



DELEGATED DECISION

Powys County Council Constitution Schedule 13 Responsibility for Functions

Application Number: 23/1178/FUL

Grid Ref: E: 313083
N: 260357

Community Council: Penybont Community

Valid Date: 28.07.2023

Case Officer:



Applicant: N/A

Location: Land At Hendy Wind Farm, Bettws Disserth, Llandrindod Wells, Powys,

Proposal: Construction of a revised access track between Turbines 5 & 6 (retrospective)

Application Type: Full Application

Consultee Responses

Consultee	Received
<u>PCC-(M) Highways</u>	18th Aug 2023
The County Council as Highway Authority for the County Class I Highway, A44	
Wish the following recommendations/Observations be applied	
Recommendations/Observations	
Thank you for consulting the Highway Authority on this matter.	
Based on the information provided, the Highway Authority does not wish to comment on this application.	
<u>Welsh Water</u>	23rd Aug 2023

DCWW have no comments to make on this application.

Environmental Protection

No comments received at the time of writing this report.

PCC-Ecologist

No comments received at the time of writing this report.

Natural Resources Wales (Mid Wales)
DPAS

15th Sep 2023

We have concerns with the application as submitted. However, we are satisfied that these concerns can be overcome by attaching the following conditions to any planning permission granted:

Condition 1: Habitat Management Plan

Condition 2: Great Crested Newt (GCN) surveillance and monitoring plan

Condition 3: Biosecurity

The documents identified below should also be included in the approved plans and documents condition on the decision notice:

Documents:

- o Environmental Statement - Volume 1 - Main Text - Hendy Windfarm
- o Letter dated 25th July 2023 from ADAS
- o Figure 7.12 Great Crested Newt Survey Locations
- o Hendy Wind farm - Protected Species Protection Plan August 2020
- o Hendy Wind farm - Construction Environmental Management Plan (Phase two) August 2020
- o Revised Access Track to Turbine 6 and 7 Site Plan
- o Surface Water Management Plan Hendy Wind Farm - A111447 dated 15 November 2018

Please note, without the inclusion of these conditions and documents we would object to this planning application. Further details are provided below.

Protected Species

We have reviewed the following documents submitted in support of the application:

- o Environmental Statement - Volume 1 - Main Text - Hendy Windfarm
- o Letter dated 25th July 2023 from ADAS
- o Figure 7.12 Great Crested Newt Survey Locations
- o Hendy Wind farm - Protected Species Protection Plan August 2020
- o Hendy Wind farm - Construction Environmental Management Plan (Phase two) August 2020
- o Revised Access Track to Turbine 6 and 7 Site Plan

We note that the above application is a retrospective application for the Construction of a revised access track between Turbines 5 & 6. Given the location of the development we would advise that the proposal be carried out under the appropriate derogation licence issued by NRW under the provisions of Regulation 55 (2) (e) of the Conservation of Habitats and Species Regulations 2017 (as amended) [the Habitats Regulations]. We note that the development appears to have been completed and therefore no licence can be issued for the retrospective works.

In light of the proposal we would advise had the works not been retrospective we would have advised that the proposal would not be detrimental to the maintenance of the favourable conservation status of the local population of Great Crested Newts (GCN) provided licensing conditions are imposed in respect of (a) long term monitoring (b) Submission of a long term site management plan; and (c) long term biosecurity plan.

We note the comments regarding terrestrial habitat quality on the site, however whilst the habitat may be considered to be sub-optimal for GCN, we consider that GCN can be found in these types of habitat and a number of GCN Special Areas of Conservations (SAC's) have short grass grazed habitats.

In light of the above, appropriate site management, underpinned and informed by site monitoring will ensure the maintenance/restoration of the current conservation status (CCS) to its favourable conservation status.

