

Penderfyniad ar y Cais

gan Isabel Nethell

Benodir gan Weinidogion Cymru

Dyddiad: 11/12/15

Application Decision

by Isabel Nethell

Appointed by the Welsh Ministers

Date: 11/12/15

Application Ref: APP/U6925/X/15/516134

Site Address: Merthyr & Gelligaer Common, Merthyr Tydfil

Determination of this application has been delegated to me by the Welsh Ministers.

- The application, dated 29 October 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 Merthyr & Gelligaer Common (CL 38) and the Commons Registration Authority is Merthyr Tydfil County Borough Council ("the Council").
- The application is made on behalf of Kronos Solar SPV51 Ltd. ("the applicant").
- The works proposed is the surfacing of an existing access track.

Decision

1. Consent is granted for the works in accordance with the application dated 29 October 2015 and the plans submitted with it, subject to the following conditions:
 - (i) The proposed works hereby permitted shall begin no later than 01 October 2020 in line with the conditions set out in the planning permission dated 01 October 2015 (Ref: 15/0418/FULL).
 - (ii) The works must be carried out strictly in accordance with the details contained in the application.
2. For the purposes of identification only, the location of the works is shown outlined in red on the attached plan.

Preliminary Matters

3. Merthyr & Gelligaer Common (CL 38) has a total area of some 7638 acres with rights 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 of the Law and Property Act 1925 and is not within a Site of Specific Scientific Interest (SSSI) or an Area of Outstanding Natural Beauty (AONB). Cadw has confirmed that the proposed works will not have an effect on any Scheduled Ancient Monument.

The Application

4. The site is located on land to the south of the Miller Argent Works, Fochriw Road, Merthyr Tydfil CF48 4AE adjoining the western boundary of the common land (Grid Reference 309554 – 205553). The proposal would surface an existing access track, of approximately 170 metres in length, with loose Ecomix or similar stone chippings, with

a base of rough gravel. The works will provide a suitable surface for the use of construction traffic servicing an approved solar farm and associated infrastructure (planning permission reference P/15/0169).

Application Procedures

5. The procedures for an application of this sort 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 the applicant posted notices on the site (which were maintained for the required period of time), an advertisement was originally placed in the Merthyr Express on Thursday 20 August and re-advertised on Thursday 05 November 2015, and copies of the appropriate documentation were made available for public inspection at Merthyr County Borough Council offices, Unit 5, Triangle Business Park, Pentrebach, Merthyr Tydfil CF28 4TQ and Caerphilly County Borough Council, Pontllanfraith House, Blackwood, NP12 2YW.
6. In addition, the applicant confirmed that formal notification was sent to Leek Weston Ltd. (acting on behalf of the landowner), Gelligaer and Merthyr Commoners Association, Merthyr and Caerphilly County Borough Councils, Natural Resources Wales (NRW), Cadw, the Open Spaces Society (OSS), Darran Valley Community Council and Merthyr Tydfil Town Council.
7. This application has been determined solely on the basis of written evidence.

Objection & Representations

8. One objection was made to the application by Gelligaer & Merthyr Commoners Association but this was later withdrawn on 13 September 2015. Representations were received from the Open Spaces Society (OSS), dated 23 November 2015, and Cadw dated 29 October 2015. The representation from Cadw did not raise any concerns and provided confirmation that "*the proposed development will have no impact on any designated historic assets*". The OSS representation stated that they had no objections to the proposals providing that "*the works are confined to the access track and there is no fencing or disturbance of the common*".

Main Issues

9. The matters to be considered in determining an application for consent are set out in Section 39(1) of the Commons Act 2006:
 - (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;
 - (d) any other matter considered to be relevant.
10. Paragraph 39(2) of the Act further explains that "*the public interest includes the public interest in –*
 - (a) nature conservation;

- (b) the conservation of the landscape;
- (c) the protection of public rights of access;
- (d) the protection of archaeological remains and features of historic interest.

11. I have also had regard to the Welsh Government's Common Land Consents Guidance¹ 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. 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. Taking these principles into account, the main issues in this case are the effects of the proposed works on the interests of persons having rights in relation to the land, on the interests of the neighbourhood, and on the public interest, and the benefits to be gained from carrying out the proposed works.

Reasons for the Decision

12. I am satisfied that the applicant carried out extensive consultations as set out in the 2012 Regulations and that, through these actions, all those with an interest in the land have been provided with an opportunity to comment on the application. I am also satisfied that the applicant has made sufficient efforts to establish what rights exist over the common by consulting the necessary commons registration authority and the Gelligaer and Merthyr Commoners Association.
13. In the absence of any representations from Commoners or those using the common, and in view of the nature of the works proposed, I do not consider that there is anything before me to lead me to the conclusion that the works would unacceptably affect the interests of those having rights in the land or occupying it or the interests of the neighbourhood.
14. Based on the information before me, I am satisfied that there will be no adverse or unacceptable effects in relation to nature conservation or the conservation of the landscape, and that public rights of access to the area will not be adversely affected. No issues have been raised relating to the protection of archaeological remains and features of historic interest.
15. I have taken into account all of the matters specified in the legislation and conclude that in the light of the comments above I am satisfied that, having considered the information before me, it is expedient that consent should be granted for the application made.

Formal Decision

16. For the reasons given above I allow the application and hereby grant consent under Section 38 of the Commons Act 2006 for the works identified in the preamble and sections 14 and 15 of the application form. Consent is therefore granted subject to the conditions specified at paragraph 1.

¹ Welsh Government – Common Land Consents Guidance (August 2014)

17. This decision does not convey any approval or consent which may be required under any enactment, by-law, order, regulation or private agreement other than section 38 of the Commons Act 2006.

Isabel Nethell

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Head of Service – Operations & Policy (Wales)

Planning Inspectorate

Location plan (not to scale)

