

Adran yr Amgylchedd, Cynaliadwyedd a Thai  
Department for Environment, Sustainability and Housing



Llywodraeth Cynulliad Cymru  
Welsh Assembly Government

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CF23 8RS

Eich cyf : Your ref  
Ein cyf : Our ref A- - PP 121-07-qA739201

Dyddiad : Date 10 June 2009

Dear Sir/Madam

**TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED):  
SECTION 77  
APPLICATION BY CAMBRIAN RENEWABLE ENERGY LIMITED**

**FOR THE ERECTION OF 16 WIND TURBINE GENERATORS, AN ANEMOMETER  
MAST, ELECTRICAL AND CONTROL BUILDING, ELECTRICAL CONNECTIONS,  
ACCESS ROADS AND TEMPORARY CONSTRUCTION COMPOUND AND BORROW  
PITS ON LAND AT MYNYDD Y BETWS, AMMANFORD, CARMARTHESHIRE**

**INCLOSURE ACT 1845  
SECTION 147  
APPLICATION BY BETWYS COMMONS HOLDINGS LIMITED  
ORDER FOR EXCHANGE OF COMMON LAND**

**LAW OF PROPERTY ACT 1925  
SECTION 194  
APPLICATION BY CAMBRIAN RENEWABLE ENERGY LIMITED  
WORKS ON COMMON LAND**

**MYNYDD Y BETWS, AMMANFORD,  
CARMARTHESHIRE**

1. Consideration has been given to the report of the Inspector Mr Stuart B Wild MRTPI MCIM who held a local inquiry into the above applications (main report). Consideration has also been given to the Inspector's addendum report which dealt with the impact of the scheme itself as distinct from its cumulative impact with Mynydd Y Gwair, with particular reference to landscape and visual effects and the effect on Scheduled Ancient Monuments, the policies relevant to the development and the reasons for the attachment of the conditions recommended by him.



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## Planning Application

2. On 5 October 2007 the Minister for Environment, Sustainability and Housing, one of the Welsh Ministers, directed under Section 77 of the Town and Country Planning Act 1990 (the 1990 Act) that your application be referred to the Welsh Ministers rather than be determined by the local planning authority. Under the transitional provisions of the Government of Wales Act 2006 the power to determine applications called in under Section 77 of the 1990 Act has been transferred to the Welsh Ministers and this function has been allocated to the Minister for Environment, Sustainability and Housing (the Minister).

3. The Inspector's conclusions are set out at paragraphs 47 - 92 of his main report, a copy of which is enclosed, and those paragraphs are reproduced at Annex A to this letter. His conclusions on the addendum report are set out at paragraphs 1-17 of that report, a copy of which is also enclosed. The Inspector recommended that outline planning permission be granted, subject to planning conditions. Subject to the comments below the Minister agrees with the Inspector's conclusions and accepts his recommendation that planning permission be granted subject to conditions.

4. The starting point for the consideration of the application is Section 38 of the Planning and Compensation Act 2004 which provides that if regard is to be had to the development plan for the purposes of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.

5. The Inspector dealt with the development plan policies at paragraph 8 of his main report and paragraphs 5 -16 of his addendum report. The Minister accepts, for the reasons given by the Inspector, that the development plan policies most relevant to this proposal are policies UT6 and BE1 of the Carmarthenshire Unitary Development Plan (UDP), adopted in July 2006. She also accepts his view that the main area of conflict between the proposal and the development plan relates to the general support for windfarm development in policy UT6, taking into account the various criteria, and the objectives of protecting the setting of scheduled ancient monuments in UDP policy BE1.

6. The Minister has noted that an issue was raised at the inquiry about the standard applied in UDP BE1, which requires no adverse impact on the preservation, archaeological potential, amenity, historic value or the setting of sites of a scheduled ancient monument or archaeological remains considered of national importance, and UDP UT6, which refers to no significant adverse impact on the quality of the local environment, or to sites of nature conservation, historical or archaeological importance, agricultural value, areas designated for their landscape value, or to species of nature conservation and ecological value. It was argued on your behalf that UDP UT6 should be taken as the lead policy being technology specific whereas it was argued on behalf of the Countryside Council for Wales and Cadw that both were specific policies with the tests in both, including the higher standard BE1, needing to be taken into account. The policies are both part of the UDP and the Minister sees no reason to conclude that either should be regarded as the lead policy.

