



Penderfyniad ar Gais

Ymweliad safle a wnaed ar 05/11/15

gan Janine Townsley LLB (Hons)

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 17/12/15

Application Decision

Site visit made on 05/11/15

by Janine Townsley LLB (Hons)

an Inspector appointed by the Welsh Ministers

Date: 17/12/15

Application Ref: APP/Y6930/X/15/516124

Site address: Cefn Gwrhyd Common, Neath Port Talbot.

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

- The application dated 17 July 2015 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 Cefn Gwrhyd Common (CL25B).
 - The application is made by Mr Daniel McCallum of Awel Aman Tawe.
 - The proposed works consist of the construction of access tracks and the erection of a platform and passing places.
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Decision

1. Consent is granted for the construction of access tracks and the erection of a platform and passing places at Cefn Gwrhyd Common, Neath Port Talbot in accordance with the application dated 17 July 2015 and the plans submitted with it subject to the following conditions:
 - (i) The works shall begin no later than 5 years from 2 September 2015 (the date of planning permission Ref: P2014/0402);
 - (ii) The works shall be carried out in accordance with the details contained in the application and be completed not later than 12 months from the date of their commencement.

Preliminary Matters

2. I have had regard to the Welsh Government's Common Land Consents Guidance, August 2014, in determining this application under section 38 of the 2006 Act, which has been published for the guidance of both the Planning Inspectorate and applicants.
 3. CL25B straddles the communities of Gwaun Cae Gurwen, Cwmllynfell and Pontardawe. The site falls within Neath Port Talbot County Borough Council who are the Commons Registration Authority and is owned by the Somerset Trust. CL25A adjoins CL25B.
 4. Cefn Gwrhyd Common is registered as common land (CL25B) and amounts to some 341.2 hectares. Rights of pasture for the grazing of cattle, horses and sheep are registered for the common. The public have a right of access to the common for air and exercise under section 193 of the *Law of Property Act 1925*. The common is not subject to an Order of Limitation made under section 193 or a Scheme of Management made under the *Commons Act 1899*.
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The Application

5. On 6 March 2013 consent was granted under section 194 of the *Law of Property Act 1925* for works to be carried out on the common in relation to a proposal for the placement of a wind turbine and hard standing, together with temporary fencing during the construction period, the construction and/or improvement of 2.45 km of access track, 4.5 metres wide with a crushed stone surface on the common and the widening of the existing tarmac road to 4.5 metres for a length of 400 metres using crushed stone. The area of land to be affected by that scheme amounts to 11120 m² with 5190m² land being lost during the operational phase of the wind farm. There was a concurrent grant of an application made under section 147 of the *Inclosure Act 1845* for 8 626m² of exchange land.
6. This application seeks permission for works in addition to those previously consented for the widening of the access tracks to up to 6 metres in specific locations (at corners and junctions) to enable the delivery of cranes and large loads during the construction phase. This is required in particular at Perthigywnion Farm. Widening is also required to provide three passing places. The works also comprise the temporary construction of a working area of up to 3.5 metres to construct the access tracks and the erection platform. The width of the widened access tracks will be dependent upon soil conditions and drainage requirements and whilst an allowance of up to 1.75 m to either side of the tracks is sought, the application states that it is likely that 0.75m either side of the consented track will be sufficient with a resultant total width of 6 metres. The application, however seeks a total construction width of 8 metres to facilitate the construction of 4.5 metre wide tracks.
7. The works also comprise the provision of a turning head near the turbine erection platform, a new spur off the access track to another already consented wind turbine (referred to as T2) which is located on private land.
8. The application states that where tracks need to remain as permanent features to service the completed development, the edge of the tracks will be re-vegetated to allow the width of the tracks to reduce to 3 metres although stone will not be removed from these areas to allow for access should a major component need replacing.
9. The procedures to be followed for this application are set out in The Works on Common Land, etc. (Procedure) (Wales) Regulations 2012. The Regulations require that the application be publicised and that an opportunity be provided for representations to be submitted to the determining authority by any person. In accordance with these requirements, notices were posted on site and maintained for the required period of time. A notice of the proposal was published in the South Wales Guardian on 22 July 2015. Additionally, letters were set to the owner of the land, The Commoners Association, Neath Port Talbot County Borough Council and four local community Councils informally notifying of the proposed works. All known commoners have been written to, as has Natural Resources Wales, Cadw and the Open Spaces Society. The applicant has also offered to give a presentation outlining the proposed works.
10. I am satisfied 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 an opportunity to comment on the application.

