

Appeal by Hendy Wind Farm Ltd against refusal of planning permission to construct and operate 7 wind turbines with a maximum tip height of 110m and maximum hub height of 69m together with ancillary development comprising substation, control building, new and upgraded access points and tracks, hard standing and temporary compound and associated works at land off A44, SW of Llandegley, Llandrindod Wells, Powys, LD1 5UG.

Evidence of Margaret Tregear (Commons & Planning)

on behalf of

Brecon and Radnor Branch of The Campaign for the Protection of Rural Wales



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Witness details

My name is Margaret Tregear

My address is New Barn Farm, Clyro, HR3 5JW

I have a degree in Mathematics from Oxford University. Following graduation I worked for international accounting firms Deloitte Haskins and Sells, and Ernst and Young. I passed professional exams leading to memberships of the Institute of Chartered Accountants of England and Wales and the Institute of Taxation. A change in direction led to a second degree, first class honours in Russian from the School of Slavonic and East European Studies, London University.

I moved to Radnorshire for the beauty and richness of the natural environment, and to pursue my interest in outdoor activities and the natural world. I am a member of the Radnorshire and the Herefordshire Wildlife Trusts, of the Ramblers and also the Open Spaces Society. I am a keen walker and horse rider.

Living in a beautiful and vulnerable rural area has made me realise that much of the wonder and diversity of the countryside which my generation was lucky enough to take for granted as we grew up is at risk from ill-considered development and agricultural and other pollution. If we are to try to ensure that the next generations do not inherit an impoverished countryside, I believe it's vital that decisions concerning landscape, rural communities and the natural environment are made very carefully and informed by good and adequate evidence. To anyone living in a deeply rural county such as Radnorshire, it is also obvious how fragile rural communities are and how many fundamental changes in the rural way of life have been absorbed in a few short decades. My concerns have led to my involvement with the Brecon and Radnor branch of The Campaign for the Protection of Rural Wales.

My professional skills enable me to understand professional and legal documents, to comprehend the evidence presented in support of a planning application and evaluate this evidence against the relevant legal and professional requirements for such evidence.

SUMMARY

This Proof of Evidence is concerned with two issues:

- 1) The unassessed impacts on Llandegley Rhos Common (RCL34), and
- 2) Government policy for planning and renewable energy.

1 Llandegley Rhos Common and Wind Farm Ancillary Works

1. The development of the Hendy wind farm has many elements, some of these beyond the site of the wind farm itself. The consideration of impacts of the development is not confined to those elements of the development which are most obvious and lie within the site, but is required also to include related ancillary development. I am concerned here with access works required on the Llandegley Rhos Common.
2. The requirement to treat ancillary works as part of the development for the purpose of impact assessment is set out in Schedule 4 of the EIA Regulations.
3. NRW scoping opinion, which should have informed the preparation of evidence supporting the application, clearly reiterated this requirement.
4. Consideration of impacts of ancillary works on the Common is all the more necessary since applications under the Commons Act 2006 are not being considered concurrently. Applications submitted in 2014 were rejected by the Planning Inspectorate as inaccurate and therefore invalid. NRW identified insuperable problems with proposed replacement land. Commons applications have not been pursued since.
5. There are to be two access routes across the common onto the site, one coming off the A44 at the northern end of the common (the northern track) and the second coming from the A44 via a new piece of road to the U1574 and joining the common just past Pye Corner (the southern track). These access routes will be approximately 1.7km and 1km in length respectively. Both will follow the routes of existing stone tracks for almost all their length.

6. The wind farm application documents are sparing with information, and we have gleaned more from the related Commons Act applications. It appears works on the common are to consist of the construction of two access tracks of minimum 4.5m width, with passing places, substantial cut and fill with removal, storage and replacement of topsoil, culverting of watercourses under access tracks, wheel wash facilities, temporary fencing and potentially also other unspecified works such as borrow pits. All AILs will follow the southern route, some incoming traffic will use the northern.
7. ES Vol II contains Figs 1.2.2-1.2.4 – which indicate that the construction of the southern track will require substantial modifications to the existing track, negotiating the dip and dogleg corner just beyond Pye Corner, smoothing the undulations via cut and fill, and culverting at three separate points. The southern track runs parallel and fairly close to the River Edw, a feeder to the Wye SAC, and raised above it at the eastern end. The existing northern track is already culverted at three points, runs right beside a stream for some of its length and alongside a marsh at its southern end. This marsh drains by culvert under the track into a pond on the other side of the track.
8. The nature of the two existing tracks, their place in the landscape, and the marshy stretch mentioned above can be seen in Appendices L and M.
9. The common is unimproved land hosting mixed grazing. It falls downhill away from the North West corner. Lower parts of the common are wet and marshy, and there are several springs, small streams, and a pond. The wetness of the ground means that much of the common is quite undisturbed habitat. Clearly such a site has potential to host a rich variety of wildlife. It is known to host breeding curlew.
10. The common, which is also CROW Act open access land, is crossed by two bridleways running east-west across the north of the common and north-south on the eastern edge, and also by the Byway Open to All Traffic which almost coincides with the existing southern track. The landscape with its majestic enclosing hills, including the spiny ridge of the Llandegley Rocks, and its sense of remoteness, draws many to use the rights of way around and across the common.

