



Penderfyniad ar yr Cais

Ymweliad â safle a wnaed ar 4 May 2022

gan **J Burston BSc MA MRTPI AIPROW**

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 23/06/2022

Application Decision

Site visit made on 4 May 2022

by **J Burston BSc MA MRTPI AIPROW**

an Inspector appointed by the Welsh Ministers

Date: 23/06/2022

Appeal Ref: CAS-01469-N8P2V3

Site address: Rhiwceiliog Common, Rhiwceiliog, Pencoed, Bridgend

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

- Register Unit: Rhiwceiliog Common CL20
 - Size of Common: 1065.5 acres
 - Commons Registration Authority: Bridgend County Borough Council
 - Landowner: The Trustees of the Dunraven Estate
 - Description of the area of Common: Lowland heath, adjacent to public highway.
 - The application, dated 19 November 2021, 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: Western Power Distribution
 - The works comprise the erection of low voltage overhead powerlines, consisting of 4 poles.
-

Decision

1. Consent is granted for the works in accordance with the application dated 19 November 2021 and the accompanying plans, subject to the following conditions:
 - 1) The works shall begin no later than three years from the date of this decision;
 - 2) All works shall be completed in accordance with the Job Method Statement, dated 30 May 2022; and
 - 2) All temporary fencing / safety barriers shall be removed within one month of the completion of the works.

Procedural Matters

2. I carried out an unaccompanied site inspection on 04 May 2022. 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.
3. 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 PEDW 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.

4. 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 WBFG Act”). In reaching this decision, I have taken into account the ways of working set out at section 5 of the WBFG 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 WBFG Act.

Main Issues

5. 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.
6. 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

Background

7. Western Power distribution (WPD) is seeking consent to construct a new low voltage power line associated with a new supply application. Under WPD’s licence conditions, it is obliged to provide an applicant with the lowest cost option to provide the supply applied for. The nearest point of connection to the existing network is via a high voltage transformer pole adjacent to Coedcae Farm and will comprise of 4 poles and 4 spans of insulated overhead line. Whilst there is an alternative option, outside of the Common, WPD was unable to obtain third party consent for this routing.

Representations

8. Five responses were received in response to the notice of the application.
9. The Open Spaces Society have stated that they have no objections to the proposal.
10. The remaining objections were received from local residents whose concerns include: landscape harm; harm to the Red Kite population and biodiversity; impact on living conditions, increase in traffic volumes; harm to areas of historic interest; and works being carried out on the common by the person requiring the electricity connection.

The interests of those occupying or having rights over the land

11. The Common Land Register shows that there are some 83 registered commoners who have interests in the common. However, the applicant advises that there are currently only 3 active commoners who exercise their rights. The common land register records rights to cut and take fern/bracken, estovers, and right of pasture for sheep, pigs, ponies, horses, goats, geese and cattle on the common. The applicant consulted the commoners, from the 83 that were consulted 19 replied. The majority of respondents, 16 in total, supported the application. Those that rejected the proposed development have not provided any substantive reasons for their position.
12. The landowner has agreed to the works and a wayleave agreement accompanied the application. I also note that it was the landowner's preference for the power lines to be overhead, rather than underground.
13. I consider that access to the common will not be restricted in any significant way by reason of the proposed works, both during and after construction operations. Any exclusion from the application site will only be of a temporary nature, and an agreement could be reached with any interested parties as to the timing of the exclusion, if necessary.
14. There is no evidence to suggest that the works are likely to harm the interests of those occupying or having rights over the land (and in particular persons exercising rights of common over it).

The interests of the neighbourhood and public rights of access

15. The interests of the neighbourhood test relates to whether the works will impact on the way the common land is used by local people.
16. The applicant has advised that the application area would have to be closed for about 2 to 3 days whilst the works take place, which will prevent its use and impact on anyone wishing to access the Commons from this point on the highway. However, there are a number of alternative accesses onto the common further along the highway, which I do not consider to be an unreasonable distance for a short-term diversion.
17. Further, I consider that public access to the common would not be restricted in any significant way by reason of the proposed works. Any exclusion of the public from the application site will only be of a temporary nature, and agreement should be reached with any interested parties as to the timing of the exclusion and an alternative temporary access be provided, if it is considered necessary for wellbeing or health reasons.
18. I conclude that public access over the commons will be maintained as far as is practically possible during the works. As all safety barriers will be removed once the works are completed, which is expected to be within 2 to 3 days, the works would not have an unacceptable or lasting impact on local and public access rights over the commons.