We recommend that you attach the following conditions to any grant of planning consent:

Condition 1:

1. Submission of an updated habitat management plan that includes specific prescriptions

for great crested newt. Specific provisions of the plan to include

- (a) For each identified ecological feature, defined aims and objectives (including targets that can be used as key performance indicators for monitoring purposes);
- (b) Habitat management prescriptions for aquatic and terrestrial habitats;
- (c) Maps illustrating the location of ecology areas and for these to be provided as geographical information system shape files
- (d) Appropriate amphibian reasonable avoidance measures;
- (e) Contingency prescriptions if fish and/or invasive non-native species (INNS) are detected;
- (f) Site liaison, wardening, incident reporting and response arrangements;
- (g) Details of the skills and competencies required by those undertaking the works or activities including whether they require European

Protected Species licenses for the activities proposed*;

- (h) Contingency measures that are capable of being implemented in the event of failure to undertake or appropriately implement / correct management or surveillance prescriptions including any required actions arising from unforeseen situations;
- (i) Details of persons or bodies responsible for undertaking management and surveillance together with required skills and competencies;
- (j) Reporting requirements associated with species surveillance and habitat management
- (k) Provision for periodic review mechanism for the Environment Management Plan; and
- (l) Plans for Ecological Compliance Audits to evidence compliant implementation of all ecological avoidance, mitigation and compensation works.

Condition 2:

Submission of a long term great crested newt surveillance and monitoring plan. The approved plan shall include:

- a. Methodology: The methodology shall accord with and results reported through the Wales Great Crested Newt Monitoring Scheme;
- b. Surveys shall be carried biennial unless fish or invasive non native species are detected. In these circumstances, surveys shall be carried out annually

- c. Duration: Throughout the operation and decommissioning phases of the approved scheme ;
- d. Surveys shall include abundance counts and habitat quality assessments using Habitat Suitability Index (HSI) scores;
- e. Identification of individuals/bodies being responsible for commissioning, undertaking and reporting survey results;
- f. Each water body, including all applicable water features referenced in the surface water management plan shall be individually numbered on site

Biosecurity

We consider biosecurity to be a material consideration owing to the nature and location of the proposal. In this case, biosecurity issues concern invasive non-native species (INNS) and diseases. We therefore advise that any subsequent planning consent includes the requirement for the submission of an appropriate Biosecurity Risk Assessment to the satisfaction of the LPA.

We consider that this assessment must include

- (i) appropriate measures to control any INNS on site; and
- (ii) measures or actions that aim to prevent INNS being introduced to the site for the duration of construction and operational phases of the scheme.

Possible Condition:

Condition 2: No development, including site clearance, shall commence until a Biosecurity Risk Assessment, and Method Statement that considers invasive non-native species and specific diseases (e.g. Chytrid) has been submitted to and approved in writing by the Local Planning Authority. The risk assessment shall include measures to prevent the introduction of and where present control, removal or for the long-term management of invasive species both during construction and operation. The risk assessment shall consider landscaping and other related plans. The Biosecurity Risk Assessment shall be carried out in accordance with the approved details.

Justification: To ensure that an approved Biosecurity Risk Assessment is implemented to secure measures to prevent or control the spread and effective management of any invasive non-native species and listed diseases at the site.

Environmental Management

We note that the applicants have submitted the following documents in support of the

application:

- o Surface Water Management Plan Hendy Wind Farm - A111447 dated 15 November 2018
- o Construction Environmental Management Plan (CEMP) Hendy Wind Farm dated August 2020

We note that the works were completed in October 2020. The site was attended regularly during the process of constructing the major construction phases. On each occasion silt mitigation measures were checked, as well as nearby watercourses. Comments regarding the CEMP were made at several points during the development. On reviewing the submitted CEMP, we would have been satisfied with the proposed plans for environmental management as set out in the plan. We recommend that you list the above documents in the condition identifying approved plans and documents attached to any grant of planning consent.

Other Matters

Our comments above only relate specifically to matters included on our checklist, Development Planning Advisory Service: Consultation Topics (September 2018), which is published on our website. We have not considered potential effects on other matters and do not rule out the potential for the proposed development to affect other interests.

We advise the applicant that, in addition to planning permission, it is their responsibility to ensure they secure all other permits/consents/licences relevant to their development. Please refer to our website for further details.

PCC-Rights Of Way Senior Manager

23rd Aug 2023

The applicant is advised that the above public rights of way (PROW) exists within the application area and the proposed development as shown on the application plans provided will directly affect it.

