



## Application Decision

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by R H Duggan BSc (Hons) DipTP MRTPI

an Inspector appointed by the Welsh Ministers

Decision date: 28/04/2025

Appeal reference: CAS-03944-R3H4V3

Site address: Aberedw Hills Common, Aberedw

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- The application dated 2 December 2024 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 Aberedw Hills Common (CL 46) and the Commons Registration Authority is Powys County Council.
  - The application is made by Aberedw Energy Park Limited (the applicant).
  - The proposed work is the Installation and operation of a temporary anemometer mast for a period of up to 5 years to measure wind speed and wind direction comprising a single galvanised steel mast with guy wires and anchor blocks, support solar array for the power supply and fencing on the common.
  - A site visit was made on 9 April 2025.
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### Decision

1. The application is allowed, and consent is granted for the installation and operation of a temporary anemometer mast for a period of up to 5 years to measure wind speed and wind direction comprising a single galvanised steel mast with guy wires and anchor blocks, support solar array for the power supply and fencing on the common in accordance with the application dated 2 December 2024 and the plans submitted with it and subject to the following conditions:

- i) The works shall begin no later than five years from the date of this decision.

Reason: To ensure that the works are commenced within a reasonable time frame.

- ii) The permission hereby granted shall endure for a period of five years from the date of commissioning. The applicant shall inform the Local Planning Authority within one month of the date of commissioning.

Reason: To comply with the terms of the application.

- iii) No later than three months after the end of the five year operating period, the anemometer mast, guy wires and anchor blocks, solar array and fencing shall all be removed, and the land reinstated to its previous condition.

Reason: To ensure the site is reinstated in the interests of those exercising their

rights on the common and to ensure the landscape is retained.

## **Procedural Matters**

2. In determining this application, I have had regard to the Welsh Government's Common Land Consents Guidance, August 2014, (the Guidance) which has been published for the guidance of both the former Planning Inspectorate (now PEDW) and applicants.

## **The Application**

3. The application seeks consent for works consisting of the installation of a 122.5 metre steel triangular lattice anemometer mast held up by high tensile guy wires. The mast would be approximately 60cm wide of aluminium lattice structure and the guy wires that hold up the mast would be made of galvanised steel wire. The anemometer mast would be installed at ground level on a timber raft base and supported by three sets of three guy wires at 120-degree intervals, fastened to nine anchor points at distances of approximately 30m, 55m and 80m from the mast. Permanent foundations are not required, limiting impacts on the surface of the common. Guy wire anchors would be secured in dugout areas of up to 3.95m long, 1m wide and up to 2.95m deep. A solar panel is included at the base of the anemometer mast (within the fenced area) which would power the low-intensity infra-red lighting of the mast. Wooden stockproof fencing approximately 1.2m in height is proposed to prevent livestock accessing the location of the mast and this would be placed around the base of the mast and each of the anchor points. An anti-climb plate and barrier would also be installed at the base of the mast to prevent anyone being able to climb the structure.
4. It is stated that the anemometer mast is required within the site of the proposed Aberedw Energy Park which is planned to include up to 18 wind turbines of up to 200m to tip in height. The wind turbine scheme would be subject to a separate application process for a Development of National Significance (DNS) as the proposed installed capacity of the scheme would be over 10 megawatts. It is standard practice to secure a separate permission for an anemometer mast as part of the design process as it is required to monitor and record accurate wind data such as direction and speed over a period of time, which will then be used to inform the design of the wind turbine scheme.
5. This application is accompanied by a Planning, Design and Access, and Green Infrastructure Statement (March 2024), and a Landscape and Visual Technical Statement (October 2024). These documents were prepared to accompany the planning application for the proposals (referenced below). They provide details of the design process and environmental considerations for the proposed anemometer, as well as the likely effects on Landscape Character, Visual Amenity and the Landscape and Historic Landscape Area Designations arising from the proposed development. I have had regard to these in making my decision in so far as they are relevant to the area of registered commons.
6. Planning permission has been approved by Powys County Council on 30 January 2025 (LPA Reference: 24/0346/FUL) for temporary planning permission for an anemometer mast of up to 122.5m in height (including instruments) with associated stockproof fencing.

