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## Penderfyniad ar Gais

Ymweliad safle a wnaed ar 18/11/14

gan Emyr Jones BSc(Hons) CEng  
MICE MCI

Arolygydd a benodir gan Weinidogion Cymru  
Dyddiad: 08/12/14

## Application Decision

Site visit made on 18/11/14

by Emyr Jones BSc(Hons) CEng MICE  
MCI

an Inspector appointed by the Welsh Ministers  
Date: 08/12/14

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**Application Ref: APP/V6950/X/2014/515990**

**Site address: Bloreng Common, Garn yr Erw/Blaenavon, Torfaen**

**The Welsh Ministers have transferred the authority to decide this application to me as the appointed Inspector.**

- The application dated 29 July 2014 is made under section 38 of the *Commons Act 2006* (the 2006 Act) for consent to carry out restricted works on common land.
  - The application relates to Bloreng Common (CL18). The Registration Authority is Torfaen County Borough Council.
  - The application is made by Torfaen County Borough Council.
  - The proposed works consist of a walking/cycling route.
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### Decision

1. Consent is granted for the construction of a walking/cycling route at Bloreng Common, Garn yr Erw/Blaenavon, Torfaen in accordance with the application dated 29<sup>th</sup> July 2014 and the plans submitted with it subject to the following conditions:
  - (i) The works shall begin no later than 5 years from 8<sup>th</sup> October 2012 (the date of planning permission Ref: 11/P/00559);
  - (ii) The works must be carried out strictly in accordance with the details contained in the application and all affected Common land shall be fully reinstated upon completion of the works.

### Preliminary matters

2. This application has been determined on the basis of written representations and my accompanied visit to the site and surrounding area.
3. Bloreng Common (CL18) has a total area of some 2,017 hectares and rights to graze cattle, sheep, goats, geese and ponies/horses as well as estover rights in respect of cutting and taking bracken are registered. The public have a right of access to the common for air and exercise under section 193 of the *Law of Property Act 1925*. Despite extensive enquiries, the applicant has not found any evidence that the common is subject to an Order of Limitation made under section 193. It is not subject to a Scheme of Management made under the *Commons Act 1899*.

### The application

4. The site is located very close to the south western boundary of CL18 and runs roughly parallel and just to the south west of Garn Road (B4248) which links Blaenavon and Brynmawr. The route runs over previously industrially disturbed ground, adjacent to a

tailings tip, along a former tailings track now mainly covered in upland grasses and some scrub to broken sections of the track. It then continues over exposed coal spoil onto an extensive area of concrete previously used as a loading bay and then joins a tarmac track linking to the B4248. The overall length being in the region of 1.4km.

5. The proposal would extend the existing National Cycle Network route 492 from Whistle Road, Garn yr Erw and link to an existing route to Brynmawr and the Heads of the Valleys cycle network, thereby filling in a missing link in the current provision. The permanent works proposed comprise a surfaced walking and cycle route approximately 2.4m in width using non enclosing fencing, non enclosing stone wall, surface ground works, soil stabilising, interlocking soil filled plastic mesh, ground level decking, waymarking, habitat enhancements, and re-soiling and grassing concrete pads. Temporary works in the form of a compound and newt mitigation barriers also form part of the application.
6. A notice of the proposal was published in the South Wales Argus on 1<sup>st</sup> August 2014 and posted at both ends of the route with relevant documents placed on deposit for public inspection. The applicant confirms that commoners were consulted via both the farms to which the rights are attached and the 12 or so known active commoners<sup>1</sup>. It notes that some letters had to be delivered by hand, because they were initially delivered to other farms with similar names, and highlights the need for the register to include post codes and to be kept up to date in respect of who lives at each property. The applicant acknowledges that some people could have been missed out due to the entries in the commons register being partly out of date. The Blorenges Commoners Association, Blaenavon Town Council, Natural Resources Wales, CADW, and the Open Spaces Society were also consulted.