In the Local Development Plan, DM13 criterion 9 requires the public right of way to be enhanced and integrated within the layout of the development proposal. Should planning permission be granted the applicant must ensure:

- o that any surface damage to the PROW attributable to the development; either in construction or subsequent use is repaired to the Highway Authorities satisfaction
- o that no surface water from the drainage of the tracks should be directed towards any PROW
- o that any gates associated with the development should open away from the

PROW, to prevent them from obstructing the PROW

It is therefore strongly advised that the applicant checks the definitive line of the public rights of way on their land to ensure that they understand where they are located. You can access a digital interpretation of the Definitive Map using this link: <https://en.powys.gov.uk/article/13184/Public-Rights-of-Way-Map> Please refer to the accompanying user guide, enclosed.

In addition to the above, Powys County Council has a duty to 'assert and protect' public rights of way under the Highways Act 1980. The applicant should note:

- o Development over, or illegal interference with, a public right of way, is a criminal offence and enforcement action will be taken against any applicant who ignores the presence of affected public rights of way. This includes temporary obstructions such as rubble mounds, building materials, parked vehicles etc...
- o Landscaping & Surfacing - Advice will need to be sought before interfering or surfacing a public right of way.
- o New fencing or boundaries - The developer will need to seek a licence for a new structure if intending to create a boundary across a public footpath or bridleway. We cannot authorise a structure across a Restricted Byway or Byway Open to All Traffic.
- o Temporary closures - The applicant can seek a temporary closure of a public right of way from the council if they feel the public may be at risk during the works. The process can take a couple of months to put into place so early consultation with Countryside Services is recommended if a temporary closure is required. This is a separate procedure for which a fee applies.
- o Legal Diversion - If development directly affects a public right of way, the applicant will need to seek advice and apply for a legal diversion from the Council. No development can take place on a public right of way until a legal order is confirmed and the process may take at least 6 months. For more information please discuss with Countryside Services at the earliest available opportunity.

Community Council

No comments received at the time of writing this report.

Ward Councillor

No comments received at the time of writing this report.

Powys Ramblers

20th Sep 2023

Powys ramblers wish to comment on this application please.

We wish to support the comments made by countryside services.

Public Responses

Following the display of a site notice, one public representation has been received at the time of writing this report. A summation of the points raised are detailed below:

- Crosses PROW bridleway LA 1218
- Retrospective
- GCN's
- Flooding

Planning History

App Ref	Description	Decision	Date
22/0419/FUL	Formation of revised access track between Turbines 5 & 6 (retrospective)	Refused	7th Mar 2023

Principal Planning Constraints

Right of Way	134/1218/1
Solar Local Search Areas	SS

Principal Planning Policies

Policy	Policy Description	Year	Local Plan
PPW	Planning Policy Wales (Edition 11, February 2021)		National Policy
NATPLA	Future Wales - The National Plan 2040		National Policy
TAN5	Nature Conservation and Planning		National Policy
TAN12	Design		National Policy
TAN18	Transport		National Policy

TAN23	Economic Development	National Policy
TAN24	The Historic Environment	National Policy
SP7	Safeguarding of Strategic Resources and Assets	Local Development Plan 2011-2026
DM2	The Natural Environment	Local Development Plan 2011-2026
DM4	Landscape	Local Development Plan 2011-2026
DM5	Development and Flood Risk	Local Development Plan 2011-2026
DM7	Dark Skies and External Lighting	Local Development Plan 2011-2026
DM8	Minerals Safeguarding	Local Development Plan 2011-2026
DM13	Design and Resources	Local Development Plan 2011-2026
T1	Travel, Traffic and Transport Infrastructure	Local Development Plan 2011-2026
RE1	Renewable Energy	Local Development Plan 2011-2026
SPGBIO	Biodiversity and Geodiversity SPG (2018)	Local Development Plan 2011-2026
SPGLAN	Landscape SPG	Local Development Plan 2011-2026

Other Legislative Considerations

Crime and Disorder Act 1998

Equality Act 2010

Planning (Wales) Act 2015 (Welsh language)

Wellbeing of Future Generations (Wales) Act 2015

Marine and Coastal Access Act 2009

Officer Appraisal

Site Location and Description

The application site is located within the community council area of Penybont and not within a settlement development boundary and is therefore considered to be development within the open countryside as defined by the Powys Local Development Plan (2018). The application site relates to a parcel of agricultural land between turbines 5 and 6 at Hendy windfarm.