7. The Minister has gone on to consider UDP policies BE1 and UT6 (i) which she considers are particularly relevant to the consideration of this application. She accepts the Inspector's conclusion that the proposal would in some limited cases adversely affect the setting of ancient monuments in the area and she considers that, in this respect, it would be contrary to UDP policy BE1. The Minister has noted the Inspector's comment at paragraph 8 of his addendum report that, by its very nature, a wind farm requires a location likely to conflict with the objectives of UDP policy UT6 criteria (i) and (ii). However, the Minister also accepts (having had regard to the Inspector's appraisal at paragraph 73-77 of his main

report) that the effect of the proposal would not be significantly adverse in terms of UDP policy UT6 (i).

8. Subject to the comments in paragraph 7 above the Minister accepts the Inspector's conclusions on the development plan policies identified by him in paragraphs 5 - 15 of his addendum report which she agrees are relevant to the consideration of this proposal. Having had regard to the conclusions in the Inspector's main report, the Minister agrees with his conclusions in the addendum report, for the reasons given in paragraphs 6 -15 of that report, on the extent to which the proposal is in accordance with those policies. She also agrees with the Inspector's conclusions on those instances where harm to a policy would be overcome by the recommended conditions, and those where harm would need to be balanced in reaching a decision on the application.

9. In the light of the appraisal at paragraph 7 above the Minister considers that the development plan policies cannot be regarded as giving a clear steer on the application and that therefore it should be considered on its own merits having regard to all material considerations.

10. Turning to the references in the Inspector's reports to the proposed windfarm at Mynydd Y Gwair, the Minister accepts that where there is an undetermined application near the subject application site then the undetermined application is a material consideration. However, as that application has yet to be determined and, even if it were to be permitted there is no certainty that it will be constructed, the Minister does not consider that it can be accorded significant weight in the consideration of this application. She has noted that in his addendum report the Inspector confirms that where reference is made in his original report to the Mynydd Y Gwair wind farm it is in respect of considering the possible cumulative impact if both schemes were built. However, having had regard to all the evidence presented to the inquiry, including both Inspector's reports, the Minister accepts that the Mynydd Y Betws application on its own would not result in an unacceptable harm to the setting of the Penlle'r Castell Ancient Monument. Similarly, she also accepts that the Mynydd Y Betws application on its own would not have an unacceptable impact on the view from Castell Carreg Cennen or unacceptably harmful visual and landscape effects to viewpoints from the National Park boundary and along the valley floor to the north of Mynydd Y Betws because of the relatively small size of the turbines within the large scale of the surrounding landscape.

11. The Minister has noted the Inspector's references, in relation to the effect of the proposal on the setting of Scheduled Ancient Monuments, to the turbines being, if allowed, of a temporary nature with a permission for 25 years. The Minister considers that the permission, although for 25 years and as such not permanent, is nevertheless for a significant period and, in consequence, should be given little weight.

12. The Minister has noted the Inspector's comments at paragraph 58 of his main report about the number of other potentially suitable windfarm sites where development could be prevented by the presence of similar monuments such as on the application site. However, it is a long established principle that each site should be considered on its own merits.

13. The Minister has also noted the Inspector's comments at paragraph 60 of his main report about how many people might be affected by the change of view from Penlle'r Castle. While she considers it acceptable to take into account the numbers of people who would be affected by a given issue the Minister does not consider that, in this particular instance involving a scheduled monument, this is a consideration which should be given significant weight.

Committee examined the application and whether councillors might be tempted to avoid unpopular decisions. However, she has not had regard to these matters as material considerations in her consideration of the application. As regards the Councillor's remark, recorded in paragraph 90, about a factor which influenced his decision, the Minister has, in reaching her decision on the application, had regard to the Welsh Assembly Government policy supporting the need to combat climate change and increase the production of renewable energy.