## Representations

7. The Planning Inspectorate received representations from Cadw and the Blorenges Commoners Association.
8. According to Cadw, the proposal would be inside the Registered Blaenavon Landscape of Outstanding Historic Interest and specifically in the Garn-yr-Erw Transport Corridor Historic Landscape Characterisation Area<sup>2</sup>. It notes that the proposed cycle route follows the general direction of the existing and historic transport features in this area and would, therefore, be in accordance with the character of the area. It is also noted that this part of the Blaenavon World Heritage Site is notable for communications routes and the proposal would conform to this such that it would not compromise the Outstanding Universal Values of the World Heritage Site.
9. The Commoners Association objects to the proposed extension for a number of reasons. It seeks clarification/further information in respect of liability, limitations, and compensation for loss of grazing as well as a redraft of the fencing. Concerns are expressed as to on-going maintenance responsibilities and exacerbation of existing problems with fly tipping, littering, illegal off-road vehicle use and drug abuse. If the scheme is to proceed, additional signs in respect of such matters as dogs, litter, trespass etc. are requested, but it is feared that this would not suffice as there have

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<sup>1</sup> Examining the register reveals that the total number of rights registered is significantly greater than 12, although some individuals may be named more than once.

<sup>2</sup> The application states that the boundary of the Blaenavon industrial landscape world heritage site is adjacent to the start of the route but not part of the area over which the route would run.

been recent reports of livestock worrying and sheep theft. The Association feels that the correct procedure has not been followed with many rights holders not being notified and those that were notified not being given the required 28 days in which to respond.

### **The statutory requirements**

10. Section 38(1) of the 2006 Act requires the consent of the Welsh Ministers to the proposed works as they include works which would prevent or impede access to or over the land. Although not concrete, tarmacadam or coated roadstone, the soil filled plastic mesh and ground level decking could be construed as being works for the resurfacing of land with similar material, in which case they also require consent. I will adopt a precautionary approach and assume that this is the case. Without first obtaining consent, any such works would be unlawful.
11. In determining this application for consent I must have regard to<sup>3</sup> (a) the interests of persons having rights in relation to, or occupying, the land (and in particular persons exercising rights of common over it), (b) the interests of the neighbourhood, (c) the public interest (including the public interest in nature conservation, the conservation of the landscape, the protection of public rights of access to any area of land, and the protection of archaeological remains and features of historic interest), and (d) any other matter considered to be relevant.
12. Common land is a finite resource and the Welsh Government has indicated that it should not be developed unnecessarily, access to it should not be prevented or impeded unnecessarily, and the proper management of it should be encouraged.

### **Reasons**

#### Notification

13. Whilst the applicant recognises that some commoners may not have been notified, the statutory requirement is limited to notifying those that the applicant believes to be exercising rights of common or likely to be affected by the application<sup>4</sup>. I have no evidence to indicate that such persons were not notified.
14. The closing date for receipt of representations was 28<sup>th</sup> August 2014, which was less than 28 days after the publication requirements were fully complied with. However, the regulations enable me to waive the non-compliance where I am satisfied that it would be unreasonable to require compliance and no-one is likely to be prejudiced by non-compliance<sup>5</sup>. As the non-compliance only appears to relate to one day's reduction in the 28 day period and in these circumstances the Planning Inspectorate would have accepted any representations that were only a day or so late, I am so satisfied.
15. Subject to the above, I consider that the applicant carried out the required consultations and that, through these actions and the advertising in a newspaper and the placing of notices on the application site, all those with an interest in the land have been provided with a reasonable opportunity to comment on the application.

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<sup>3</sup> Commons Act 2006 Section 39

<sup>4</sup> The Works on Common Land, etc. (Procedure) (Wales) Regulations 2012, regulation 7(c) (iii) & (iv).

<sup>5</sup> The Works on Common Land, etc. (Procedure) (Wales) Regulations 2012, regulation 9.

