



Penderfyniad ar yr Cais

Ymweliad â safle a wnaed ar 23 May 2022

gan J Burston BSc MA MRTPI AIPROW

**Arolygydd a benodir gan Weinidogion
Cymru**

Dyddiad: 03/08/2022

Application Decision

Site visit made on 23 May 2022

by J Burston BSc MA MRTPI AIPROW

**an Inspector appointed by the Welsh
Ministers**

Date: 03/08/2022

Appeal Ref: COMS/3275723

Site address: Eisteddfa Gurig, Ponterwyd, Ceredigion

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

- Register Unit: Eisteddfa Gurig CL84
 - Size of Common: 314ha
 - Commons Registration Authority: Ceredigion County Council
 - Landowner: Mr and Mrs Thomas
 - Description of the area of Common: grazed upland moor.
 - The application, dated 1 September 2018, 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 is made by: Llust Y Gwynt Wind Farm Limited
 - The works comprise the Installation and operation of a temporary meteorological testing mast for a period of 3 years to measure wind speed and wind direction. A single galvanised steel mast with guy wires and anchor blocks and solar array for the power supply.
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Decision

1. Consent is granted for the works in accordance with the application dated 18 May 2021 and the accompanying plans, subject to the following condition:
 - 1) The works shall begin no later than three years from the date of this decision.

Procedural Matters

2. I carried out an unaccompanied site inspection on 23 May 2022. The weather was initially misty, however, this lifted during my visit and I was able to get a satisfactory view of the operational site and the surrounding landscape.
3. My decision has been made on the basis of my observations on this visit, taking account of the application and any representations received in response to the advertisement of the application.

4. I have had regard to the Welsh Government Common Land Consents Guidance, published in August 2014, which sets out the benefits which common land should deliver, and the outcomes that it considers must be ensured by the consents process. This document has been published for the guidance of both the Planning Inspectorate and applicants. However, the application will be considered on its merits and a determination will depart from the published policy if it appears appropriate to do so. In such cases, the decision will explain why it has departed from the policy.
5. Furthermore, I have considered the duty to improve the economic, social, environmental and cultural well-being of Wales, in accordance with the sustainable development principle, under section 3 of the Well-Being of Future Generations (Wales) Act 2015 (“the WCFG Act”). In reaching this decision, I have taken into account the ways of working set out at section 5 of the WCFG Act and I consider that this decision is in accordance with the sustainable development principle through its contribution towards one or more of the Welsh Ministers well-being objectives set out as required by section 8 of the WCFG Act.

Main Issues

6. Section 38 of the 2006 Act provides that a person may apply for consent to carry out restricted works on land registered as common land. Restricted works are any that prevent or impede access over the land.
7. In considering such an application I am required by section 39 of the 2006 Act to have regard to the following:
 - 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 which includes the interest in 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; and
 - d) any other matters considered to be relevant.

Reasons

8. The application site is grazed moorland, registered as common land and owned by Mr and Mrs Thomas. The common affected by the proposal is CL84 with a total area of 314 hectares. The common is subject to grazing rights and a right to take turf or peat as set out in the Common Land Register. These rights are only attached to the landowners who do turn out their animals onto the common in exercise of their rights.
9. In general, the land slopes in a southwards direction, from the high point at Plynlimon (752m Above Ordnance Datum (AOD)) through Drum Peithnant (684m AOD) and the Dyll Faen forestry block towards Drybedd (560m AOD) and Bryn Glas (515m AOD) near to southern boundary above the A44.
10. Planning permission was granted on 26 April 2022 (reference A210079 applies) for the proposed works. The permission includes 8 conditions.

Description of Proposed Works

11. The application form sets out that *“the works consist of the installation of an 80 metre steel monopole held up by high tensile guy wires. The main pole is an approximately 220 mm diameter steel tube with galvanised finish. The guy wires that hold up the monopole are made of galvanised steel wire. There will be a short section of galvanised chain joining the guy wires to the eight anchors which will be placed up to 50m from the base of*

the mast. The met mast requires 9 ground anchors in total: 8 anchors for the guy wires and a single anchor at the base of the mast. Each of the 8 anchors will measure 2m x 1m totalling 16m². The base anchor will measure 4m x 2m totalling 8m². The total land take for the mast will be 24m²."

12. Further works would include the installation of a solar array to provide power to the mast and instrumentation. The total land take for the solar array would be 32m². The mast would be decommissioned at the end of 3 years and the site would be reinstated to its former condition.

The interests of persons having rights in relation to, or occupying, the land (and in particular persons exercising rights of common over it)

13. In the context of the overall grazing area of the common (314 hectares) the reduction of 56 square metres is insignificant and the period of time during which this limitation will occur is short (three summers at most).
14. Whilst there are various rights of common exercised, I have no substantive evidence to indicate that the proposal would have an adverse impact on any person with an interest in the land. As such, the works are unlikely to harm the interests of those occupying or having rights over the land.