Representations

11. Over one hundred individual letters of objection were received in relation to the application, and a further five letters of objection were received following the response of the applicants. The Open Spaces Society made no comments and a letter received from the Pontardawe Community Council accepted the proposals provided the works remain within the stated criteria, that restoration is monitored correctly and the organisation maintain the restored paths adequately.

Summary of Objections

12. A number of the objection letters covered issues such as the feasibility and efficiency of wind energy, comparisons with other sources of renewable energy, the suitability of the exchange land offered at the time of the section 194 application and the safety of the junction between the access road and the A474. These are concerns which do not relate to the works proposed under this application.
13. A number of the objection letters referred to the visual impact of the access tracks on the common including the impact on tourism, the possible disruption of farming including the effect on hefted flocks resulting in animal welfare issues, the impact on access to the common, the effect on horse riders and the effect on the flora and fauna of the common.
14. Concerns were also raised that improvements to the access tracks would lead to increased use and consequential anti-social behaviour such as fly tipping and the use of scrambler bikes.
15. Some of the letters also expressed concern that the temporary widening of the tracks would disturb the soil structure and that the proposal to allow these sections to re-vegetate would likely result in the growth of rushes as opposed to native vegetation. Concern was also expressed about the long term visual impact of rushes on the common. In this regard, I have been referred to a previous appeal decision¹. The letter of objection stated the refusal of that application was as a result of a finding that re-vegetation of an access track with or without intervention would have been unlikely to have introduced a vegetative growth typical of the surrounding common. The objection concluded that even where the works were considered to be temporary, the permanent effect of them would be visible for longer than the intended life of the development.
16. The concerns of the objectors listed in paragraphs 13-15 above will be explored within the relevant sections below.

The Statutory Requirements

17. In determining this application for consent, I am required by section 39 of the 2006 Act to have regard to (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.

¹ APP/B6855/X/2013/515872

18. 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

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

19. The main impact of the proposal on those with grazing rights would be during the construction phase of the development. Whilst there is no fencing proposed, the works to widen the access track include sections either side of the track (up to 3.5 metres either side) being required during the works.
20. The impact of these works is likely to be greatest on hefted flocks. I note however that the application area is only used by one such flock and the owner consents to the application.
21. Whilst the application states that only limited grazing rights are exercised in the area, the works would result in some impact on grazing. Due to the temporary nature of the works proposed by this application the loss of grazing during the construction phase would be negligible. I note that the additional construction widths of the paths would be allowed to re-vegetate following the construction phase and whilst this would extend the period when grazing would be unavailable to these areas, the extent of land affected being a strip either side of an already consented track means that the interference with grazing would be limited. Further, I have no reason to believe that the applicant would not maintain good communications with the graziers to allow the scheme and animal movements to proceed without conflict. Overall therefore I am satisfied that the proposed works would not unacceptably interfere with the interests of those occupying or having rights over the land.