11. Detailed consideration of the potential impacts of track construction on the landscape, heritage, ecology and hydrology is set out in other evidence. Note that exclusion of consideration of works on the common extends to failure to undertake ecological surveys on the common.
12. The application does not include consideration of the impacts above, and also ignores potential impacts on graziers, on residential amenity at Pye Corner, and on archaeology.
13. My evidence includes the impacts on users of rights of way, both practical and in terms of quality of experience. Powys Countryside Services did not object to the wind farm application, but CS have clearly not walked the common and have not considered how users of rights of way are to negotiate construction, site traffic, fencing, landform changes and tricky ground conditions nor whether alternative routes across the common are legally or practically feasible. By way of example, I set out the very real practical difficulties which a user of the north-south bridleway would encounter after construction of the access roads. The altered experience of crossing the common when it is almost ringed with substantial roads and abuts a wind farm has also not been considered.
14. There is a curious further complication with which the developer has refused to engage: much of the wind farm site sits on inclosed common land, over which a right of public 'air, exercise and recreation' was created by the Inclosure awards. Impacts of development on these rights has not been explored.

2. Renewable energy: government planning policy

15. CPRW Brecon and Radnor supports renewable energy, where appropriately sited and scaled. Government policy is clear that while renewable energy development is required, planning protections for landscape, biodiversity, tourism, and the well-being of rural communities are not to be overridden.
16. Government's publication 'Energy Generation in Wales 2016', sets out that Wales is performing well in the achievement of its renewable targets, having achieved 6.9Twh in

2016 against a 2020 target of 7Twh, and 43% of electricity demand from renewable sources in 2016 against a 2030 target of 70%. Planning policy (PPW9 and TAN 8) is clearly enabling development of sufficient generation.

17. Wales is a net exporter of energy and Powys has the highest combined electricity and heat capacity at 299MW and in 2016 produced 55% of the electricity it consumed from renewable sources.
18. Natural Resources Policy 2017 identifies the benefits derived from natural resources and recognises the need for their protection. It notes that: "Biodiversity and well-functioning ecosystems provide natural solutions that build resilience, which in turn help society create jobs, support livelihoods and human well-being, adapt to the adverse impacts of climate change and contribute to sustainable development" It recognises that Wales' natural resources are not only the backbone of our rural economy and the foundation of our primary production industries - agriculture, forestry, fisheries, and the water industry. **"Our beautiful landscapes, nature and wildlife also support a vibrant tourism and recreation sector as well as being a vital part of our culture and identity"** and are a central reason people choose to live and holiday in Wales. The health and economic benefits of outdoor recreation are recognised.
19. Planning policy Wales (9) provides advice on how the planning system can promote "sustainable development". It sets out that where there is an absence of plan policy there is a presumption in favour of proposals in accordance with the key principles and key policy objectives of sustainable development. In this case one of the more important principles is "using **scientific knowledge to aid decision-making...**" as in this case the Environmental Statement has failed to undertake the necessary research.
20. PPW recognises **"The conservation and enhancement of statutorily designated areas and of the countryside and undeveloped coast; the conservation of biodiversity, habitats, and landscapes;** the conservation of the best and most versatile agricultural land; ... **all need to be promoted"**

21. PPW also notes that (4.6.4) "The countryside is a dynamic and multi-purpose resource. In line with sustainability principles, it must be conserved and, where possible, enhanced for the sake of its ecological, geological, physiographic, historical, archaeological and agricultural value and for its landscape and natural resources, balancing the need to conserve these attributes against the economic, social and recreational needs of local communities and visitors. Central to this is ensuring that the countryside is resilient to the impacts of climate change and plays a role in reducing the causes of climate change through the protection of carbon sinks and as a sustainable energy source."
22. TAN 8 sets out the landscape objective outside either designated landscapes or the AONBs as 'to maintain the landscape character i.e. no significant change in landscape character from wind turbine development'.
23. Government policy does not require any diminution of planning protections. This site is clearly unsuitable for the proposed development, and the harms would outweigh any benefit. Progress to date in achievement of targets demonstrate that the necessary development can be achieved within the current planning regime.

EVIDENCE

This Proof of Evidence is concerned with two issues:

- 1) The unassessed impacts on land adjoining the application site, being Llandegley Rhos Common (RCL34) and land along the southern access route from the A44 via the U1574 to the Common, and
- 2) Government policy for renewable energy - Planning Policy Wales 9 (PPW) seeks to facilitate the development of renewable energy in appropriate locations.

1 Wind Farm Ancillary Works on Llandegley Rhos Common

1.1 Introduction

1.1.1 This evidence establishes that the ancillary works to the wind farm which are to take place on the Llandegley Rhos Common have not been identified as part of the wind farm application and their environmental, agricultural and amenity impacts have not been investigated and assessed within the applicant's documentation. It also establishes that these impacts are, or have the potential to be, significant in the determination of the wind farm application.

