

Penderfyniad ar Gais

Ymweliad safle a wnaed ar 1 Hydref 2015

gan Janine Townsley LLB (Hons)

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 23/11/15

Application Decision

Site visit made on 1 October 2015

by Janine Townsley LLB (Hons)

an Inspector appointed by the Welsh Ministers

Date: 23/11/15

Application Ref: APP/P9502/X/2015/516123

Site address: Black Mountain, Llangadog, Carmarthenshire

The Welsh Ministers have transferred the authority to decide this application to me as the appointed Inspector.

- The application dated 7 July 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 Black Mountain Common (CL18).
- The application is made by Brecon Beacons National Park Authority on behalf of TGV Hydro Limited.
- The proposed works consist of the construction of a hydro intake structure, a buried penstock, a small stone clad turbine house and buried discharge pump.

Decision

1. Consent is granted for the construction of a hydro intake structure, a buried penstock, a small stone clad turbine house and buried discharge pump at Black Mountain Common, Llangadog, Carmarthenshire in accordance with the application dated 7 July 2015 and the plans submitted with it subject to the following conditions:
 - (i) The works shall begin no later than 5 years from 26 August 2015 (the date of planning permission Ref: 15/12300/FUL);
 - (ii) The works shall be carried out in accordance with the details contained in the application and be completed not later than 6 months from the date of their commencement.

Preliminary Matters

2. I have had regard to the Welsh Government's Common Land Consents Guidance, August 2014, 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.
3. The site is within the Brecon Beacons National Park and is owned by the Brecon Beacons National Park Authority but the Commons Registration Authority is Carmarthenshire County Council.
4. Black Mountain Common is registered as common land (CL18) and amounts to some 7,800 hectares. Rights of pasture for the grazing of sheep, ponies and cows are registered for the common. The common lies within the Brecon Beacons National Park. The public have a right 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 or a Scheme of Management made under the *Commons Act 1899*.

The Application

5. The site is located in the south west area of the common, adjacent to the A4069 and the Pont Clydach Bridge. The proposed works comprise the construction in the watercourse of a low height concrete, timber weir and a stainless intake/forebay tank and intake screen and the laying of 280mm diameter polyethylene underground pipeline. Two sections of the pipeline, with a combined length of 6 metres, would be raised above ground. The proposal also includes the construction of a stone clad turbine house with a footprint of 16 m². The works would also necessitate the provision of associated temporary storage of intake materials.
6. The procedures to be followed for this application 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, notices were posted on site and maintained for the required period of time. A notice of the proposal was published in the South Wales Guardian on 22nd July 2015. The applicant advised that due to the size of the common and the significant number of individuals with registered rights, it has not been possible to contact all parties with registered rights on the common. However, a presentation has been given to the Meithrin Mynydd Graziers Group for the Black Mountain and letters were sent out to the 42 active graziers within the affected common land unit CL18 West. The applicant has also confirmed that letters were sent out by the Llyn-Y-Fan Graziers Association to their members and letters were sent to the secretaries or chairs of the main Black Mountain Graziers Association and sub associations, the Llangadog Community Council, the Brecon Beacons National Park Authority Planning department, the Ramblers Association, the Brecon Beacons Park Society and the Open Spaces Society. An open day has been held in Gwynfe Community Hall. The applicant has not consulted CADW since they were advised by the archaeologist from the Brecon Beacons National Park Authority during the planning application process that the proposal would not affect any scheduled ancient monuments or any archaeological resources recognised on the Historic Environment Register.
7. I am satisfied that the applicant carried out the required consultations and that, through these actions and the advertising in a newspaper and the placing of notices on the application site, all those with an interest in the land have been provided with an opportunity to comment on the application.

Representations

8. There have been no objections to the scheme, however correspondence from the Open Spaces Society was submitted by e-mail on 5 June 2015 stating no objection provided the common is fully reinstated once the works are complete. The applicant has confirmed that the common will be fully reinstated save for the turbine house which would be a permanent feature.

