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Ysgrifennydd y Cabinet dros yr Amgylchedd a Materion
Gwledig
Cabinet Secretary for Environment and Rural Affairs



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: APP/K6920/X/16/516185

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cc. Simon Morgan, REG Windpower Ltd

9 August 2016

COMMONS ACT 2006

APPLICATION BY COAL CONTRACTORS LTD UNDER SECTION 16 OF THE COMMONS ACT 2006 IN RESPECT OF COMMON LAND AT RHYMNEY HILL COMMON, RHYMNEY, CAERPHILLY IN CONNECTION WITH THE PEN BRYN OER WIND FARM

1. Following your application reference 516185 made under section 16 of the Commons Act 2006 (the 2006 Act) for the deregistration and exchange of common land at Rhymney Hill Common (CL9), Rhymney, Caerphilly, I have received the report by the Inspector, Michael R. Lowe BSc (Hons) from the Planning Inspectorate Wales (PINs Wales).

Summary of decision

2. The formal decision is detailed at paragraph 21 below. The application is approved.

Procedural Matters

3. Welsh Ministers have appointed PINs Wales to undertake the processing of section 16 applications on their behalf, including the making of recommendations to Welsh Minister on whether or not an application should be approved.

4. In considering an application to exchange land it is necessary for the proposals to be advertised to allow those with private interests and third party rights the opportunity to make representations on the application. The Inspector's report notes that the application was advertised in the Western Mail on 25 March 2016 and that notices were posted at the site. A pre-application consultation was also conducted.
5. Representations in support of the application were received as a result of the published notice of the application and pre-application consultation. No objections were received. PINs Wales considered it appropriate to deal with the application on the basis of written representations.

Considerations

6. Section 16(1) of the 2006 Act provides that the owner of any land registered as common land may apply for the land (release land) to cease to be so registered. If the area of release land is greater than 200m² a proposal must be made to replace it with other land to be registered as common land (replacement land).
7. The Welsh Government has issued guidance on 'Common Land Consents'. Welsh Ministers seek to adhere to the guidance in processing and determining applications. I note every application must be considered on its own merits and a determination may, in exceptional circumstances, depart from the guidance if it appears appropriate to do so.
8. In determining this application, regard is to be had to:
 - i) the interests of persons having rights in relation to, or occupying, the release land (and in particular persons exercising rights of common over it);
 - ii) the interests of the neighbourhood;
 - iii) the public interest;
 - iv) any other matter considered to be relevant.
9. The 2006 Act sets out that 'public interest' includes 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.
10. Welsh Government's aim is to protect common land as part of its strategic objectives in relation to biodiversity and for the sustainable use of natural resources to improve the benefits to local communities, the economy and the environment. The 2006 Act provides for the safeguarding of commons for current and future generations, helping the Welsh Government to ensure that the stock of common land is not diminished.

Inspector's Report

11. Consideration has been given to the Inspector's report. The Inspector's conclusion is set out at paragraph 23 of his report, a copy of which is enclosed. The Inspector recommends that consent should be granted and an Order of Exchange made. Specifically, he recommends 'the application to deregister and exchange common land at Rhymney Hill Common, Rhymney, Caerphilly, Register Unit CL9, is granted in accordance with the terms of the application [Ref: 516185] dated 24 March 2016 as amended on 26 May 2016 and the plans submitted therewith and that an order pursuant to Section 17 of the 2006 Act shall be sent to Caerphilly County Borough Council and the applicant'.

12. The Inspector in making his recommendation considered a range of issues arising from the proposed development; including statutory requirements, policy guidance issued by the Welsh Government and views received as a result of the published notice of the application and pre-application consultation.