The interests of persons occupying or having rights in relation to the land

16. The land is owned by Walters Mining and Celtic Energy and their land agent has confirmed that they are happy with the proposal.
17. Active common rights holders have been consulted and the Commoners Association submitted an objection. I have already addressed the possible existence of an Order of Limitation and compliance with notification requirements.
18. It would appear that this part of the common is not currently grazed, due to the danger of animals straying onto the road, but that is a matter of choice for individual commoners. The works compounds and part of the route would be on existing hard surfaces which cannot be grazed in any event. The temporary loss of potential grazing on other parts of the route during the fairly short construction phase would be negligible. The soil filled plastic mesh would be over-sown such that it could be grazed and the intention to soil part of the existing concrete section would compensate for any loss of potential grazing at decked sections with a net gain in areas which could be grazed being anticipated. There is no bracken on the proposed alignment so the rights of estover would not be affected.
19. Torfaen County Borough Council would be responsible for the delivery of the scheme and thereafter liability for the route over the outstanding part of the 25 year lease period would rest with Sustrans. I cannot envisage any situation where the works would result in any claims against individual commoners. Aftercare requirements would not be excessive, consisting predominantly of twice early grass cutting, and I have no reason to believe that the Council/Sustrans would not be able to maintain the scheme using their own resources and/or volunteers.
20. Upland crime is a problem in Torfaen and neighbouring areas with the Council and other stakeholders working with the relevant police forces to address the matter. Nonetheless, I am of the opinion that the proposal would not exacerbate the problem and the increased passive surveillance from legitimate use of the route could be a benefit in that respect. Signage provided would include that relating to dog fouling, anti-social use, littering and off-road biking.
21. The Association requests a redraft of the fencing proposals to effectively manage and graze this section of the common. Whilst no details are provided, this could be interpreted as being the total enclosure of part of the common. If so, the Council's ecologist has expressed concern that the resultant grazing levels and land management could affect an important area of upland habitat. Be that as it may, I can only determine the application on the basis of the proposals submitted which do not include such provision.
22. The proposed fencing immediately adjacent to the B4248 is intended to reduce access by motorbikes and quad bikes, reduce incidents of fly tipping and reduce off highway pull-ins and parking,<sup>6</sup> rather than to facilitate grazing. The bulk of the common lies on the other side of the B4248 and an existing continuous stockproof fence, set back from the road, prevents animals grazing the common on that side of the road from straying. This already prevents both parts of the common from being grazed together. In these circumstances, the proposed fencing would not impact further on

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<sup>6</sup> See further comment on the justification under the Landscape sub-heading

commoners' abilities to graze the part of the common to the south west of the road, should they chose to do so.

23. I am, therefore, satisfied that the proposed works would not interfere with the ability of commoners and other rights holders to exercise their rights as compared to the current situation.

The interests of the neighbourhood

24. This is usually interpreted as relating to the way the common land is used by local people. When the works would be carried out there would be a limited impact on local people's ability to use the area for air and exercise. Nevertheless, this would only be for a maximum period of 7 months after which the provision of a firm walking and cycling route would considerably enhance local people's ability to use the common for that purpose in the long term. I, therefore, consider that the works would positively benefit the neighbourhood.

The public interest

25. Nature conservation, the conservation of the landscape, the protection of public rights of access and the protection of archaeological remains and features of historic interest are all capable of being material planning considerations. I note that the proposal benefits from planning permission (Ref: 11/P/00559). It would be reasonable to assume that the local planning authority did not consider that any impacts in relation to these considerations were sufficient to refuse planning permission. I also note that the planning permission includes conditions relating to prior approval of external finishes and surfaces, a Great Crested Newt Mitigation Strategy, and the removal and restoration of the temporary construction access and associated works, which are of particular relevance to some of the above public interests.
26. However, what may be perfectly reasonable from a planning perspective may, or could, have an adverse impact on the traditional use of the land as a common and I will consider each of these public interests individually.

*Nature conservation*

27. The Extended Phase I Ecological Study shows the area to have a rich matrix of habitats on disturbed and undisturbed ground including exposed shales, semi improved grassland, marsh and acid grassland, heather banks and drainage channels which support a range of valuable and distinct flora and fauna. As part of the planning process mitigation plans have been developed to reduce the ecological impact, to protect fauna and flora during construction and to provide post project monitoring and evaluation to ensure grass and habitat establishment. Natural Resources Wales was consulted and contributed to the mitigation strategies for Otters and Newts. On the basis of the evidence before me, I am of the view that the proposed works would not have a significant impact on the public interest in nature conservation.