1.1.2 For a description of the site, I adopt that set out in Proof of Evidence on Ecology, Paragraphs 1.1.1 to 1.1.5.

1.1.3 **The documents:** I have relied on the following key relevant appeal/application documents:

- APP011 Supporting Planning Statement (Appendix A)
 - 3.0 The Proposal
 - 7.8 Planning Policy Compliance - Public Rights of Way
- APP013 Transport Assessment (May 2014) (Appendix B)
- APP014 Appellant's Further Submission dated 24th March 2015 (Core doc PP-7)

- APP021 Environmental Statement Vol 1 (Core doc ES-2)
- APP022 Environmental Statement Vol II – Figures (Part 1) (Core doc ES-3)

1.2 Wind farm application required to include whole development

1.2.1 As far as we have been able to determine (see 1.5 below), works on the Common are to consist of the construction of access tracks of minimum 4.5m width, with passing places, substantial cut and fill with removal, storage and replacement of topsoil, culverting of watercourses under access tracks, wheel wash facilities, temporary fencing and potentially also other unspecified works such as borrow pits.

1.2.2 **Town and Country Planning (Environmental Impact Assessment) Regulations 1999 as amended** (Appendix C) Schedule 4 ‘Information for inclusion in environmental Statements’ requirements include:

- Para 1: “Description of the development, including in particular—
(a) A description of the physical characteristics of the **whole** development and the land-use requirements during the construction and operational phases...”
- Para 3: “A description of the aspects of the environment likely to be significantly affected by the development...”
- Para 4: “A description of the likely significant effects of the development on the environment....”
- Para 5: “A description of the measures envisaged to prevent, reduce and where possible offset any significant adverse effects on the environment.”

This requirement is cited in the Environmental Statement Vol 1 2.2.1 ‘The Environmental Statement’.

1.2.3 **NRW Scoping Opinion SC/2013/0012 for wind farm application** (Appendix D): NRW advice as set out in Scoping Opinion SC/2013/0012 (dated October 2013 and addressed to Mr Stuart Vendy of Cunnane Town Planning) is unequivocal regarding the need to describe and assess all parts of the project within the ES. See Annex 1 Para

3 of Scoping Opinion: ‘Ancillary and associated development.’ The ES should include related developments which are inextricably a part of the wind farm project even where these could potentially be assessed as a separate project. Access tracks, as ancillary developments, ‘should be considered where possible in the Environmental Assessment’. There is no evident good reason not to provide a description of access tracks across the Common and details of their construction in the Environmental Statement sufficient to allow identification and assessment of impacts.

- 1.2.4 Consideration of impacts of ancillary works on the Common is all the more necessary since applications under the Commons Act 2006 (Appendix E) are not being considered concurrently. Applications submitted in 2014 were rejected by the Planning Inspectorate as invalid. See 1.4 below.

1.3 New access tracks on the Common, their purpose and construction, as presented within P/2014/0672 wind farm application documents

- 1.3.1 APP021 Environmental Statement Vol I (Core Doc ES-2 Page 6) 3.0 ‘**Project description**’ includes:

1. Construction of c. 3.3 km of new access tracks
2. C. 1km of existing track to be upgraded

(1) is the new tracks beyond the Common to the turbines and quarry while (2) is the proposed work approximately following the course of the Byway Open to All Traffic (BOAT) to the south of the Common.

- 1.3.2 Approximately 1.7 km of new construction/upgrade to create the northern site access across Llandegley Rhos Common is not included in the project description. With the exception of drawings provided in App022 Environmental Statement Vol II (Core Doc ES-3) Figures 1.2.2-1.2.4, construction information for northern and southern access routes is not provided in the documentation accompanying wind farm application P/2014/0672.

- 1.3.3 Similarly, documentation accompanying wind farm application P/2014/0672 does not include any identification of potential impacts of proposed ancillary works on the Common, nor any assessment of the significance of these impacts.
- 1.3.4 On 8th February 2018 we received confirmation from the Local Authority that the site plan submitted as page 4 of APP014 (Core doc PP-7) is regarded as the final site plan. The red line site boundary includes two tracks across the Llandegley Rhos Common, one to the north and west of the Common (the northern track), and one to the south of the Common (the southern track). The site boundary also includes Pye Corner Lane (U1574) and the new access off the A44 which meets the U1574.
- 1.3.5 The red line site boundary appears imprecisely drawn on the Common in that it does not clearly indicate turning circles, passing places and other significant additional landtakes on the Common. Access tracks on the Common are drawn to an entirely different scale from the access tracks which extend beyond the Common to the turbines. The southern track will carry AILs and must be of at least equal dimensions to turbine tracks beyond the Common boundary.
- 1.3.6 App022 Environmental Statement Vol II (Core Doc ES-3) Figures 1.2.2-1.2.4 illustrate limited technical information for the construction of the southern track. This section of track (approx. 1km) is included in the Project Description 3.0 (above) although the description of works as 'upgrade' is misleading. Work on the track will require significant engineering, for example at the dogleg corner just beyond Pye Corner. Please see Proof of Evidence on Hydrology.
- 1.3.7 There is no description of construction work proposed on the northern track to render this suitable for heavy construction vehicles.
- 1.3.8 It is assumed that requirements for quarried stone etc. include works on the southern access route (as this track is included in the Project Description) but requirements for the northern track are not included. Stone requirements for the development are potentially significantly underestimated, so that quarrying requirements or vehicle movements are likely also to be underestimated.