The Statutory Requirements

9. In determining this application for consent, I am required by section 39 of the 2006 Act to have regard to (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 (including 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) and (d) any other matter considered to be relevant.

10. 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.

Reasons

The interests of persons occupying or having rights in relation to the land

11. All known Common rights holders in the area have also been consulted and have no objections. I have no reason to believe that the applicant would not maintain good communications with the graziers to allow the scheme and animal movements to proceed without conflict. The temporary loss of grazing during the construction phase would be negligible. As the majority of the proposed works are underground and the site would be reinstated upon completion, I am satisfied that they would not unacceptably interfere with the interests of those occupying or having rights over the land.

The interests of the neighbourhood

12. This is usually interpreted as relating to the way the common land is used by local people. During construction there would be some limited impact on local people's use of the area. However, this would only be for a maximum period of 6 months after which the common would be re-instated. I therefore consider that the works would not unacceptably interfere with local people's use of the land.

The public interest

13. Nature conservation, the conservation of the landscape, the protection of public rights of access and the protection of archaeological remains and features of historic interest are all capable of being material planning considerations. I note that the Brecon Beacons National Park Authority has granted planning permission for the scheme (Ref: 15/12300/FUL). It is reasonable to assume that, before granting planning permission, the NPA carried out a thorough assessment of the development in light of the development plan and other considerations including its statutory duties. It clearly did not consider that the development would have an unacceptable impact on any of the matters listed above and I have neither seen nor read anything to lead me to a different view.

Nature conservation

14. The pipe route was selected to avoid areas of flushes of the European protected moss *Hamatocaulis vernicosus*. Protective measures would be taken to position and trench the pipe in areas close to the moss. I note that Natural Resources Wales does not object to the application and I am of the view that the proposed works would not harm the public interest in nature conservation.

Landscape

15. The turbine house would be a permanent feature and for this reason would have some impact on the appearance of the landscape. However the location, to the rear of a dwelling house and within an area with existing tree cover would reduce its impact. As a result of this, the works would not be incompatible with the future use of the land as common land. Once complete, the only other signs that the works had taken place would be the weir and 6m or so elevated section of pipeline set over two areas, due to the presence of rock and at a pinch point near the western bank of the river. The weir has been sensitively designed and would not be unduly prominent or visually intrusive.

I am satisfied that there would be no lasting materially harmful impact on the landscape.

Public rights of access

16. The works would prevent access to a very small area of the common while they are being undertaken, but this would only be for a maximum period of 6 months after which the land would be re-instated. I have already noted the location of the permanent features of the works and consider that as a result of their location, any detrimental impact on public right of access would be minimal and as a result of the temporary nature of the majority of the works, there would be no lasting harmful effect in that respect.

Archaeological remains and features of historic interest

17. I have no evidence to suggest that known archaeological remains and features of historic interest would be affected by the proposal.

Other matters of public interests

18. The national need for renewable energy is, in my view, also a matter of broader public interest. The scheme's contribution to that need is a factor which weighs in its favour.

Conclusion

19. The Welsh Government¹ advises that the expectation that works proposed in relation to common land which do not benefit the common, but confer some wider benefit on the local community are more likely to be successful under section 16 of the Act, so that an exchange of land is proposed and can be taken into account. I note the advice that consent to such works under section 38 will rarely be granted. Exceptionally, however, consent may be appropriate where the works are of temporary duration or where the works will be installed underground, and the proposals ensure the full restoration of the land affected, and the works confer a public benefit. I am satisfied that the application works accord with this policy objective since they will not materially harm the objectives set out in paragraph 8 above and will confer a wider public benefit by facilitating the generation of sustainable energy.
20. For the reasons given above, I allow the application and grant consent for the works identified in sections 14 and 15 of the application form, subject to the conditions specified at paragraph 1 of this decision.

Janine Townsley

Inspector

¹ In "Common Land Consents Guidance" – paragraph 4.12