## **Summary of Representations**

7. In response to consultation letters sent to relevant parties and the publication of a notice of the proposal, a number of representations were received:

8. The Open Spaces Society (OSS) has not raised an objection to the proposed works but has raised procedural concerns regarding the size of the plans submitted with the application.
9. Cadw advised that there are a number of Scheduled Monuments within 5km of the site, but no objection is raised. Cadw states that the documents submitted with the planning application concluded that the proposed development would have no significant adverse effects on any scheduled monuments, and Cadw concur with this conclusion.
10. Natural Resources Wales (NRW) reiterated its advice from that given at the planning application stage which advised that their concerns regarding ornithology could be addressed by suitably worded conditions on the planning permission; it was satisfied with the reports in relation to bats and Great Crested Newts; and that the proposal would be unlikely to have an impact on the Brecon Beacons National Park (BBNP). With regard to protected sites NRW notes that the site is located within the catchment of the River Wye Special Area of Conservation (SAC). However, there is unlikely to be a source of additional nutrients and/or a pathway for impacts from the development. As such, the development is not likely to have a significant effect on the River Wye SAC in relation to nutrient inputs.
11. A total of 31 individual representations were submitted to PEDW raising the following issues:
  - Concerns about compliance with statutory requirements for public consultation;
  - Catastrophic impact on birdlife on the Common, and that the supporting wires will pose a danger to various birds, including lapwings, curlews, red kites, buzzards and ospreys;
  - Harmful impact on nature conservation, ecology, biodiversity and peat;
  - Harmful impact on geology and on groundwater/hydrology;
  - The height of the mast would have a detrimental visual impact on the area, the landscape and historic environment, including the cumulative impact of other proposed schemes in the wider area;
  - Concerns regarding the noise of wind through the wires;
  - Detrimental impacts on the use of the common by registered commoners and those with grazing rights, and danger to individuals riding horses;
  - Harmful impact on tourism and the economy;
  - Concerns raised regarding the potential danger to low flying military aircraft and paragliders, the air ambulance and hot air balloons;
  - Concerns regarding the content of the application and the overall need for the mast and wind turbines given that the site is not within a pre-assessed area for wind energy developments.

## **Main Issues**

12. 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 their rights of common over it);

- b) The interests of the neighbourhood;
- c) The public interest (including 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 matter considered to be relevant.

## **Reasons**

### ***The interests of persons having rights in relation to the land***

13. Aberedw Hills Common is registered as common land (CL 46) and extends to some 2,858.99 acres or 1,156.99 hectares. The applicant states that the public do not 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.
14. The applicant advises that there are a total of 67 sets of rights registered on the common, including 1 common right to graze 150 sheep and 20 cattle on Llanfraith Hill; 65 common rights to graze sheep, cows or horses across the whole common area, with a combined right to graze 12,837 Sheep Units; four of these common rights include the right to graze one weaning lamb per grazing sheep (this right applies to a combined 798 sheep); two of these common rights include the right to graze the suckling young of grazing animals, including ponies (this applies to a total of 195 sheep units); and 48 common rights include the right to take bracken off the Common for bedding or reasonable agricultural purposes, and two include the right to take fern for the benefit of the farm.
15. The mast would be transported to the site via existing access tracks. No new tracks, temporary or permanent, would be required for the installation of the mast and no permanent foundations are required, thus minimising the impact of the proposed works on the common.
16. The proposed works would clearly result in a reduction in the area of common being available for the graziers to exercise their rights for a period of up to 5 years following commencement of the works, and the loss of part of the common has the potential to interfere with hefting practices. However, given that the total area of the common is 1,156.99ha, the proposed works would occupy only a very small portion (approximately 0.05ha) which would be enclosed by fencing, with the remainder of the common continuing to be available for grazing.
17. Whilst the mast and associated fencing would result in interference with the grazing rights this is very minor or negligible due to the narrow area of land being enclosed. Although the use of the land for grazing would be lost for a temporary period, this is on a small part of the overall common, which I find to be insignificant.
18. As such, I do not find there has been any interference with access rights.

### ***The interests of the neighbourhood***

19. There is no definition of neighbourhood in the 2006 Act. The Guidance requires consideration to be given to whether the works mean that local people will be prevented from using the common in the way that they are used to. It also requires consideration to be given to whether the works would interfere with the future use and enjoyment of the land as a whole.
20. The applicant states that the public do not have a right of access to the commons for air and exercise under section 193 of the Law of Property Act 1925. However, there are public rights of way that cross the common, but the proposed works would not be located

within 50m of any public rights of way and would not affect the use of these rights of way or other recreational trails or networks. The closest Public Right of Way (102/2093/1) is approximately 190m north-west of the proposed anemometer mast. The location of the proposed mast and associated fencing has been specifically chosen to avoid key site constraints such as watercourses and public rights of way.