1.3.9 What *is* clear from P/2014/0672 application documents is that:

- There will be two site access tracks across the Common, both replacing existing single width tracks of simple construction, or without construction and simply defined by usage, and following the land contours and land forms.
- The southern track will require substantial engineering, not described. (There are *no* construction details given for the northern route despite technical challenges arising from the nature of the ground through which some of the track passes.)
- There will be wheelwash facilities, at one or both entrance points off the A44, precise location unknown.
- Access tracks will be fenced 'during the construction period'.
- Ancillary works such as borrow pits, cut and fill, culverting etc. are not specified beyond information contained in App022 Environmental Statement Vol II (Core Doc ES-3) Figures 1.2.2-1.2.4 relating to southern route only.

1.3.10 The rationale for the two access tracks is explained in the APP013 Transport Assessment¹ (Appendix B) page 7 as below:

1. Northern access route across Common: To carry all incoming general construction traffic. (We assume this to mean all incoming traffic arriving from the north except AILs – this is not wholly clear – see below.) No exit by this route².
2. Southern access route across Common: To carry all incoming site traffic arriving from south and all exiting traffic which will only be permitted to exit left onto the A44 northbound. Also to carry all AILs which will arrive from the north.

1.3.11 Please see Appendix F, annotated site map with brief details of the purpose, current use, description of construction if any, and clear potential construction issues.

¹ Also APP014 Core Doc PP-7 pages 84-90 Letter from WYG Environment Planning Transport Limited to Cunnane Town Planning 12/1/2015

² Note that s38 Commons Act 2006 application 515979 states that this route is for exit only. We assume this to be simply factually incorrect.

1.4 Planning History: applications made re wind farm ancillary works under Commons Act 2006

- 1.4.1 Planning applications under s38 and s16 of the Commons Act 2006 were lodged in 2014, reference numbers 515979 & 515980 respectively (Appendices G & H), where
1. S38 application was made for the works on the northern track across the Common;
 2. S16 application was made regarding the works on the southern track across the Common, and exchange land proposed in felled woodland off the Common.
- 1.4.2 On 18/7/2014 PINs advised Hendy Windfarm Ltd that applications 515979 and 515980 were deemed invalid in view of inadequate or inaccurate information and unsatisfactory public consultation (Appendix I). Having received no response, on 29/10/2015 PINs confirmed to Hendy WF that applications were deemed withdrawn (Appendix J). Fresh applications are required and the Inspectorate have confirmed on 31/1/2018 that no new applications have been submitted.
- 1.4.3 Consequently, while it's usual to consider a wind farm application and any associated Commons Act applications together, this is not possible in this case.
- 1.4.4 **Natural Resources Wales objection to Commons Act applications (Appendix K):** NRW objected to both applications on 7/11/2014 citing the following grounds:
1. The proposed exchange land was separated from the Common with means of access unspecified;
 2. The proposed exchange land was not clearly suitable for grazing or clearly free of other rights e.g. shooting;
 3. Lack of information regarding location & duration of wheelwash;
 4. Lack of clarity regarding continuation of grazing rights;
 5. Potential restriction of grazing land on Common.
- 1.4.5 NRW objection makes clear that the proposed replacement land was entirely unacceptable. Full consideration of the extent and nature of the works on the Common might suggest that the extent of replacement land proposed is also

inadequate. It is not clear that it would be possible to locate appropriate replacement land to compensate for landtake on the Common.

1.5 Construction details for new tracks

1.5.1 Northern track – description of works from s38 Commons Act application

1.5.1.1 While no information is provided in the wind farm application, Commons Act S38 application (Appendix G) gives the following description of the ‘upgrading of existing access track’ (Qu 10): Qu14:

“Construction works will be carried out to the existing track that crosses from the north of Llandegley Rhos Common (RCL 34) whose entrance is off the A44 opposite Larch Grove with the track travelling west to the boundary of the Common where it then follows the boundary of the Common south until it meets the existing byway open to all traffic, which runs along the southern part of the Common from Pye Corner.”

“The work will comprise construction of an access point together with an upgrade to the existing access to accommodate construction related traffic. This will also use an existing public right of way³. As part of the works to upgrade the access work on the Common, a wheel wash facility will be constructed. The access tracks will be a minimum of 4.5 metres wide, the width varying locally for junctions, bends and passing places. Topsoil will be stockpiled and subsoil excavated to a maximum depth of 400mm below existing ground level (or deeper where tracks are cut into existing slopes).”

