

Rebecca Evans AC / AM
Y Dirprwy Weinidog Ffermio a Bwyd
Deputy Minister for Farming and Food



Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref
Ein cyf/Our ref: APP/B6855/X/2012/515645
APP/B6855/X/2013/515872
APP/B6855/X/2013/515873
APP/B6855/X/2013/515874
APP/B6855/X/2013/515875
APP/B6855/X/2013/515876

Ms G Elias
RWE Innogy UK Ltd
Unit 22
Baglan Bay Innovation Centre
Central Avenue
Baglan Energy Park
Port Talbot
SA12 7AX

Dear Ms G Elias,

25 June 2015

**COMMONS ACT 2006
APPLICATIONS BY RWE INNOGY UK Ltd UNDER SECTIONS 16 AND 38 OF THE
COMMONS ACT 2006 IN RESPECT OF LAND AT MYNYDD Y GWAIR, SWANSEA**

Following your applications made under sections 16 and 38 of the Commons Act 2006 for the deregistration and exchange of common land and the consent for works on common land at Mynydd y Gwair, Swansea I have received the Planning Inspectorate report. The inspector, Mrs Helen Slade MA FIPROW, has reported on applications made under:

- Section 38 for the erection of a temporary meteorological anemometry mast and associated fencing (Application A) (APP/B6855/X/2012/515645);
- Section 38 for the surfacing and improvement of the proposed access route (Application B) (APP/B6855/X/2013/515872);
- Section 16 for the deregistration and exchange of land (Application C) (APP/B6855/X/2013/515874);
- Section 16 for the deregistration and exchange of land (Application D) (APP/B6855/X/2013/515873);
- Section 38 for the construction of temporary protective fencing for a CADW Scheduled Monument (Application E) (APP/B6855/X/2013/515875); and
- Section 38 for the construction of temporary protective fencing for a CADW Scheduled Monument (Application F) (APP/B6855/X/2013/515876).

Where applications are made under both Section 16 for the deregistration and exchange of common land and Section 38 for restricted works on common land Welsh Ministers

reserve the right to recover jurisdiction for the determination of all applications under the Commons Act 2006 in order that they may be considered in their entirety. In this case I exercise these functions in my role as Deputy Minister for Farming and Food with portfolio responsibility for the Commons Act 2006.

The Planning Inspector visited the site on 18 December 2012, 10 March, 14 March and 18 November 2014. The Inspector took evidence via an independent Public Inquiry which opened on 11 March at the Dylan Thomas Centre in Swansea. As it was not possible to complete the inquiry in the time available it was adjourned. The inquiry resumed on 20 March so that the Inspector could hear closing submission. The inquiry was adjourned once again as some of the information supplied to the Inspector was both imprecise and inaccurate, furthermore none of the objectors had seen copies of the Unilateral Undertaking prior to the inquiry resuming on 20 March. The inquiry opened and closed on 19 November 2014 following the submission of a revised Unilateral Undertaking, written responses and closing submissions. The Inspector's conclusions, reasoning and recommendations are set out in paragraphs 138 – 249 of her report, a copy of which is enclosed. The inspector recommended that:

- Application A – Consent should be granted subject to a Construction Method Statement and a Habitats Management Plan being submitted to, and approved by, the Local Planning Authority (LPA). If and when the LPA is satisfied that the conditions have been successfully discharged, she recommends that the Section 38 consent be granted;
- Application B – Consent should not be granted;
- Application C – No orders be made;
- Application D – No orders be made; and
- In the event that no orders are made for Applications C and D then consent should not be given for Applications E and F.

In considering this issue I note the Welsh Government's aim to protect common land as part of its strategic objectives in relation to biodiversity and to 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.

The Inspector in making her recommendations considered a wide range of issues arising from the proposed development; including statutory requirements, policy guidance issued by the Planning Inspectorate Wales and the Welsh Government and views offered by those attending the inquiry.

Under sections 16 (deregistration and exchange) and sections 38 / 39 (restricted works) of the Commons Act 2006 in determining the application the Welsh Ministers shall have regard to:

- (a) the interests of persons having rights in relation to, or occupying, the release land (and in particular persons exercising rights of common over it);
- (b) the interests of the neighbourhood;
- (c) the public interest; and
- (d) any other matter considered to be relevant.

In the report the Inspector notes that whilst Application A will result in some minimal impacts on the grazing, access rights and the landscape there will be no lasting adverse impacts on the site. However, the granting of planning permission by Swansea City Council for a temporary mast was subject to the production of a Construction Method Statement for the site as a whole and a Habitat Management Plan for the enclosed areas around the mast. Neither document was made available to the Inspector to consider as part of the Inquiry process nor to the Welsh Ministers in considering these applications so it is unknown if the concerns of the graziers in respect of damage to the soil, vegetation and general management have been addressed. I agree with the comments of the Inspector at paragraph 155 the consequence of this is that "it is impossible to provide an informed view on the issues of damage caused by accessing the site to construct the mast".

The Inspector recommends the granting of permission for the erection of the temporary anemometry mast subject to a Construction Method Statement and a Habitat Management Plan being produced to the satisfaction of the LPA, I disagree with this approach as it makes the consent contingent on the views of a third party.