The interests of the neighbourhood

15. The intended works do not add something that will positively benefit the immediate neighbourhood, although it may contribute towards a project which will produce renewable energy, going some way to fulfilling the Welsh Government's objectives in relation to sustainable energy. The works will be of short and temporary duration and thus any adverse effect on the neighbourhood will be limited and would be enforced by a planning condition attached to planning permission A210079.

The public interest

Nature Conservation

16. The application area is not designated in terms of biodiversity. However, it is within 10km of the Elenydd-Mallaen Special Protection Area (SPA) and the River Wye Special Area of Conservation (SAC), which are both considered to be functionally connected to the application area.
17. The screening assessment, based on the submitted application, indicates that there are possible pathways through which the proposal may impact upon the relevant European site features. As such it is necessary to consider the need for a Habitat Regulations Assessment (HRA).
18. The need for HRA is set out within Article 6 of the EC Habitats Directive 1992, which is transposed into British Law by the Conservation of Habitats and Species Regulations 2017 (the Regulations). The Inspector, as competent authority with respect to the Regulations, will need to decide whether 'likely significant effects' alone or in-combination with other plans or projects, can be ruled out based on the information provided by the parties. The competent authority may agree to the project only after ascertaining that it will not adversely affect the integrity of the European site. The HRA is provided at annex A and B to this decision.
19. The HRA(s) conclude that, in the case of Elenydd-Mallaen SPA, with mitigation measures in place, the development would not adversely affect the integrity of the European sites.

In the case of the River Wye SAC, no Significant effect is predicted and an Appropriate Assessment will not be required for this SAC.

20. As such I can conclude the proposal would not have a likely significant effect on the integrity of the European sites. It would therefore comply with the Habitats Regulations.
21. In terms of wider nature conservation, the proposal does not envisage any benefits to nature conservation as a result of the proposal. However, there is similarly no robust evidence which would indicate that the proposed mast and other structures would have a negative impact on existing biodiversity.
22. Accordingly, given the mitigation proposed, I do not consider that the works would result in any significant impact on nature conservation.

Conservation of the landscape

23. The mast and associated structures would result in some visual impact and would appear prominent in close up views. However, these impacts would be highly localised and limited in duration.
24. Moreover, the consideration of the planning application took into account the impact on the local and wider landscape. In granting permission, the planning conditions imposed seek to minimise any harm. Overall, I do not consider that the proposal would have a materially negative impact on the public interest in conservation of the landscape.

Protection of public rights of access

25. The proposed mast will not directly interfere with any public rights of way. It will marginally reduce the area available to the public in terms of access to the common for air and exercise, but this reduction will be temporary.

Protection of archaeological remains or features of historical interest

26. Cadw has been consulted on the application and has no comments to make. There are no listed buildings, scheduled ancient monuments or non-designated nationally important archaeological sites on or near the proposed development. Accordingly, from all that I have seen and read there is no evidence before me that the proposal will have any adverse effect on archaeological remains or features of historic interest.

Conclusion on the public interest

27. While I note there would be some temporary visual impact and a restriction on public access over parts of the common for a limited period, overall, I consider there would be no significant impact on the public interest.

Overall Conclusion

28. Whilst there will be some minimal impacts on the grazing and access rights, and a minor impact in landscape terms, there will be no lasting adverse impacts which would prevent the granting of this application.
29. Therefore, I conclude that the proposed works will not unduly harm the interests set out in paragraph 7 above. Consent is therefore granted for the works subject to the conditions set out in paragraph 1.

J Burston

Inspector

Habitat Regulations Assessment

Elenydd-Mallaen SPA

Background

1. The need for Habitats Regulations Assessment (HRA) is set out within Article 6 of the EC Habitats Directive 1992, which is transposed into British Law by the Conservation of Habitats and Species Regulations 2017 (the Regulations). The Inspector, as competent authority with respect to the Regulations, will need to decide whether 'likely significant effects' alone or in-combination with other plans or projects, can be ruled out based on the information provided by the parties. The competent authority may agree to the project only after ascertaining that it will not adversely affect the integrity of the European site.
2. Whilst the Regulations provide strict protection, they are not a prohibition on new development or activities. Instead, they involve a case-by-case examination of the implications for each European protected site, its qualifying features and its conservation objectives. There is no statutory method for undertaking an HRA and the approach can vary on a case-by-case basis. Nonetheless, guidance issued from the European Commission¹ sets out a four-stage assessment process involving Screening; Appropriate Assessment (AA); Assessment of Alternatives and Imperative Reasons of Overriding Public Interest (IROPI). AA considers the implications of the proposal for the European site in view of its conservation objectives. Steps 3 and 4 are collectively known as derogation.
3. The purpose of this HRA is to report on the impacts of the scheme on the Elenydd-Mallaen Special Protection Area (SPA) and the River Wye Special Area of Conservation (SAC), which are European protected sites. Conscious of the requirements of Regulation 63(3) and 63(4) of the Regulations regard has been had to the representations of Natural Resources Wales (NRW), the applicant and the general public in carrying out this assessment.