15. With regard to national policy, the site is outside a Strategic Search Area (SSA), the boundary of which has not been formally redefined by the local planning authority, where Technical Advice Note (TAN) 8 indicates that most areas should remain free of large wind power schemes. The Minister has noted the Inspector's comments about whether it would be appropriate for Carmarthenshire County Council to adopt the ARUP refinement study as some form of supplementary Planning Guidance, but considers that this is a matter for the local planning authority to consider. However, the Minister, having had regard to the Inspector's assessment and all the evidence submitted to the inquiry, has concluded that the site can be considered as immediately adjacent to the SSA boundary where it is indicated, at paragraph 8.4 of Annex D to TAN 8, that significant change in landscape character is acceptable. Although placed towards the end of the suitable sites in the ARUP review published in December 2006 the Minister considers that the development of this site, which she notes has the ability to link directly into the national grid, will contribute towards the 2010 indicative targets for Wales.

16. Subject to the above comments the Minister agrees with the Inspector's conclusions. As previously indicated the Minister considers that development plan policies cannot be regarded as giving a clear steer on the application and that therefore it should be considered on its own merits having regard to all material considerations. The Minister accepts the Inspector's assessments of the degree of harm that would be caused by the development in terms of ancient monuments, habitat, landscape and the other matters raised at the inquiry but on balance concludes that the contribution the proposal would make to the provision of electricity from renewable sources would outweigh the harm that would be caused by the development.

17. The Inspector recommended that planning permission be granted subject to the conditions appended as Annex 1 to his main report and has provided a list of reasons for those conditions with his addendum report. With regard to recommended condition 21 (n) the Minister has had regard to the advice of Circular 35/95 that planning conditions are not an appropriate means of controlling the right of passage over public highways. Nor does the Minister consider it appropriate for a condition to require a scheme for off-site highways works. She therefore does not consider that condition 21 (n) recommended by the Inspector should be imposed. The Minister proposes to attach in its place a requirement for a scheme for the provision of site notices to encourage drivers to follow preferred routes and where appropriate indicate particular entrances to (or exits from) the site. The Minister does not propose to impose condition 24 recommended by the Inspector as she does not consider that it is possible to require the dedication of land as "access land" by condition. Subject to these and other minor amendments the Minister considers that the conditions recommended by the Inspector, listed at Annex 1 to his report, should be imposed for the reasons given by him. The Minister agrees with the Inspector, for the reasons given by him, that turbine 12 and its associated access track should be removed from the permission by condition as this part of the development would result in significant damage to the blanket bog habitat.

18. The Minister considers that the matters covered by the Section 106 Planning Obligation by Unilateral Undertaking appended to the Inspector's main report at document 4 are necessary to make the development acceptable in planning terms. A re-executed Undertaking, correcting minor technical deficiencies noted by Welsh Assembly Government Division Officials, was submitted on behalf of Cambrian Renewable Energy Limited after the Inspector had submitted his reports. The Minister has noted that the planning obligations contained in the revised Undertaking were unchanged.

19. The Minister has taken into account the environmental information as defined by the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 in reaching her decision on this application.

20. In reaching her decision the Minister has had regard to the written representation by Friends of the Earth Cymru which was submitted to the Minister after the inquiry had closed. The representation included reference to the Tyndall Centre paper 'Reframing the Climate Change Challenge in the light of Post-2000 Emission Trends' and the EU's Renewable Energy Directive and the contribution that Mynydd Y Betws would make towards reducing carbon dioxide emissions from electricity generation in Wales. The Minister accepts the Inspector's conclusion, set out in his main report, that there is little doubt that the Mynydd Y Betws site could make a positive contribution towards meeting the 2010 targets and she does not consider that the representation raises any new evidence or new matter of fact which would materially affect her decision on the application.

### **Section 147 application**

21. Before an Order can be made under the provisions of Section 147 the Welsh Ministers must be satisfied that the proposed exchange of land would be beneficial to the owners of the respective lands and that its terms are just and reasonable. As common land is involved in the proposed exchange, in considering whether those criteria are met the Welsh Ministers will also have regard to any representations about its effect on the interests of the owners of any common rights over the land, or incumbrances on the land and on the general public.

22. In the light of the above the Minister disagrees with the Inspector and takes the view that issues such as visual amenity etc and how they affect users of the common – both commoners and the public - are relevant to the consideration of this application and must be considered apart from the planning application.