“The works will be fenced off during construction using the Heras 151 System of fencing to a height of 1.8 metres with a round top panel and anti-climb mesh which is the strongest panel on the market. Any trip hazard will be highlighted and there will be an anti-tamper tool to provide additional security to the

³ This is not correct but may reflect the fact that the farm track has been in use as alternative route for walkers, riders and cyclists when the Common is impassably wet.

fence. The fencing has high visibility feet. For further details, please see section D1 of this application.”

1.5.1.2 Qu 15: “Upgrading to allow vehicles to exit the Common via the existing northern entrance.”

1.5.1.3 Qu 18: “The fencing will be put in place temporarily as required to allow plant and machinery to be separated from the general public/livestock during construction works to the existing track.”

1.5.1.4 Further information provided in this application:

1. Works area or area to be enclosed by fencing: 6,800 sq. m.
2. Length of fencing 1700 m
3. Works ‘time limited’ - 9 months required

1.5.1.5 The existing track is an unmetalled stone farm track, without foundation, single vehicle width, following land contours (Photo Appendix L). It is approximately 1.7km in length, rising as it goes east-to-west from the A44 to the corner, then descending to the south-west corner of the Common. This track crosses an extremely wet area of land in the south west corner of the Common, and crosses several streams on the western side of the Common. The wind farm application P/2014/0672 contains no construction details for this track.

1.5.2 Southern track – description of works from P/2014/0672

1.5.2.1 The only information given in application documents regarding construction of the southern track is found in App022 Environmental Statement Vol II (Core Doc ES-3) Figures 1.2.2-1.2.4. From these drawings, which are not detailed construction drawings but are merely indicative of the type of construction planned, it is clear that very considerable cut and fill operations are intended, and culverting of watercourses. There is no further detail within the application, nor is there a s38 Commons Act application which might have yielded more information.

1.5.2.2 Environmental impacts of the construction of this track are discussed at greater length in our other evidence, in particular Hydrology evidence.

1.5.2.3 The existing BOAT across the Common (Photo Appendix M) is, where it is not simply established by usage, constructed in a similar way to the northern and western tracks on the Common. It follows the undulating contours and curves around landforms. Towards its eastern end the ground rises to the north of the track and falls away to the south, where the River Edw meanders through marshy ground. At the western end the track passes through more level land and is prone to being wet and muddy, in particular in the south west corner of the Common, where the track crosses the River Edw.

1.6 Potential environmental impacts of ancillary works on Common

1.6.1 The extent of the works, as indicated within the application documents (southern track) and s38 Commons Act application (northern track) is substantial and will have potential for significant landscape, environmental, agricultural and amenity impacts which have not been subject to assessment and evaluation within the Environmental Statement. The notes below are brief as these potential impacts are dealt with in more detail in our other evidence.

1.6.2 **Landscape and visual impacts** - While we don't have details of engineering required for construction of the northern access route, it's clear that the southern route will be highly engineered and both will be very different in scale from the existing small farm tracks on the Common. It's clear also that if the northern track is to be successfully quarantined from surrounding surface water, particularly in the south west corner of the Common, it cannot remain as unobtrusive in style as the existing farm track. These changes will intensify the experience of landscape damage and harm to visual amenity, cumulatively with impacts resulting from other elements of the development. For more detail see Landscape Proof of Evidence.

- 1.6.3 **Potential impacts on amenity, rights of open access and public rights of way** - The Llandegley Rhos Common is CROW Act open access land. It is also crossed by two bridleways, crossing east-west and north-south. There is a BOAT across the southern end of the Common from Pye Corner in the east to the proposed wind farm site in the west. The OS Explorer Map 200 map also shows a traffic-free cycle route on the course of the visible track, from which the BOAT apparently briefly diverges over the western part of the common. The course of the BOAT where it leaves the track is not clear on the ground – to all intents and purposes there is a single usable track. See Map - Appendix N. The Common itself is an important amenity for the neighbourhood and the public in general as a site for bird watching, walking, cycling, and horse riding.
- 1.6.4 The new southern access track is described as an upgrade of the existing track and follows its route. It is not clear where the current users of the BOAT across the common are intended to go while the construction work on the road and the wind farm is taking place. We note that Powys Countryside Services response on 29/3/2017 to the developer's proposals expressed satisfaction with the developer's offer of a planning condition to produce a plan - post determination - for safe passage for BOAT and other right of way users. CS would not seem to have walked the route of the BOAT or assessed the likelihood of being able to locate a route safe from construction traffic, but also safely negotiating the developer's fences and embankments, avoiding the marshy ground by the Edw, negotiating the Edw crossing as the BOAT leaves the wind farm site, skirting old quarries, providing a surface and topography suitable for horses, carriage drivers, cyclists etc. and with appropriate rights of access across the CROW/Common. We do not think this response adequately protects rights of way users. (We note also that CS response to the developer's proposals of an alternative route through the turbines APP018 Draft 106 plan (Appendix O) fails to note the clear possibility that micro-siting might put the new route in breach of 200m separation from turbines, fails to note BHS recommendation is in fact for '200m or three times blade tip height (whichever is greater)', and fails also to understand that in any case the proposed route breaches just about every other BHS recommendation for rider safety around turbines (Appendix P). Note that bridleway arrangements at the developer's newly built wind farm, Bryn Blaen, provide little reassurance: we acknowledge that

the works are raw and possibly unfinished but on visiting we were surprised at the poor condition of the rerouted right of way and also at ill thought through details such as the placing of the catch of a horse gate immediately adjacent to a three strand electric fence, complete with three large reels of wire suspended from the fence.)