The application seeks retrospective planning permission for the formation of a revised access track between Turbines 5 & 6. The track covers approximately 1797sqm and 335m in length and finished with hardcore.

This application is a resubmission of refused planning permission 22/0419/FUL which was refused on the grounds of:

1. Insufficient information has been submitted in support of the application to conclude there would be no adverse impacts upon protected and priority species and habitats as a result of the proposed development. The development is therefore contrary to Planning Policy Wales (Edition 11, 2021), Technical Advice Note 5: Nature, Conservation and Planning, LDP Policies DM2 and SP7, and Supplementary Planning Guidance: Biodiversity and Geodiversity (Adopted October 2018).

Principle of Development

Policy DM13 of the Powys LDP states development proposals should meet all highway access requirements, (for all transport users), vehicular parking standards and demonstrate that the strategic and local highway network can absorb the traffic impacts of the development without adversely affecting the safe and efficient flow of traffic on the network or that traffic impacts can be managed to acceptable levels to reduce and mitigate any adverse impacts from the development. TAN 6 states the choice of design and materials, and the relationships of texture and colour to existing development, local traditions, and the landscape, can be important considerations for both agricultural/forestry buildings and roads.

LDP Policy DM4 highlights that proposals for new development outside the Towns, Large Villages, Small Villages and Rural Settlements defined in the Settlement Hierarchy must not, individually or cumulatively, have an unacceptable adverse effect, on the valued characteristics and qualities of the Powys landscape.

It is therefore considered that the principle of development complies with the Powys LDP (2018) subject to the following:

Highways

Policies DM13 and T1 of the Powys Local Development Plan (2018) indicates that development proposals should incorporate safe and efficient means of access to and from the site for all transport users, manage any impact upon network and mitigate adverse impacts.

As part of the application process the Highway Authority were consulted on the proposed development and have raised no objection to the proposed development. Officer's note the proposed development relates to an access track which does not connect to the existing highways network and will therefore not impact on highways safety.

In light of the above, it is considered that the development complies with relevant planning policies.

Landscape

Policy DM4 of the Powys Local Development Plan (2018), states that development proposals must not, individually or cumulatively, have an unacceptable adverse effect, on the valued characteristics and qualities of the Powys Landscape.

With regards to LANDMAP, the application site is classified as being of moderate value, and is classified as two areas, including Castle Bank & Blaen Edw Bank. Upland hills, plateau with a smooth & rounded profile and mix of semi-natural rough moorland landcover and large fields.

The proposal is not deemed to have an unacceptable impact on Powys landscape given the proposed length and area that it covers. The access track connects to existing wind turbine access roads and will be seen in the context of the larger development of the windfarm.

In light of the above it is therefore considered that the proposed development fundamentally complies with relevant planning policy.

The Natural Environment

Policy DM2 of the Powys Local Development Plan, TAN5 and PPW seek to safeguard protected species and their habitats. Policy DM2 states that proposed development should not unacceptably adversely affect any habitat or protected species.

There are no SACs or SSSI's located with 1 km of the proposed development and

neither are there any sites of ancient woodland.

The application site is located on agricultural pastoral land which is considered to be of low ecological value.

Natural Resources Wales have been consulted on the proposed development with further information having been submitted in support of the development which was requested, and not submitted as part of the previously refused planning application.

Based on the information submitted, Natural Resources Wales have not objected to the proposed development, however have requested conditions in respect of:

- Habitat Management Plan
- Great Crested Newt (GCN) surveillance and monitoring plan
- Biosecurity

Whilst the works undertaken are retrospective, officers would consider it appropriate to specify a time frame for the information in respect of these conditions to be submitted to, and considered by the LPA under relevant consultee consultation.

Officer's note that no biodiversity enhancements have been proposed as part of the scheme. A condition will therefore be attached to secure an appropriate level of biodiversity enhancement as part of the scheme.

In light of the above it is therefore considered that the proposed development fundamentally complies with relevant planning policy.

