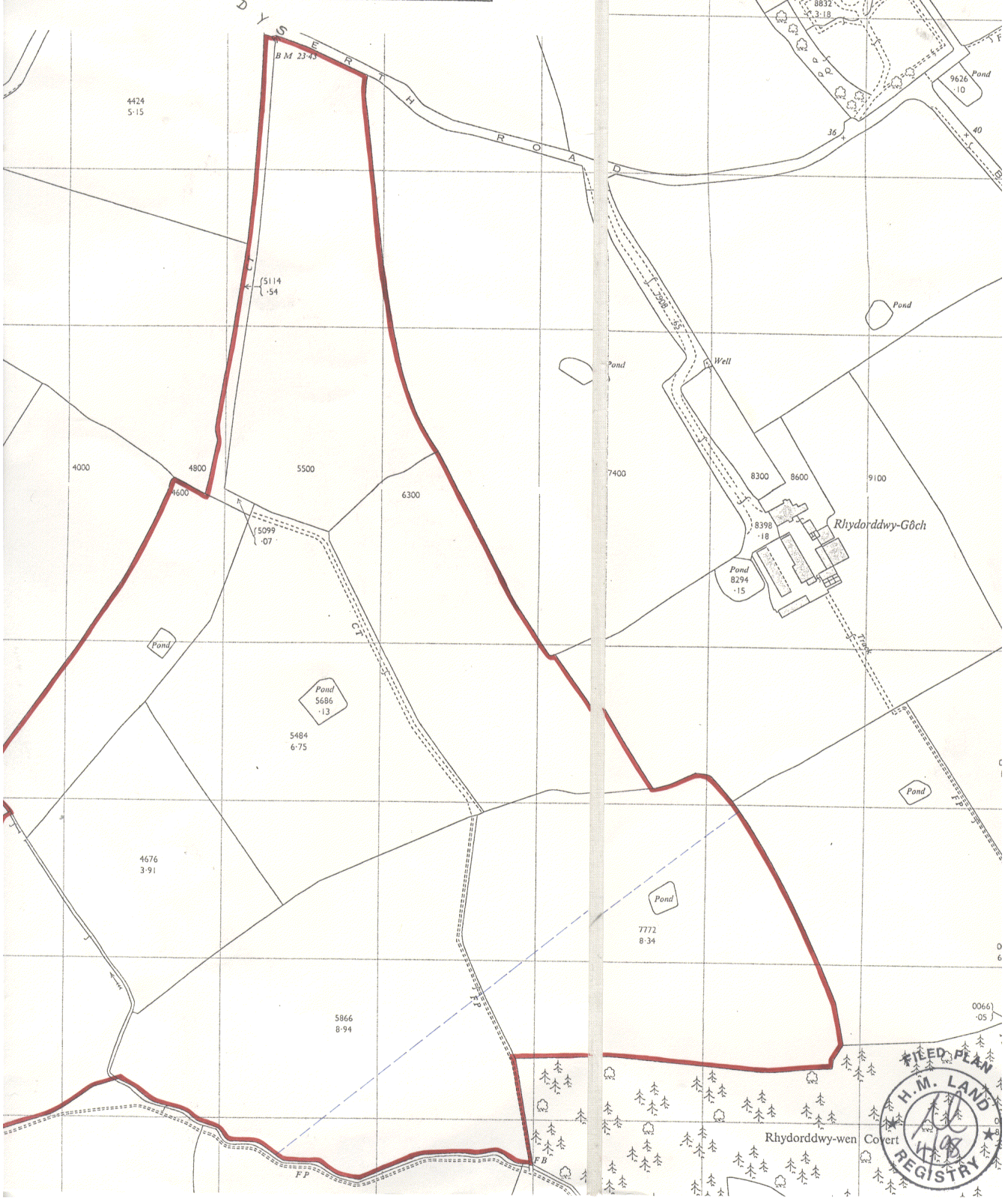
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