21. The subject common is located in relatively close proximity to the town of Builth Wells and lies approximately 16km from the boundary of the BBNP. As such, the common is used for recreational purposes by both local residents and those visiting the area. Indeed, several of those objecting to the proposed works have referred to the use of the common by those visiting the area and the impact of the proposed works on tourism and the economy.
22. The works would impede access on a small part of the common, but in my view would have a very limited effect on the way that the neighbourhood would use the common. Given the very limited extent of common that would be impacted and access to the wider common remains, I do not find the works would significantly interfere with the use and enjoyment of the common as a whole and I conclude that the works would not have an effect on the interests of the neighbourhood.

### ***The public interest***

#### **Nature Conservation**

23. Section 6 of the Environment (Wales) Act 2016 places a duty on public authorities to maintain and enhance biodiversity. A number of objections have raised concerns regarding the impact on biodiversity, including impact upon birdlife. I note that Powys County Council's ecologist raised no objection to the planning application subject to the imposition of conditions. NRW also provided a detailed consultation response to the planning application for the proposed works and has responded to this commons application. Having regard to the evidence before me I am satisfied that biodiversity enhancement and the protection of ecological and ornithological interests on the common could be achieved through the conditions imposed on the planning permission for the works.
24. With regard to peat, I am also satisfied that the applicant has demonstrated that there is no peat within the area of the proposed works.
25. The site is within the catchment of the River Wye SAC. I have already noted that planning permission has been granted. However, as the competent authority for determining this application under s38 of the Commons Act, I need to be satisfied that the proposal would not have an adverse effect on the integrity of the SAC.
26. NRW sets conservation objectives for the SAC, including phosphorus targets. In 2021, it published the results of its Compliance Assessment of Welsh River Special Areas of Conservation against Phosphorus Targets, which, amongst other things, found widespread failures on the River Wye. New development within any part of the catchment which will increase the amount or concentration of wastewater effluent or organic materials discharged directly or indirectly into the catchment's waterbodies has the potential to increase phosphate levels within those waterbodies.
27. During the course of the determination of the planning application and as part of this application NRW has confirmed that recognising the specific nature of the application it was satisfied that there is unlikely to be a source of additional nutrients and/or pathway for impacts. As the proposed works would not involve the discharge of wastewater effluent or organic materials, the proposals can therefore be screened out of HRA as there would be no pathway for impact on the SAC.

28. I am satisfied that the proposed works would satisfy the duty incumbent on public authorities in the Environment Act, and that it would not have an unacceptable impact on nature conservation interests. I am satisfied that the works would not harm the public interest in nature conservation terms.

Conservation of the Landscape

29. This application is accompanied by a Landscape and Visual Technical Statement (October 2024) which was originally prepared to accompany the planning application. It states that the Local Landscape Character Assessment for the Powys Local Development Plan (LDP) splits the County into distinct landscape character areas, and the site falls within area 50 'Aberedw Uplands'. The site is also located within the Upland Moor, Glaschw Hill Visual and Sensory Aspect Area of LANDMAP which is afforded a 'high' overall evaluation. The area is noted as a *"good example of wild open expansive upland moor landscape with diverse semi-natural vegetation mosaic"* and *"high hills with some distinct profiles, rising above general farmland and valleys"*. Therefore, the site is located within an area which is considered to be of high quality in respect of its landscape attributes.
30. BBNP is located approximately 16km to the south-east of the site. The Middle Wye Valley Registered Historic Landscape (RHL) is located approximately 10.5 km south-east; the Middle Usk Valley - Brecon and Llangorse RHL is located approximately 17 km south of the site and the Elan Valley RHL is approximately 17 km to the north-west.
31. NRW has advised the proposal is unlikely to cause significant adverse effects on either the landscape character or visual amenity of BBNP due to the temporary nature of the proposal, its slimline form and its distance from BBNP.
32. The applicant's Landscape and Visual Technical Statement concludes that although the proposed temporary mast would introduce a new manmade feature into the landscape, the nature of the development, particularly its narrow form and visual permeability of the area occupied by the guy wires, and the large scale of the landscape would be able to accommodate the mast without changing the essential character of the landscape. Therefore, influence of the proposed mast upon landscape character would be localised, limited and temporary in nature.
33. The Landscape and Visual Technical Statement includes visualisations or photomontages of the proposed mast from various viewpoints. These viewpoints formed the basis of my site visit to the surrounding area focussing on those which would be most affected, and other locations in order to ascertain for myself the likely impact of the proposal. I have no reason to fundamentally disagree with the findings of the applicant's evidence on landscape impact, and overall, my observations from the various viewpoints that I visited correspond closely with the assessments made within the technical statement. Visibility of the mast from the majority of the wider area would likely be limited and fragmented due to a number of factors including the natural screening afforded by a combination of topography, woodlands and hedgerows.
34. The proposed mast would only be 60cm wide, and the mast column is of triangular lattice design and made of galvanised steel. Therefore, it has been designed to be as unobtrusive as possible by virtue of its slender form, materials and neutral colour. As such, the structure would not appear overbearing within the landscape and consequently, in my view, the magnitude of change to the character and appearance of the common and wider landscape would be slight and temporary.
35. Visual receptors include nearby settlements such as Llansantffraed-in-Elwel, Hundred House, Frank's Bridge and potentially Builth Wells. Views of the mast would also be