Flooding

The application site is partially located within the Flood Maps for Planning Surface Water and Small Water Course Flood Zone 2 and 3. The proposed development is not classified as highly vulnerable development. Given the extent of the flooding and that the developed area is in excess of 100sqm, the development would be subject to a SAB application which will be added as an informative with any granting of planning permission.

Decision

Approve

Conditions

1. This permission being retrospective as prescribed by Section 73(a) of the Town and Country Planning Act 1990 (as amended) shall be deemed to take effect

from the date of consent.

2. The development shall be carried out in accordance with the following approved plans and documents:
 - Application Form
 - Location Plan
 - Site Plan
 - Great Crested Newt Survey Locations
 - Construction Environment Management Plan Phase Two dated August 2020
 - Protected Species Protection Plan dated August 2020
 - Surface Water Management Plan (Parts 1-3) dated 15 November 2018 prepared by WYG Environment and Planning (Northern Ireland) Ltd
3. No external lighting shall be installed unless a detailed external lighting plan is submitted to and approved in writing by the Local Planning Authority. The external lighting scheme shall identify measures to avoid impacts on nocturnal wildlife in accordance with the Bat Conservation Trust and Institution of Lighting Professionals Guidance Note 08/18 Bats and artificial lighting in the UK Bats and the Built Environment series and shall be implemented as approved and maintained thereafter.
4. Within 3 months from the date of this approval, an updated habitat management plan shall be submitted to and approved in writing by the Local Planning Authority that includes specific prescriptions for great crested newt. Specific provisions of the plan to include:
 - (a) For each identified ecological feature, defined aims and objectives (including targets that can be used as key performance indicators for monitoring purposes);
 - (b) Habitat management prescriptions for aquatic and terrestrial habitats;
 - (c) Maps illustrating the location of ecology areas and for these to be provided as geographical information system shape files
 - (d) Appropriate amphibian reasonable avoidance measures;
 - (e) Contingency prescriptions if fish and/or invasive non-native species (INNS) are detected;
 - (f) Site liaison, wardening, incident reporting and response arrangements;
 - (g) Details of the skills and competencies required by those undertaking the works or activities including whether they require European Protected Species licenses for the activities proposed*;

(h) Contingency measures that are capable of being implemented in the event of failure to undertake or appropriately implement / correct management or surveillance prescriptions including any required actions arising from unforeseen situations;

(i) Details of persons or bodies responsible for undertaking management and surveillance together with required skills and competencies;

(j) Reporting requirements associated with species surveillance and habitat management

(k) Provision for periodic review mechanism for the Environment Management Plan; and

(l) Plans for Ecological Compliance Audits to evidence compliant implementation of all ecological avoidance, mitigation and compensation works.

The measures identified shall be implemented and maintained in perpetuity.

5. Within 3 months from the date of this approval, a long-term great crested newt surveillance and monitoring plan shall be submitted to and approved in writing by the Local Planning Authority. The approved plan shall include:

a. Methodology: The methodology shall accord with and results reported through the Wales Great Crested Newt Monitoring Scheme;

b. Surveys shall be carried biennial unless fish or invasive non native species are detected. In these circumstances, surveys shall be carried out annually

c. Duration: Throughout the operation and decommissioning phases of the approved scheme;

d. Surveys shall include abundance counts and habitat quality assessments using Habitat Suitability Index (HSI) scores;

e. Identification of individuals/bodies being responsible for commissioning, undertaking and reporting survey results;

f. Each water body, including all applicable water features referenced in the surface water management plan shall be individually numbered on site.

The measures identified shall be implemented and maintained in perpetuity.

6. Within 3 months from the date of this approval a Biosecurity Risk Assessment, and Method Statement that considers invasive non-native species and specific diseases (e.g. Chytrid) shall be submitted to and improved in writing by the Local

Planning Authority. The risk assessment shall include measures to prevent the introduction of and where present control, removal or for the long-term management of invasive species both during construction and operation. The risk assessment shall consider landscaping and other related plans. The Biosecurity Risk Assessment shall be carried out in accordance with the approved details.

7. Within 3 months of the date of this approval, a biodiversity enhancement plan shall be submitted to and approved in writing by the Local Planning Authority. The agreed measures shall be implemented as approved and maintained thereafter for as long as the development remains in existence.