*Landscape*

28. The temporary works would have some impact on the appearance of the landscape but would only be in place for a relatively short period. Insofar as the route itself is concerned, the soil filled plastic mesh would grass over fairly quickly and the boardwalk sections would allow grass growth between the individual planks, such that it would not be obtrusive in the landscape with the net reduction in hard surfacing improving the condition and appearance of the common. The fairly short length of timber post and rail fence on the exposed edge of Section 3 would be seen against the

side of the tip and neither this nor the small bridges proposed would be unduly prominent features. Furthermore, the route would be located between the B4248 and a disused railway further to the south west. As such, it would be a transport route located in a corridor characterised by existing and historic transport features.

29. Nonetheless, the proposed fencing adjacent to the B4248, which is described on the relevant drawing as creating a visual barrier, would harm this part of the common's open and unenclosed nature which contributes to its special qualities. Whilst it is stated that there was a fence adjacent to the road in the past, based on what I saw at the site visit, this appears to have been limited to the north western end. The purpose of the fencing is to reduce access by motorbikes and quad bikes, reduce incidents of fly tipping and reduce off highway pull-ins and parking. Nevertheless, no justification is given for the use of a stock proof design of fencing and whilst it is stated that it would be non-enclosing, no details in that respect are provided and the drawings show it as being continuous.
30. In my view, fly tipping is more likely to take place from locations where a vehicle can be parked off the highway such that there is no need to fence off the entire length to deter fly-tipping. There is no evidence that the applicant has considered other less obtrusive and more localised means of preventing parking/access at the limited locations where this currently does or could take place, apart from bollards. Clearly there would be a need to prevent access by motorbikes and quad bikes at the termination points. The proposal does that through the stone walling, barriers and gates at both ends as well as the relatively short lengths of fencing adjacent to Whistle Road. I am satisfied that such works at the south eastern end would not have an unacceptable landscape impact.<sup>7</sup>

*Public rights of access*

31. The works would prevent access to a very small area of the common while they are being undertaken, but this would only be for a maximum period of 7 months after which the land would be accessible once again. I have already noted that the route would considerably enhance local people's ability to use the common for air and exercise in the long term and the same would apply to the public in general. As a result, the proposal would positively benefit the public right of access.

*Archaeological remains and features of historic interest*

32. Cadw appears to mistakenly believe that the site lies inside the Registered Blaenavon Landscape of Outstanding Historic Interest, but in any event it does not object to the proposal. I have no evidence to suggest that known archaeological remains and features of historic interest would be affected by it.

*Other relevant matters*

33. Torfaen has one of the lowest levels of physical activity in Wales and this is linked to increasing levels of obesity. The scheme would encourage a modal shift to more sustainable means of transport and increase access to local physical activity opportunities thereby contributing towards improving the health and wellbeing of the community. It would also provide an additional facility for visitors to the area and an opportunity to interpret and explain its upland ecology and industrial archaeology. These are all in the wider public interest.

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<sup>7</sup> The north western entrance would not be on the common.

## **Conclusion**

34. The proposed walking and cycling route would fill a gap in the existing provision, utilizing a route free of vehicular traffic, thereby considerably enhancing people's ability to use the common for recreation and access and providing wider public benefits. Insofar as the walking and cycling provision is concerned, I have identified no unacceptable impacts.
35. However, the fencing adjacent to the B4248 would have an adverse impact on the common's open and unenclosed nature. The justification provided is not sufficient to outweigh this and I am of the opinion that the walking and cycling route could be implemented without such provision. Without prejudice to the outcome of any such application, it would be open to the applicant to submit a further standalone application for alternative works adjacent to the B4248 to reduce access by motorbikes and quad bikes, reduce incidents of fly tipping and reduce off highway pull-ins and parking, if it so chose.
36. Having considered the information before me and the issues to which I am required to have regard under Section 39 of the *Commons Act 2006*, I am satisfied that it would be expedient for me to grant the consent for which this application was made in part subject to the conditions set out in paragraph 1.

*E Jones*

Inspector