Integrity of the Features of the Elenydd-Mallaen SPA

4. The SPA is designated for its breeding pairs of three Annex II bird species, namely, red kite (status: favourable), merlin (status: favourable) and peregrine falcon (status: favourable).
5. The site qualifies under Article 4.1 by supporting internationally or nationally important breeding populations of two Annex 1* species: 34 pairs of red kite, (34% of the British population and 0.3% of the world population) and about 7 pairs of merlin (over 1% of the British population). Notable also are the following three Annex 1 species: chough, peregrine falcon and golden plover. The diversity and quality of upland habitats provide an abundance of suitable feeding and nesting sites.
6. The proposed development site is 2.5km from the SPA and the ecological assessment submitted with the application included vantage point surveys that recorded all three of the birds for which the SPA is designated showing that they are active across the application site. Thus, for the purpose of the HRA it is considered to be functionally connected. In this case, functionally connected land is taken to mean land around an SPA that is within the core range of one of the designated features of the SPA and that

could provide suitable foraging or nesting habitat. Any land that is considered to be functionally connected to the SPA is a consideration in the SPA management plan and counts towards achieving the conservation objectives.

Screening

7. Construction of the mast and associated infrastructure will lead to a loss of habitat that could be used by the designated bird species for foraging or nesting. Nevertheless, the total land take of the application will be 56m². This area is considered insignificant from a foraging perspective as it would provide negligible food supply to any of the designated features.
8. Human disturbance can cause birds of prey to permanently desert their eggs and young. Temporary displacement of adults can also leave the nest open to predation. Any suitable nesting habitat within 300m of the proposed development site has the potential to be used by breeding pairs of the species for which the site is designated which introduces the risk of disturbance to these features. If birds nest here then noise and activity associated with construction of the development could cause disturbance and lead to nest failure which could undermine the conservation objectives for the SPA.
9. No suitable habitat for breeding Red Kite or Peregrine Falcon is present within 300m. However, the potential presence of breeding pairs of merlin within disturbance distance of the development area cannot be ruled out. Therefore, breeding pairs of merlin could be vulnerable to construction disturbance if works are undertaken during the breeding bird season (April to September inclusive). Accordingly, without mitigation and control measures a likely significant effect from this identified hazard cannot be ruled out.
10. The meteorological mast will be secured by a series of high tensile, metal guy ropes. These wires are relatively thin and without mitigation there is scope for birds to collide with them. Red kite and Buzzard are the two species that are likely to be most at collision risk at this particular site. Accordingly, without mitigation and control measures a likely significant effect from this identified hazard cannot be ruled out.
11. The proposal will require the use of a low intensity aviation light. Artificial light is known to have many negative effects on birds. The effects of this type of lighting would be mainly felt at night. However, the designated features for this site are diurnal and therefore the artificial lighting is unlikely to have a significant effect on the designated features or undermine the conservation objectives of the SPA.
12. Given my finding the significant effects from disturbance and collision risk could not be screened out and will need to be carried forward to the Appropriate Assessment stage.

Appropriate Assessment

13. As Likely Significant Effects cannot be excluded, then, in accordance with the Habitats Regulations, the competent authority must undertake an Appropriate Assessment (AA).
14. The applicant has put forward mitigation measures that is contended would enable it to be ascertained that the proposal would not adversely affect the integrity of the SPA. In some circumstances, the decision-taker must consider the way in which it is proposed to carry out the project and whether conditions or other restrictions would help to ensure that site integrity is not adversely affected. In practice, this means identifying the potential risks and putting in place a legally enforceable framework with the aim of preventing the risks from materialising.

15. If Merlin nests within 300m of the development, noise and activity associated with construction of the mast, compound and turning area could cause disturbance, resulting in nest failure. The mitigation put forward is set out in condition 5 attached to planning permission A210079. This condition restricts development, including site clearance, from being carried out between February and August in any year.
16. The meteorological mast will be secured by high tensile, metal guy ropes. These wires are relatively thin and without mitigation there is scope for birds to collide with them causing injury and/or death. To avoid such collisions an Avian Diversion Specification was submitted with, and conditioned as part of, the planning permission A210079 (condition 6 refers).
17. The specification states that: bird diverters will be attached to the guy ropes at a spacing of 3m for the lower 20m, and thereafter every 5m to the top of the guy line; on the third inner guy line, bird diverters at a spacing of 5m for the entire length; and neon duct tape wrapped around the monopole mast for its entire length. Furthermore, operation and maintenance inspections of the mast and guy wires will take place on an annual basis, where any repair or replacements to the diverters will be undertaken.
18. With the above proposed mitigation in place, it is unlikely that significant adverse effects on the integrity of the SPA will occur.