The interests of the neighbourhood

22. This is usually interpreted as relating to the way the common land is used by local people. Objections received relate to the potential for anti-social behaviour since improvements to the tracks could result in improved accessibility. However, the applicant has addressed this concern with measures included as part of the section 194 application. These include the provision of ditches, two gates and temporary fencing to reduce unauthorised vehicle movements on the common. There is no evidence that these measures which are already consented would not address these concerns.
23. During construction there would be some limited impact on local people's use of the area. However, this would only be for a period of 12 months after which the common would be re-instated. I therefore consider that the works would not unacceptably interfere with local people's use of the land.
24. Giving a somewhat broader interpretation to the interests of the neighbourhood, the proposed development is a community project and all proceeds will be reinvested in the local community and that would clearly be in the interests of 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 Neath Port Talbot County Borough Council granted planning permission for the scheme on 7 May 2009 (Ref: P2007/1413) and amended by means of a section 73 application which was granted on 21 October 2014 (Ref: P2014/0402). It is reasonable to assume that,

before granting planning permission, the Council carried out a thorough assessment of the development in light of the development plan and other considerations including its statutory duties. It clearly did not consider that the development would have an unacceptable impact on any of the matters listed above and I have neither seen nor read anything to lead me to a different view.

Nature conservation

26. Whilst reference is made within one of the objection letters to the need to protect the flora and fauna, no specific species have been identified as being at risk as a consequence of the works proposed under this application.

Landscape

27. The site occupies an elevated position with far reaching views across the common and adjacent common, to the nearby settlements and to the Brecon Beacons National Park.
28. The proposals include the temporary widening of three sections of the access track to provide passing places, and the temporary widening of a section of consented track to allow larger vehicles to manoeuvre during the construction phase and the creation of two sections of track over existing paths. In relation to the working area either side of the track, the applicant's methodology states that due to the rate of construction there will be no more than 100 metres of track excavated to the full construction width at any one time. The methodology also provides for rapid replacement of each section of removed turves. I conclude that following construction and a period of re-vegetation, the tracks would still resemble farm tracks already in place on the common and therefore, would not have a significant adverse effect on the landscape of the common as a whole. Where the proposed works involve the widening of an existing highway, the impact on the landscape would be less marked.
29. Some objections express concern that re-vegetation either side of the tracks will result in the growth of rushes. Concerns relate to the visual impact of the rushes on the landscape of the common as opposed to the impact on grazing by the loss of grazing quality grass. In this respect, the objection contrasts with that expressed in the previous application decision which was refused for a number of reasons². In the present case, the concerns of objectors do not appear to be based upon experience and there is nothing within the evidence before me to suggest the applicant's track reinstatement method statement is flawed. Their response to the objections noted rushes already on the common in the vicinity of the proposed works and this accords with my observations on the site visit.
30. Overall, I conclude that whilst there would be some impact on the landscape of the common, this would be limited to small area of the common at any one time, and would be temporary in nature.

Public rights of access

31. I note comments from the British Horse Society about the adequacy of the applicant's consultation of riders in the locality.
32. The works would inevitably prevent access to the area of the common for horse riders and those on foot during the construction phase, but this would only be for a

² APP/B6855/X/2013/515872

temporary period of up to 12 months after which access would be restored. Whilst the works subject to this application include some permanent features, the nature of these would not detrimentally affect access, rather, to some degree, the works to the route would improve access.

Archaeological remains and features of historic interest

33. I have no evidence to suggest that known archaeological remains and features of historic interest would be affected by the proposal.

Other matters of public interest

34. The national need for renewable energy is, in my view, also a matter of broader public interest. The scheme's contribution to that need is a factor which weighs in its favour.

Conclusion

35. The Welsh Government³ advises that the expectation that works proposed in relation to common land which do not benefit the common, but confer some wider benefit on the local community are more likely to be successful under section 16 of the Act, so that an exchange of land is proposed and can be taken into account. I note the advice that consent to such works under section 38 will rarely be granted. Exceptionally, however, consent may be appropriate where the works are of temporary duration or where the works will be installed underground, and the proposals ensure the full restoration of the land affected, and the works confer a public benefit. I am satisfied that the application works accord with this policy objective since they will not materially harm the objectives set out in paragraph 8 above and will confer a wider public benefit by facilitating the generation of sustainable energy.

36. For the reasons given above, I allow the application and grant consent for the works identified in sections 14 and 15 of the application form, subject to the conditions specified at paragraph 1 of this decision.

Janine Townsley

Inspector

³ In "Common Land Consents Guidance" – paragraph 4.12