- 1.6.5 During construction works, approximately one year, the quantity of traffic on the access roads, and the temporary fencing, will between them make the Common practically very difficult to use - a challenging and not very pleasant experience for the determined only.
- 1.6.6 APP018 Draft 106 plan (Appendix O) sets out a diverted route for BOAT users on the section within the wind farm itself which links to the east-west bridleway across the north part of the Common. This is not a satisfactory solution in that it seems that the upkeep of this bridleway is itself an issue. Until recently this bridleway crossed the fence line onto the Common by way of a style (an interesting option with a horse) but even this style has now been removed and there is no longer any crossing point through the new fence. Once on the common, the northern bridleway also closely tracks the northern access route across the top of the Common, having first somehow crossed it. During road and wind farm construction this bridleway may be difficult or dangerous to use, as well as providing an unpleasant visual and aural experience. The bridleway itself runs through wet ground which can be difficult to cross, such that the farm track is in fact commonly used in preference.
- 1.6.7 Setting aside these difficulties with the east-west bridleway there is a further complication for users of either bridleway once new wind farm access routes are built. Both bridleways will cross the new access roads and it is unclear how this will be managed. There is almost no description of construction works proposed and so no consideration of junctions with rights of way. Where the north-south bridleway crosses the southern access route the problem will be exacerbated by the extensive engineering. Fig 1.2.2 EX Vol II (Core Doc ES-3) does actually indicate the route of this bridleway and it can be seen that travelling south to north a rider, for example, will have to negotiate an embankment (potentially fenced off to protect reseeded

vegetation from livestock) up to the track, and on leaving the track again at the dogleg will have to scramble down somehow from the substantially raised roadway and over a culvert to rejoin the bridleway. This is a problem for the user, but the solution, presumably some form of ramp, if there is space for such an arrangement in what is a narrow valley, could itself present other problems. None of this has been considered.

- 1.6.8 Assuming that an arrangement might be made whereby horse riders, cyclists and carriage drivers were given a right of access over another route across the common, this could still be difficult to achieve, substantial parts of Common being very wet and difficult to negotiate.
- 1.6.9 In other words, during the period of construction access over the Common will only be a possibility for those prepared to wade through bog and/or dodge heavy traffic. When construction is complete the experience of using a wide construction track, in places banked to either side with bare earth (while vegetation re-establishes) and these banks fenced off from livestock, engineered over culverts and lifted somehow above surrounding bog (in the south west corner), will be very different qualitatively from the experience of following a simple, narrow, unobtrusive stone farm track through the undisturbed common and lifting your eyes above to the magnificent lines of hills to north, south and east.
- 1.6.10 **Potential impacts on hydrology** - The common is an exceptionally wet piece of ground, with springs, ponds and areas of standing flood water, running streams and marsh. The Common is, particularly to south and west, extremely wet – with springs, marsh, running streams, shallow groundwater and bounded on its southern edge by the Edw River. Construction work is proposed which will require substantial engineering and hydrological implications have not been identified or investigated by the developer. For further discussion of hydrology, including flood risk maps, see Hydrology Proof of Evidence.
- 1.6.11 **Potential impacts on Ecology** - See APP022 Environmental Statement Vol II Figures Part II Figs 7.1-7.9: The Ecological 'core study area' excludes the Common and so

excludes all but incidental consideration of ecological impacts of construction work to tracks on the Llandegley Rhos Common.

1.6.12 'Scottish Natural Heritage Guidance on Recommended Bird Survey Methods' Page 10 Para 3.3 (Appendix Q): 'for access tracks and grid connections, the survey area should be 500m either side of the proposed limits of variation of the route.' Natural England TIN069 Page 3 (Appendix R) also requires that 'the area studied should include the entire development footprint of the wind farm' with suggested buffers between 500m and 2km.

1.6.13 Llandegley Rhos Common has been excluded from the applicant's habitat surveys, peat probing, flight lines breeding bird survey, winter walkover survey – waders, winter walkover survey – all target species, and potential impacts of works on the Common did not inform the viewpoint selection for bird flight line observations. The Common is also not included within the otter spraint, badger, great crested newt surveys and bat transect study.