Conclusions reached by the Inspector

13. The application is made to facilitate the construction of the Pen Bryn Oer wind farm, which was granted planning permission by the Caerphilly County Borough Council on 6 August 2015. Additional planning permission was obtained on 29 April 2016 for an alternative access track that is located off Rhymney Hill Common. The scheme will involve the installation of 3 wind turbines and associated works. The common land to be deregistered forms part of register unit CL9, which comprises semi-improved and improved grassland grazed by cattle, horses and sheep. 2.4 hectares of replacement land is offered in exchange for 0.9 hectares of release land. I note that the Welsh Government guidance takes the position that the 'stock of common land and greens is not diminished' and am satisfied that the proposal accords with the position set out in the guidance.
14. In considering the application the Inspector applies the statutory tests under section 16(6) of the 2006 Act, and I consider these below.
15. Section 16(6)(a) requires me to have regard to the interests of persons having rights in relation to, or occupying, the release land (and in particular persons exercising rights of common over it). Following consultation with the Rhymney, Bedwelly and Coed y Moeth Commoners Association – who support the application – it is understood that there are 9 active and 7 non-active commoners. The Inspector comments that 'both the release land and the replacement land are of the same botanical composition being semi-improved/improved grassland'. The rights of common that are currently exercisable over the release land will be transferred to the replacement land. The Inspector concludes that there will be no adverse impact upon the people who exercise their rights on Rhymney Common.
16. I have also considered the 'Statement on Agriculture and the interests of the commoners' by Christopher Hadley which analyses the impact of the proposals on the commoners. I am satisfied that the land proposed as replacement land is of equal benefit, and that there will be a positive impact on the commoners and members of the public due to the increase in land being made available.
17. When considering the interests of the neighbourhood (section 16(6)(b)) the Inspector concludes that the proposed replacement land provides a net increase in the size of the common and consequently the land available for public access. No evidence has been presented to the Inspector to suggest that the proposals would negatively affect the way in which those in the neighbourhood use the common, and he concludes that the proposed deregistration and exchange will not have any adverse effect upon the interests of the neighbourhood. This is also the conclusion he reaches when addressing the public interest considerations, as required under section 16(6)(c) of the 2006 Act.

18. When considering 'any other matter considered to be relevant', as required under section 16(6)(d) of the 2006 Act, the Inspector places weight on the Welsh Government's Common Land Consents Guidance which sets out the Welsh Government's desire to promote sustainable energy development in an appropriate setting. The Inspector is of the view that the proposed development supports this aim.
19. The Inspector recommends that the application to deregister and exchange common land at Rhymney Hill Common (CL9) is granted in accordance with the terms of the application dated 24 March 2016 as amended on 26 May 2016 and the plans submitted therewith and that an order pursuant to Section 17 of the 2006 Act should be sent to Caerphilly County Borough Council and the Applicant.
20. I have considered the report and the issues that have been considered by the Inspector and agree with the Inspector's conclusion that the application should be granted and an Order of Exchange should be made. I believe that the considerations that form section 16(6) of the 2006 Act development support this conclusion. In particular, I agree with the Inspector that the section 16 application will benefit graziers as the land offered is of at least equal benefit to the release land, connected to the common and is considerably larger than the release land. Furthermore, I believe the development would deliver benefit to emissions targets and carbon budgets over the coming years in line with Welsh Government commitments under the Environment (Wales) Act 2016. The Welsh Government is committed to reducing net Welsh emissions by at least 80% by 2050. Renewable energy sources such as wind power have a critical part to play in achieving this.

Formal Decision

21. I have considered the Inspector's Report and noted the case for the applicant, the representations and the Inspector's conclusions. In conclusion, for the reasons given above, and in exercise of my authority as Cabinet Secretary for Environment and Rural Affairs, one of the Welsh Ministers, I hereby grant the application (APP/K6920/X/16/516185) to deregister and exchange common land at Rhymney Common, Rhymney, Caerphilly, Register Unit CL9, in accordance with the terms of the application [Ref: 516185] dated 24 March 2016 as amended on 26 May 2016 and the plans submitted therewith, and that an order pursuant to section 17 of the 2006 Act shall be made.
22. I enclose a copy of the Inspector's Report and a copy of the Order made under Section 17(1) and 17(2) of the 2006 Act, which has today been sent to the Caerphilly County Borough Council.
23. The Welsh Ministers' decision on this application will be published as required by regulation 19 of the Deregistration and Exchange of Common Land and Greens (Procedure) (Wales) Regulations 2012.
24. This letter does not convey any approval or consent which may be required under any enactment, by-law, order, regulation or private agreement other than sections 16 and 17 of the 2006 Act.

25. As requested in your application, this letter has also been copied to Simon Morgan,
REG Windpower Ltd.

Yours sincerely
Lesley Griffiths

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Cabinet Secretary for Environment and Rural Affairs