AA Conclusion

19. I have taken into account all the available evidence and have adopted the precautionary principle in carrying out this assessment. It is determined that the risks to the integrity of the qualifying interests and conservation objectives of the Elenydd-Mallaen Special Protection Area has been addressed by appropriate mitigation.
20. Accordingly, I conclude that the proposed development would not have a significant adverse effect on the ecological integrity of the European Site and therefore Common Land Consent can be granted. This conclusion is predicated on the circumstances of the case based on the site's unique context and situation and the particulars of the mitigation offered.

J Burston

INSPECTOR

Habitat Regulations Assessment

River Wye SAC

Background

1. The need for Habitats Regulations Assessment (HRA) is set out within Article 6 of the EC Habitats Directive 1992, which is transposed into British Law by the Conservation of Habitats and Species Regulations 2017 (the Regulations). The Inspector, as competent authority with respect to the Regulations, will need to decide whether 'likely significant effects' alone or in-combination with other plans or projects, can be ruled out based on the information provided by the parties. The competent authority may agree to the project only after ascertaining that it will not adversely affect the integrity of the European site.
2. Whilst the Regulations provide strict protection, they are not a prohibition on new development or activities. Instead, they involve a case-by-case examination of the implications for each European protected site, its qualifying features and its conservation objectives. There is no statutory method for undertaking an HRA and the approach can vary on a case-by-case basis. Nonetheless, guidance issued from the European Commission¹ sets out a four-stage assessment process involving Screening; Appropriate Assessment (AA); Assessment of Alternatives and Imperative Reasons of Overriding Public Interest (IROPI). AA considers the implications of the proposal for the European site in view of its conservation objectives. Steps 3 and 4 are collectively known as derogation.
3. The purpose of this HRA is to report on the impacts of the scheme on the River Wye Special Area of Conservation (SAC), which is a European protected site. Conscious of the requirements of Regulation 63(3) and 63(4) of the Regulations regard has been had to the representations of Natural Resources Wales (NRW), the applicant and the general public in carrying out this assessment.

Integrity of the Features of the River Wye SAC

4. The appeal site lies within the catchment of the River Wye SAC. The site is designated under article 4(4) of the Directive (92/43/EEC) as it hosts the following habitats listed in Annex I: Transition mires and quaking bogs; and Water courses of plain to montane levels with the Ranunculion fluitantis and Callitriche-Batrachion vegetation. In terms of qualifying species the SAC lists: Allis shad *Alosa alosa*; Atlantic salmon *Salmo salar*; Brook lamprey *Lampetra planeri*; Bullhead *Cottus gobio*; Otter *Lutra lutra*; River lamprey *Lampetra fluviatilis*; Sea lamprey *Petromyzon marinus*; Twaites shad *Alosa fallax*; and White-clawed (or Atlantic stream) crayfish *Austropotamobius pallipes*. ¹ Assessment of plans and projects significantly affecting Natura 2000 sites' (2001).
5. The Conservation Objectives for the River Wye SAC include, amongst other considerations, that the ecological status of the water environment should be sufficient to maintain a stable or increasing population of each feature. This will include elements of water quantity and quality, physical habitat and community composition and structure.
6. The issues associated with maintaining the sites integrity include water levels and flow, water quality, eutrophication (nitrogen enrichment), sedimentation, disturbance and

species maintenance; and water quality targets follow those in the revised Common Standards Monitoring Guidance for Rivers (JNCC 2016).

Screening

7. Phosphates arising from an increase in wastewater produced by the development could enter the River Wye SAC causing detrimental impacts that undermine the conservation objectives for the designated features.
8. Nevertheless, this development will not produce any significant quantities of phosphate that would result in an increase in the amount of phosphate in the River Wye SAC. Accordingly, no likely significant effect from the identified hazard on the designated features has been identified.
9. Therefore, this project can be screened out as not likely to have a significant effect on River Wye SAC and an Appropriate Assessment is not necessary.

Conclusion

10. I have taken into account all the available evidence and have adopted the precautionary principle in carrying out this assessment.
11. No Significant effect is predicted based on the information provided with the Common Land Consent application for this project alone and in-combination. All hazards have been screened out of the assessment and no AA will be required for this SAC. This conclusion is predicated on the circumstances of the case based on the site's unique context and situation.

J Burston

INSPECTOR