Nature Conservation

19. The applicant requested a 'Screening Opinion' from the Welsh Government. The response dated 30 September 2021 stated "*Our investigations have found that the area in question is semi-natural. It is also been found that the habitat in question is a rare type of lowland heath Ulex gallii – Agrostis curtisii lowland heath. To avoid any long term impact you must ensure that the turf is first removed, and retained to allow the installation to progress. Once the pole is installed the turf should then be replaced. No further interventions are necessary.*" The necessity of employing this construction technique is included in the Job Method Statement, dated 30 May 2022, submitted by the applicant.

20. Several objectors have raised concerns about biodiversity, particularly the impact of overhead powerlines on bird populations. In principle, birds of any flying species can become victims of collisions with some type of aerial wires or cables e.g. telephone / telegraph lines, as well as powerlines. Nonetheless, resident birds, can adapt to obstacles in their habitat and I have no evidence that the area is used by birds on migration. Furthermore, telegraph poles offer perching and look-out sites for some birds of prey in otherwise treeless landscapes. In any event, to reduce the potential of collisions, particularly given the location of the wires against the skyline, the applicant has stated that 'bird diverters' would be fitted to the overhead conductors.
21. Natural Resources Wales has not made any comment with regard to the application and, given my above findings, I am satisfied that the works will not materially harm nature conservation interests.

Conservation of the landscape

22. The landscape hereabouts is not statutorily designated; however, I do acknowledge that the area is recognised as a 'Special Landscape Area' in the Bridgend Local Development Plan 2006 - 2021. Nevertheless, the area is not devoid of infrastructure features, given that overhead powerlines and a wind farm are visible in the surrounding area.
23. The visual impact will be mainly from a short distance as the proposal will be situated high up on the hill side and will form part of an expansive landscape. Moreover, the heathland character of the common is established here, which would assist in assimilating the development into the landscape, rather than fragmenting it.
24. The nearby dwellings are nestled into the hillside and their views are orientated primarily to the southwest, away from the proposed site. In views to the north and northeast the powerlines will be visible but given their scale they would not be dominant or oppressive in such views.
25. The trenches and safety barrier fencing will also cause some visual harm. Nonetheless, it will be short term and the land will be re-instated upon completion of the works as set out in the Job Method Statement.
26. Accordingly, whilst there would be a minor negative impact on the landscape, I am satisfied that the landscape has the capacity to accommodate the proposal without adversely affecting the enjoyment of the common as a whole.

Archaeological remains and features of historic interest

27. Cadw were consulted about the application but did not comment. There is no evidence before me that leads me to think the works will harm any archaeological remains or features of historic interest.

Other Matters

28. Local residents have raised additional objections in relation to the impact of the overhead power lines on their living conditions. In particular, residents living close to the proposed power lines are concerned about Electromagnetic Fields (EMF). An EMF is produced whenever a piece of electrical or electronic equipment (i.e. TV, food mixer, computer mobile phone etc.) is used and distributed, including power lines. Exposure to high levels of EMFs can give rise to effects that may be irritating or unpleasant. However, I have no evidence that the general public would be exposed to EMF in excess of the recognised standards.
29. Flying kites is a fun family activity and the Common is a large area of open space where this can be carried out safely. Whilst I acknowledge that the presence of the proposed

power lines would restrict such activities, given the large area of open space hereabouts other safe locations could easily be found.

30. I note the comments made about increase in traffic volumes and reduction in land values. However, I have seen no evidence to substantiate these statements to afford them any weight.

Conclusion

31. I conclude that there would be minor impacts on grazing and access rights during construction operations and on the landscape. Nevertheless, for the reasons set out above, this would not significantly harm the interests set out in paragraph 6. Consent is therefore granted for the works subject to the conditions set out in paragraph 1.

J Burston

Inspector