experienced by recreational users of the common and parts of the Public Right of Way network. The closest Public Right of Way (102/2093/1) is approximately 190m to the north-west of the proposed anemometer mast. Views of the mast may also be experienced by road users travelling on sections of the A481.

36. Whilst it is acknowledged that the mast would be visible from a wide area, it would be constructed using slim galvanised steel which would significantly reduce the visual massing of the structure. Whilst the mast would have some negative impact when viewed from the closest viewpoints on the common such as the public rights of way, the nature of the existing view of a large expanse of common and the wider vista of Aberedw Hills would not appreciably change. In my view there would be no fundamental changes to the underlying key characteristics of the local landscape and changes to the visual context of the area would only occur relatively close to the site.

37. Therefore, I am satisfied that the proposed works would not have a harmful effect on the wider landscape character of the common.

#### Protection of archaeological remains and features of historic interest

38. In its response to this application Cadw has advised that it agrees with the conclusions of the applicant's assessments that the proposed development would have no significant adverse effects on any scheduled monuments. Clwyd Powys Archaeological Trust confirmed during the planning application consultation process that there are no archaeological implications for the development. No issues have been raised regarding any other aboveground features of historic interest in the area.

39. Therefore, from the evidence before me I conclude that the works would have no unacceptable effects on archaeological remains or features of historic interest.

#### Protection of public rights of access

40. There are public rights of way that cross the common, but the proposed works would not affect the use of these rights of way or other recreational trails or networks. The closest Public Right of Way (102/2093/1) is approximately 190m north-west of the proposed anemometer mast. The location of the proposed mast and associated fencing has been specifically chosen to avoid public rights of way.

41. I have concluded above that the area of common which would be enclosed is very small in comparison to the remainder of the common which would continue to be freely accessed by the public. As the area of land which would be fenced off is small the fencing would not have an impact on public rights of access. On the evidence before me, the works would not unacceptably affect the public interest.

#### Conclusion on effects on the public interest

42. Overall therefore, I conclude that the works would not unacceptably affect the public interest.

#### **Other Relevant Considerations**

43. As stated above, the anemometer mast is required within the site of the proposed Aberedw Energy Park which is planned to include up to 18 wind turbines. I have noted the representations made by some of those objecting to this application regarding the site not being within a pre-assessed area for wind energy and the concerns regarding the impact of wind turbines. However, any such windfarm development, if considered feasible and necessary, would be subject to a separate future DNS application where its effects on the living conditions of nearby residents, on the common and wider landscape would be fully considered. Therefore, concerns regarding a possible future wind farm, the

design or extent of which is currently unknown, and not directly relevant to this application.

44. With regard to the potential impact on low flying military aircraft the MOD was consulted as part of the planning application and did not object to the proposal subject to the imposition of conditions relating to aviation safety lighting. I am satisfied that any impact on aircraft can be addressed through the conditions imposed on the planning permission.
45. I have considered the advice in the Welsh Government Circular 016/2014 "The Use of Conditions for Development Management" in considering the need for conditions on this application. A condition requiring the development to be commenced within five years is reasonable and necessary. The application is for a temporary permission for five years, therefore, it is necessary to impose a condition ensuring the development would only last for five years. Furthermore, a requirement for the removal of the mast and all associated equipment and the reinstatement of the common within three months of decommissioning of the anemometer mast is reasonable and necessary. It would ensure that the common is returned to its previous state as soon as possible and that any interference with public access or effects on the landscape would be minimised.

### **Overall Conclusions**

46. I have taken into account all matters raised, and I conclude that the temporary anemometer mast, guy wires and anchor blocks, solar array and fencing would be acceptable, and the works would be in conformity with the policy objectives set out in the Guidance. For the reasons given above I allow the application and grant consent for the works subject to the conditions specified in paragraph 1 of this decision.
47. In reaching my decision, I have taken into account the requirements of sections 3 and 5 of the Well Being of Future Generations (Wales) Act 2015. I consider this decision is in accordance with the Act's sustainable development principle through its contribution towards one or more of the Welsh Minister's well-being objectives as required by section 8 of that Act.

*R Duggan*

INSPECTOR