I agree with the view of the Inspector at paragraph 166 with the exception of the listed documents being produced to the satisfaction of the LPA. Under section 39(3)(b) of the Commons Act 2006, the Welsh Ministers may impose such conditions relating to the proposed works as they think fit on any consent given by them under section 38(1) of that Act. Therefore, I will grant Application 'A' but subject to conditions that a Construction Method Statement and a Habitat Management Plan be submitted to, and approved by, the Welsh Ministers prior to any works under Application 'A' commencing and that the works under Application 'A' must be initiated within a period of 5 years from the date of this letter.

In respect of Application B the Inspector notes that the potential impact of the works could be considerable. Sheep hefts and public rights of way will all be affected and in some cases the character and nature of these ancient routes will disappear. Goppa Mountain has a warren of underground mines and natural caverns with drainage being through numerous watercourses. With no hydrological survey it is difficult to understand the consequences of excavations and disruption on the drainage of this area. The proposal also relies on re-vegetation of the affected areas, with or without intervention in the form of seeding, which is unlikely to produce vegetative growth typical of the surrounding common. Experience shows that disturbing the soil structure results in the regrowth of rushes. Even if the construction works themselves are considered to be of a temporary duration, the permanent effect of them will be visible for longer than the intended 25 year life span of the wind farm they will serve as there appear to be no plans to actively return the land to its current condition at the end of this period.

I agree with the conclusions of the Inspector that the potential impact of the works could be considerable. As she identifies at paragraph 174 there is a risk to the hydrology of the wider neighbourhood which should have been addressed. In addition the lack of a 'plan' to return the land to its current condition, as identified in paragraph 185, is to the detriment of the application. The Inspector at paragraph 186 highlights that no clear explanation was given as to why an existing road bordering the site was not being utilised instead of constructing or improving nearly three kilometres of track. I agree with this and would have expected the applicant to cover this either in the application or at the inquiry.

Applications C & D were considered together as they both relate to the de-registration and exchange of land. The Inspector considers that there would be significant disadvantages to those persons with rights over the common in terms of grazing and

disturbance during construction, and inappropriate replacement land for grazing. There is a risk of adverse effects due to the possible fencing requirements in relation to both the release land and the replacement land which would be incompatible with the landscape, with public access and with the use of land as common land. Public access would also be adversely affected in the short term due to temporary closures to public rights of way. In the longer term the public would be disadvantaged by the change in the character of the common as a result of the development and the unattractiveness of the replacement land.

I agree with the conclusions of the Inspector that the replacement land is inappropriate as identified at paragraphs 198 and 202 and whilst the applicant tried to address the concerns of the graziers, agreement had not been reached. I also agree with the general conclusion of the Inspector at paragraph 239 that 'overall, the applications suffer from a lack of detail due to the amount of information still to be provided'. The Inspector goes on to state that this additional information should be provided to the Local Planning Authority. This is not the case. Information in support of these applications under the Commons Act 2006 should be provided to the Welsh Ministers.

The Inspector is of the view that the proposed temporary fencing of the two archaeological features (applications E and F) will have no adverse impacts on rights holders, the neighbourhood, the public interest or any other aspect but this consent would hinge on whether orders had been granted for applications C and D.

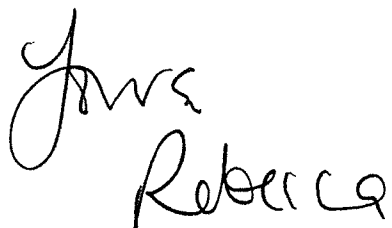
I agree with the Inspector and conclude that granting consent for applications E and F would have minimal impact however this consent is based on consent being given for applications C and D both of which I have rejected.

I have considered the Inspector's Report and have noted the case for the applicant, the representations, objections and the Inspector's conclusions. For the reasons given above, and in exercise of the powers of authority by virtue of Schedule 11, para 30 of GOWA 2006 which transferred the functions of the Assembly to the Welsh Ministers I hereby:

- Grant the application (Application A – APP/B6855/X/2012/515645) made under Section 38 for the erection of a temporary meteorological anemometry mast and associated fencing on land registered as CL7 ("the Application A works"), subject to a Construction Method Statement and a Habitats Management Plan being submitted to and approved by Welsh Ministers prior to the Application A works starting and subject to the Application A works being started within a period of 5 years from the date of this letter;
- Refuse application (Application B – APP/B6855/X/2013/515872) made under Section 38 for the surfacing and improvement of the route to Mynydd y Gwair Wind Farm including the installation of gates, cattle grids and temporary safety fencing on land registered as CL68;
- Refuse application (Application C – APP/B6855/X/2013/515874) made under Section 16 to deregister 26.36 hectares of common land at CL74 and to offer in exchange an area of adjacent land amounting to 8.46 hectares;
- Refuse application (Application D – APP/B6855/X/2013/515873) made under Section 16 to deregister 8.19 hectares of common land at CL77 and to offer in exchange an area of adjacent land amounting to 10.98 hectares;

- Refuse application (Application E – APP/B6855/X/2013/515875) made under Section 38 for the construction of a temporary protective fence for CADW Scheduled Monument known as Penlle'r Bebyll Cairn located at CL74; and
- Refuse application (Application F – APP/B6855/X/2013/515876) made under Section 38 for the construction of a temporary protective fence for CADW Scheduled Monument located at CL77.

A copy of this letter has been sent to Swansea City Council for information.

A handwritten signature in black ink, appearing to read 'Rebecca Evans'. The signature is written in a cursive style with a large initial 'R'.

Rebecca Evans AC / AM

Y Dirprwy Weinidog Ffermio a Bwyd
Deputy Minister for Farming and Food