Reasons

1. Required to be imposed by Section 91 of the Town and Country Planning Act 1990.
2. To ensure adherence to the approved plans in the interests of clarity and a satisfactory development.
3. To comply with Powys County Council's LDP Policies DM2, DM4, DM13 in relation to The Natural Environment and to meet the requirements of Planning Policy Wales (Edition 11, 2021), TAN 5: Nature Conservation and Planning and Part 1 Section 6 of the Environment (Wales) Act 2016.
4. To comply with Powys County Council's LDP Policies DM2, DM4, DM13 in relation to The Natural Environment and to meet the requirements of Planning Policy Wales (Edition 11, 2021), TAN 5: Nature Conservation and Planning and Part 1 Section 6 of the Environment (Wales) Act 2016.
5. To comply with Powys County Council's LDP Policies DM2, DM4, DM13 in relation to The Natural Environment and to meet the requirements of Planning Policy Wales (Edition 11, 2021), TAN 5: Nature Conservation and Planning and Part 1 Section 6 of the Environment (Wales) Act 2016.
6. To comply with Powys County Council's LDP Policies DM2, DM4, DM13 in relation to The Natural Environment and to meet the requirements of Planning Policy Wales (Edition 11, 2021), TAN 5: Nature Conservation and Planning and Part 1 Section 6 of the Environment (Wales) Act 2016.
7. To comply with Powys County Council's LDP Policies DM2, DM4, DM13 in relation to The Natural Environment and to meet the requirements of Planning Policy Wales (Edition 11, 2021), TAN 5: Nature Conservation and Planning and Part 1 Section 6 of the Environment (Wales) Act 2016.

Informative Notes

Protected Species

Work should halt immediately and Natural Resources Wales (NRW) contacted for advice in the event that protected species are discovered during the course of the development. To proceed without seeking the advice of NRW may result in an offence under the Conservation of Habitats and Species Regulations 2017 and/or the Wildlife & Countryside Act 1981 (as amended) being committed. NRW can be contacted by phone at 0300 065 3000.

Birds - Wildlife and Countryside Act 1981 (as amended)

All nesting birds, their nests, eggs, and young are protected by law and it is an offence to:

- o intentionally kill, injure or take any wild bird
- o intentionally take, damage or destroy the nest of any wild bird whilst it is in use or being built
- o intentionally take or destroy the egg of any wild bird
- o intentionally (or recklessly in England and Wales) disturb any wild bird listed on Schedule 1 while it is nest building, or at a nest containing eggs or young, or disturb the dependent young on such a bird.

The maximum penalty that can be imposed - in respect of a single bird, nest or egg - is a fine of up to 5,000 pounds, six months imprisonment or both.

The applicant is therefore reminded that it is an offence under the Wildlife and Countryside Act 1981 (as amended) to remove or work on any hedge, tree or building where that work involves the taking, damaging or destruction of any nest of any wild bird while the nest is in use or being built (usually between late February and late August or late September in the case of swifts, swallows or house martins). If a nest is discovered while work is being undertaken, all work must stop, and advice sought from Natural Resources Wales and the Council's Ecologist.

Rights of Way

Development over, or illegal interference with, a public right of way, is a criminal offence and enforcement action will be taken against any applicant who ignores the presence of affected public rights of way. This includes temporary obstructions such as rubble mounds, building materials, parked vehicles etc...

Landscaping & Surfacing - Advice will need to be sought before interfering or surfacing a public right of way.

New fencing or boundaries – The developer will need to seek a licence for a new structure if intending to create a boundary across a public footpath or bridleway. We cannot authorise a structure across a Restricted Byway or Byway Open to All Traffic.

Temporary closures – The applicant can seek a temporary closure of a public right of way from the council if they feel the public may be at risk during the works. The process can take a couple of months to put into place so early consultation with Countryside Services is recommended if a temporary closure is required. This is a separate procedure for which a fee applies.

Legal Diversion – If development directly affects a public right of way, the applicant will need to seek advice and apply for a legal diversion from the Council. No development can take place on a public right of way until a legal order is confirmed and the process may take at least 6 months. For more information please discuss with Countryside Services at the earliest available opportunity.

Signed.....
Senior Planning Officer

Date:

Signed.....
Authorising Officer

Date: