

Carl Sargeant AC / AM
Y Gweinidog Tai ac Adfywio
Minister for Housing and Regeneration



Llywodraeth Cymru
Welsh Government

Ein Cyf/Our ref: qA1140739
Eich Cyf/Your ref: CY02/34947.22

Mrs C Tracey
Burgess Salmon LLP
One Glass Wharf
Bristol
BS2 0ZX

6 May 2014

Dear Mrs Tracey

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL BY RES UK & IRELAND LTD.
WIND FARM COMPRISING 21 WIND TURBINES AND ASSOCIATED DEVELOPMENT
AT LAND SURROUNDING BRYN LLYWELYN, LLANLLWNI, CARMARTHENSHIRE,
SA39 9ED.**

**COMMONS ACT 2006 – SECTION 16
APPLICATION BY THE CROWN ESTATE
PROPOSED EXCHANGE OF LAND AT MYNYDD LLANLLWNI COMMON (CL3) AND
MYNYDD LLANFIHANGEL RHOS-Y-CORN COMMON (CL4).**

**COMMONS ACT 2006 - SECTION 38
APPLICATION BY RES UK & IRELAND LTD.
PROPOSED WORKS ON COMMON LAND AT MYNYDD LLANLLWNI COMMON (CL3)
AND MYNYDD LLANFIHANGEL RHOS-Y-CORN COMMON (CL4).**

1. Consideration has been given to the report of the Inspector, Emyr Jones BSc (Hons) CEng MICE MCMI, who held a public inquiry into an:
 - i. appeal under section 78 of the Town and Country Planning Act 1990 for 21 wind turbines (three bladed horizontal axis) to a maximum blade tip height of 127 metres with associated electricity transformers, underground cabling, access tracks, road widening works, crane hardstandings, control buildings, substation compound, communications mast and anemometry mast for a period of 25 years; temporary works including construction, compound, laydown area, rotor assembly

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

Wedi'i argraffu ar bapur wedi'i ailgylchu (100%)

English Enquiry Line 0845 010 3300
Llinell Ymholiadau Cymraeg 0845 010 4400
Correspondence: Carl.Sargeant@wales.gsi.gov.uk
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pads, turning heads, welfare facilities and eight guyed anemometry masts on land surrounding Bryn Llywelyn, Llanllwni, Pencader, SA39 9ED;

- ii. application under section 16 of the Commons Act 2006 for the deregistration and exchange of land at Mynydd Llanllwni and Mynydd Llanfihangel Rhos-y-Corn Commons; and
 - iii. application under section 38 of the Commons Act 2006 to carry out works on Mynydd Llanllwni and Mynydd Llanfihangel Rhos-y-Corn Commons.
2. On 18 December 2012 you, on behalf of your client Res UK & Ireland Ltd., lodged a section 78 appeal against the refusal of Carmarthenshire County Council, on 29 November 2010, to grant planning permission for a wind farm (48MW) comprising 21 wind turbines and associated development at land surrounding Bryn Llywelyn, Llanllwni, Carmarthenshire.
3. On the 4 February 2013 the Crown Estate and you, on behalf of your client, submitted to the Welsh Ministers, under separate cover from your section 78 appeal, two applications submitted under sections 16 and 38 of the Commons Act 2006.
4. On 27 March 2013 a direction was issued by the Planning Inspectorate under the authority of the former Minister for Environment and Sustainable Development that the section 78 appeal should be determined by the Welsh Ministers rather than by a Planning Inspector. The reason for the direction was because the most efficient and effective way of determining the appeal was for it to be decided in conjunction with the two related applications under the commons legislation. An Inspector has no jurisdiction to decide an application under section 16 of the Commons Act 2006 and thus in accordance with the recovery of appeals criteria listed in paragraph 3.11.2 of Planning Policy Wales (Edition 5, November 2012) [now carried forward in Edition 6, February 2014] the appeal was recovered along with the two common land applications.
5. Under the provisions of the Government of Wales Act 2006 the power to determine appeals made under section 78 of the Town and Country Planning Act 1990 ("the 1990 Act") and applications under section 16 and section 38 of the Commons Act 2006 have been transferred to the Welsh Ministers. In this case, these powers are being exercised by me, the Minister for Housing and Regeneration.
6. The appeal and common land applications proceeded to a joint public inquiry, which was dealt with by an independent Planning Inspector. The inquiry sat for 13 days on 15-18 October, 22-25 October, 29 October-1 November and 7 November 2013. Accompanied site visits were made on 24 October and 8 November and unaccompanied visits were made on 8 May, 7 November and 8 November 2013.
7. The Inspector's conclusions of the inquiry are set out at paragraphs 489-586 of his report, a copy of which is enclosed. The Inspector recommended that the:
 - i. appeal be dismissed and planning permission should not be granted;
 - ii. application under section 16 should be refused; and
 - iii. application under section 38 should be refused.

8. The Inspector considered that the main considerations in this appeal, and those which were considered at the inquiry, are:

- the effect of the proposal on the character of the site and the surrounding rural area which is designated as a Special Landscape Area
- the effect of the proposal on the living conditions of neighbouring residential occupiers and the enjoyment of those using the site and surrounding area for recreation/amenity purposes with particular regard to visual impact
- the effect of the proposal on the setting of Scheduled Ancient Monuments
- the effects of the proposal on habitats, birds and ecological interests
- whether the proposal in combination with other developments would exceed the Welsh Government's capacity limit for the Strategic Search Area.

9. The main considerations for the two related common land applications are the:

- effect of the proposal on the interests of persons having rights in relation to, or occupying, the land (and in particular persons exercising rights of common over it)
- effect of the proposal on the interests of the neighbourhood
- effect of the proposal on the public interest, including 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.

10. I agree with the Inspector that these are the relevant issues for the appeal and common land application.

Inspector's Planning Balance and Conclusion on Planning Appeal

11. The Inspector, at paragraphs 575-576 of his report, drew the following planning balance and overall conclusions on the planning appeal:

"The proposal would contribute to the UK target of 15% of energy to be derived from renewable sources by 2020 and the WG's aim of having 4.5KWh/d/p of installed onshore wind capacity by 2015/2017. The planning system has an important role in delivering the above target and aim with the latter to be achieved by, amongst others, optimising the use of the existing SSAs. Nonetheless, TAN 8 recognises that not all the land within an SSA may be environmentally suitable for major wind power proposals and the Minister's letter of July 2011 confirms that all SSAs have a finite environmental capacity and output should not exceed the maximum levels outlined. That does not support the suggestion that use of the grid connection should be maximised.

A balance, therefore, needs to be struck between the benefits of generating electricity from renewable onshore wind and the identified impacts on the character and appearance of the SLA, the settings of SAMs, and heath land habitats, as well as the conflict with the statutory development plan and the potential impact on holiday accommodation businesses and community led initiatives to promote Llanllwni Mountain. In my view, these impacts, conflict with policy and potential impacts demonstrate that this part of the SSA is not environmentally suitable for major wind power proposals. I consider that the balance lies on the side of retaining Mynydd Llanllwni as a special place free from such development and I conclude that the appeal should be dismissed."

Inspector's Conclusions on Common Land Applications

12. The Inspector, at paragraph 586 of his report, drew the following overall conclusion on the common land applications:

"If Ministers accept my recommendation that the planning appeal should be dismissed, the scheme would not be able to proceed and there would be no need to deregister or to undertake restricted works on common land such that both applications should be refused. However, if Ministers do not accept my recommendation and allow the planning appeal, the impact on graziers' rights during the construction period, and conflict with the interests of the neighbourhood and the public interest, including in nature conservation and the conservation of the landscape, needs to be balanced against the national need for renewable energy. In my opinion, the balance clearly lies with safeguarding the graziers' rights, the interests of the neighbourhood and the public interest, including in nature conservation and the conservation of the landscape, such that both applications should be refused."

Conclusion

13. I agree with the Inspector's conclusions and accept his recommendation that the planning appeal be dismissed and the common land applications be refused.
14. I have taken into account the environmental information as defined by the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 (as amended) in reaching my decision on this appeal.
15. I have received one representation relating to the planning merits of the application since the inquiry closed, but I do not consider that it affects the initial conclusions on the appeal and related common land applications or raises any issues that should be considered further by the parties.
16. Under sections 40 and 42 of the Natural Environment and Rural Communities Act 2006 ("NERC 2006") a duty is placed on Welsh Ministers to carry out their functions with regard, so far as is consistent, with the proper exercise of those functions, to the purpose of conserving biological diversity in accordance with the United Nations Environmental Programme Convention on Biological Diversity 1992. The Welsh Ministers are required to publish a list of living organisms and types of habitat which in their opinion are of principle importance for this purpose. It is the duty of the listing authority to take, or to promote the taking by others of, such steps as appear to the authority to be reasonable practicable to further the conservation of living organisms and types of habitat included on any list published by the authority.
17. The appeal site includes habitats listed as being of principle importance in Wales under section 42 of NERC 2006. While reference is made by the Inspector to habitats afforded protection under section 42, he has only gone into limited detail on the impact of the proposal on these habitats. We are not satisfied, from the Inspector's report, that he has fully addressed the duty under sections 40 and 42 of NERC 2006, but as detailed above there are a number of reasons for refusal and whilst this is an issue of concern we do not consider it necessary to deliberate on the issue further.

FORMAL DECISION

18. For the reasons given above, and in exercise of the power referred to in paragraph 5 of this decision letter, I hereby:
- i. Dismiss the appeal made under section 78 of the Town and Country Planning Act 1990 and refuse to grant planning permission for 21 wind turbines (three bladed horizontal axis) to a maximum blade tip height of 127 metres with associated electricity transformers, underground cabling, access tracks, road widening works, crane hardstandings, control buildings, substation compound, communications mast and anemometry mast for a period of 25 years; temporary works including construction, compound, laydown area, rotor assembly pads, turning heads, welfare facilities and eight guyed anemometry masts on land surrounding Bryn Llywelyn, Llanllwni, SA39 9ED;
 - ii. Refuse the application under section 16 of the Commons Act 2006 for the deregistration and exchange of land at Mynydd Llanllwni and Mynydd Llanfihangel Rhos-y-Corn Commons; and
 - iii. Refuse the application under section 38 of the Commons Act 2006 to carry out works on Mynydd Llanllwni and Mynydd Llanfihangel Rhos-y-Corn Commons.

19. A copy of this letter has been sent to Carmarthenshire County Council and those who were entitled to appear at the public inquiry and did so.

Yours sincerely,



CARL SARGEANT AM
Minister for Housing and Regeneration,
one of the Welsh Ministers.