1.6.14 Potential changes to the complex water regimes across the Common may also impact on flora and fauna, as may any waterborne pollution. Several springs start to the north of the southern access track and are intended to be culverted under the track and down to the Edw which runs almost parallel to and just to the south of the southern track. Another significant tributary into the Edw meets the north-south section of the northern track in the south west corner of the Common. At this corner there is a substantial area of boggy land abutting the final 120-150m of the track which is evident in Appendix L. The construction of the widened track itself has potential for considerable harmful impact, but it does also appear that the realignment of the northern track at the site entrance is likely to encroach directly onto this area of bog. It is impossible to see how, at this location and also elsewhere where new tracks are alongside or a short distance from watercourses, a buffer of 20m (ES Vol 1 10.5.1) can possibly be achieved. It is concerning that there has been no investigation. There is a pond approximately 200m south of the Larch Grove entrance off the A44 and in general with the exception of the highest ground to the north west and a few raised

areas the Common is marshy with standing water which is in places deep enough to impede or prevent walking. See also Proof of Evidence on Hydrology and Ecology.

- 1.6.15 As a significant area of semi-natural vegetation, neither intensively farmed nor heavily grazed, relatively undisturbed and with large areas of wetland, Llandegley Rhos Common has the potential for significant ecological interest. There has been no investigation of baseline ecology, identification of potential impacts, or measures to be taken to avoid harmful impacts etc.
- 1.6.16 **Ecological mitigation** - Cunnane (Appendix S) have suggested that some form of mitigation for ecological damage resulting from the construction of the wind farm could be considered on the Common. Quite apart from issues of ownership and management this does not take into account either damage to the Common itself from wind farm ancillary works or the current ecological status of the Common.
- 1.6.17 **Curlew** - Impacts on the known curlew population on the common are considered in Proof of Evidence Ecology and Ornithology.
- 1.6.18 **Impacts on agricultural rights of Commoners** - Commoners' rights exist over Llandegley Rhos Common and the Common is actively grazed. We append statements from graziers (Appendix T).
- 1.6.19 **Potential impacts on residential amenity** - These are considered in the evidence of witness Mrs Penny Everett, of Pye Corner.
- 1.6.20 **Potential impacts on archaeology** - See APP022 Environmental Statement Vol II Figures (Core Doc ES-3) (Part III) Figure 8.4. This shows NMRW Heritage Asset 158, a 'possible Roman road', passing under the route of the northern track. . APP023 ES Vol III – Technical Appendices (Core Doc ES-4) (Part 15) ADAS Historic Environment Desk-Based Assessment identifies the potential for direct adverse impact on this asset but this is not evaluated further as the road construction work is not recognised within the planning application documents. We can't see that this potential direct adverse impact is picked up by Statutory Consultees, but CPAT response prior to that dated

1/12/2015 does not ever appear to have been published on the planning application website.

1.7 Inclosure awards and public right of access

- 1.7.1 In addition to the registered Common Land RCL034 which is the subject of Paragraphs 1.1 to 1.6, there are also potentially extant public rights over the adjoining inclosed Commons of Llandegley Rhos and Hendy Bank. This is covered in more detail in Appendix U, letter from the Open Spaces Society dated 8th February 2018. We also attach a map Appendix V which was prepared by Environment Information Services and submitted to the Local Authority in objection to the Hendy WF application P/2014/0672. This map demonstrates the location of the inclosed land in relation to the proposed wind farm development and shows the likely placement of 5 of the 7 turbines on the inclosed Common land.
- 1.7.2 In summary the issue here is that the Inclosure Awards made in the nineteenth century in relation to each of two inclosed Commons at Hendy Bank and Llandegley Rhos, which form most of the application site, each contain an unusual but specific provision reserving public access after Inclosure as below:

“And I declare that I do reserve to the Public a privilege at all times of enjoying air exercise and recreation on all parts of the lands to be inclosed which shall be unplanted or uncultivated for arable purposes. And I direct that in the fences of the Allotments gates or stiles shall be placed at convenient intervals at or about the places shown upon the Map hereunto annexed for the purpose of securing access for the Public but in the exercise of the privilege hereby reserved no injury shall be done to the lands or to the herbage or to the fences or to the stock or game or to anything upon such lands. And I declare that in the event of a belt of trees being planted the Public shall not thereby be deprived of the privilege hereinbefore reserved but that access shall be provided by means of paths or openings through the belt of trees to the uncultivated or unplanted land.”

1.7.3 Extracts of transcripts of the key sections of the actual awards form Appendices W and X. There is also documented evidence of an additional 'Ancient Public Road' crossing both inclosed Commons, and running close to the proposed turbine positions.

1.8 Conclusion

- Proposed works on Llandegley Rhos Common are substantial and should have been detailed within the application and considered in terms of their impacts.
- These impacts, examined in this report and also in our other evidence, are not addressed in the developer's application documents and have the potential to be significant and weigh in the planning balance.
- There are issues with access rights over Inclosed Commons which the developer has not addressed in any manner.

2 Renewable energy: government planning policy

2.1 B&R CPRW understands the implications of man-made climate change, including its capacity to harm existing landscape character, heritage features and ecology as well as the risks to mankind. It accepts that part of the solution is the decarbonisation of the energy sector. It supports the Welsh Government's planning policies which seek to increase deployment of the right type of renewable energy developments in the right places.