23. There is nothing before the Minister to lead her to the conclusion that the exchange of land would not be beneficial to the owners of the respective lands. As to the interests of those with rights of common she is satisfied, from the evidence before her, that they would not be adversely affected to any unacceptable degree by the exchange of land.

24. The Minister has had regard to the effect that the exchange of land would have on the use of the common by members of the public and, in that respect, she considers that the comments made by the Inspector in paragraph 80 of his main report are as relevant to this issue as they are to the planning application. The Minister has noted the objections to the proposed exchange from the Open Spaces Society and other organisations and members of the public but she agrees with the Inspector's comments and considers that the exchange of land would not prevent the reasonable enjoyment of the area by members of the public.

25. In the light of the above comments the Minister considers the proposed exchange of land would be beneficial to the owners of the land and its terms are just and reasonable.

26. In considering applications for consent under section 194, the Minister must give regard to "the benefit of the neighbourhood" in the general context of the enjoyment of the land as a place for air and exercise as it exists before any proposals are carried out, and to "the private interests" being, amongst other things, the interests of the soil owner, any commoners, tenants, licensees or other parties with a legal interest in the land. The interests of the public are also taken into consideration as are any objections or representations and any other relevant factors.

27. Furthermore, the access referred to in section 194 is considered to be the access of all parties with legal rights over the land. It also includes the access of animals to the land for grazing and so, if any of the land would be inclosed by any proposed buildings, fencing or works, so that, for example, animals which normally graze on that part of the Common are no longer able to, then it can be said that access would be prevented or impeded.

28. References have been made to fencing being constructed between Mynydd y Betws Common and Mynydd y Gwair Common but the Minister offers no comment on the merits of such a proposal as it is not a matter before her for consideration and would need to be the subject of a separate application under section 194.

29. In this case the soil owner supports the proposed works, as do the Betws Commoners' Association, who have indicated that 97 of the 101 registered graziers are supportive of the proposed works. The Minister is satisfied that reasonable attempts have been made to ascertain the views of the private interests in the land and no additional comments have been received in that respect or from any of the registered commoners. While the Minister does not consider that these factors are sufficient reasons in themselves, either individually or together, to justify granting consent under section 194, they are nevertheless considerations which must be taken into account in the determination of the application.

30. There are objections to the proposed works from the Open Spaces Society and a number of organisations and members of the public. The Minister accepts that the proposed works would prevent access to the land concerned by animals for grazing and the public for air and exercise but, having regard to her comments in the previous paragraph and in paragraph 24 above (which she also considers to be relevant to this application) she considers there is nothing before her to lead her to the conclusion that the inclosure of this particular part of the Common would adversely affect the use or management of the Common as an open space or prevent or impede access to the Common to an unacceptable degree.

31. In the light of the above comments the Minister takes the view that it is expedient to grant consent to carry out the works proposed.

#### FORMAL DECISION

32. Subject to the comments above the Minister agrees with the Inspector's conclusions and accepts his recommendations. Accordingly the Minister hereby

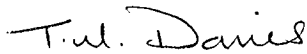
- (i) grants outline planning permission in respect of planning application E/10446 dated 17 May 2005 subject to the conditions in Annex B to this letter;
- (ii) agrees in principle to the exchange of land detailed in the application made under section 147 of the Inclosure Act 1845 and dated 29 August 2007. A

further letter will be sent to you about the process for the making of the necessary Order; and

- (iii) grants consent under section 194 of the Law of Property Act 1925 for the erection of temporary fencing around various construction sites, permanent fencing around the substation, the permanent erection of 15 wind turbines, an anemometer mast and substation building and construction of associated works as indicated in the application dated 29 August 2007 and amended at the inquiry (by the deletion of turbine 12 and associated works from the scope of the application).

33. This letter, a copy of which has been sent to the Head of Planning and to the Commons Registration Officer of Carmarthenshire County Council, and to those persons and organisations who appeared at the inquiry, does not convey any approval or consent which may be required under any enactment, bye law, order or regulation other than section 57 of the Town and Country Planning Act 1990 and section 194 of the Law of Property Act 1925.

Yours faithfully



**Teresa Davies**  
Head of Decisions Branch  
Planning Division

Signed under authority of the Welsh Ministers

Enc: Leaflets "H" and "HC"