2.2 The branch does not find it helpful, as the Appellant seeks to do, to rehearse every climate change document since Kyoto or to rely on outdated or English/UK Guidance when up to date Welsh Guidance is in place. It is unhelpful to over stress or exaggerate need in an endeavour to justify harms which the Welsh Government has declared unacceptable. If the developer considers policy to be ill judged or that recent studies are inaccurate then it is for them to lobby the government and not to seek to put their thumb in the scales when addressing the planning balance at an inquiry into the acceptability, judged under existing policy, of a particular development.

2.3 It appears from the recent study, Energy Generation in Wales 2016 (Appendix Y p.3), that existing planning policy as set out in PPW 9 and TAN 8, has performed well in satisfying Welsh policy expectations. TAN 8 (par.1.4) anticipated that by 2020 Wales would produce 7TWh of electricity per annum by 2020. The 2016 Study (p.3) shows that by 2016 Wales was producing 6.9TWh from renewable generation. We provide updated figures in Appendix AE demonstrating this is a continuing trend.

2.4 Wales's overall energy consumption is 93.5TWh of energy per year of which 16.1 Tw is electricity consumption. Wales is a net exporter of electricity producing 38.8TWh a year.

2.5 In 2017 the Welsh Government (Appendix Y p.5) announced a target of 70% of electricity demand from renewable sources by 2030. By 2016 it had made good progress achieving 43%. There was 2,854MW of installed capacity at that time. Powys (Appendix Y p.7) has the highest combined renewable electricity and heat capacity at 299 MW, one of seven local authority areas with a total of over 200 MW. It produced in 2016 from renewable sources 55% of the electricity it consumed.

2.6 In her statement to the Assembly on 06/12/16 Lesley Griffiths (Appendix Z) identified priorities for Wales. She said answer to questions: "As I said, I'm passionately in favour of windfarms in the correct place. You don't want them all together—well, that's why we have the strategic search areas. We put the large ones together there to save them from being on every mountain top, as you referred to. What they need to do, each local planning authority, when they're looking at wind turbines or windfarms, for instance, they've got to look at their overall vision and strategy for renewable energy development in their area to make sure that their international and their national statutory obligations to protect designated areas or species or habitats are observed."

2.7 That policy position remains unchanged. The Public Position Statement issued 29/11/2017 (Appendix AA) supports deployment in appropriate sites: "Policy in Wales supports further renewable generation in **the appropriate sites** and at an appropriate scale. Their impact and contribution to the resilience of our natural resources and ecosystems, and the benefits they provide to wellbeing, will be key to their consideration.

We believe the Wellbeing of Future Generations Act, the clear direction in planning policy and the direction set within the Natural Resource Management policy provide a supportive framework to appropriately harness our rich natural resources, maintaining and enhancing the resilience of Wales' ecosystems, in a way which people who live and work in Wales will support. **With careful planning**, there is potential for significant renewable energy deployment in Wales.”

2.8 The Natural Resources Policy 2017 (Appendix AB) identifies the benefits derived from Wales Natural Resources and seeks to reconcile the opportunities for green growth, including renewable energy, with the need to protect other natural resources.

2.9 It notes that: "Biodiversity and well-functioning ecosystems provide natural solutions that build resilience, which in turn help society create jobs, support livelihoods and human well-being, adapt to the adverse impacts of climate change and contribute to sustainable development. The Welsh Government, as a sub-national government, is a critical actor in addressing the global challenges to biodiversity and climate change and plays a key role in delivering commitments under international agreements to the mitigation and adaptation of climate change, addressing biodiversity loss and delivering the sustainable development goals." (Page 5)

2.10 It recognises that "Wales' natural resources are not only the backbone of our rural economy; they also provide vital resources and benefits to our economy and society as a whole. Natural resources are the foundation of our primary production industries - agriculture, forestry, fisheries, and the water industry. **Our beautiful landscapes, nature and wildlife also support a vibrant tourism and recreation sector as well as being a vital part of our culture and identity.** A central reason people choose to live and holiday in Wales is the quality and accessibility of our natural environment."(page 6) Natural resources are essential for human life and their condition affects both our physical and mental well-being. High quality natural resources and ecosystems play a key role in supporting health outcomes. They can help to tackle key public health issues ranging from air and noise pollution to conditions associated with physical inactivity, such as diabetes and obesity. **Outdoor recreation generates significant health benefits for the**

population in Wales as well as significant benefits to Wales' economy though the growing tourism opportunities.

2.11 Planning policy Wales (9) provides advice on how the planning system can promote "sustainable development", identifying that its goal is to "enable all people throughout the world to satisfy their basic needs and enjoy a better quality of life without compromising the quality of life of future generations."(4.1.1)

2.12 It advises that (4.2.4) "A plan-led approach is the most effective way to secure sustainable development through the planning system and it is important that plans are adopted and kept regularly under review (see Chapter 2). Legislation secures a presumption in favour of development in accordance with the development plan for the area unless material considerations indicate otherwise (see 3.1.2). Where:

there is no adopted development *plan* or
relevant development plan *policies* are considered outdated or superseded or
where there are no relevant *policies* "

there is a presumption in favour of proposals in accordance with the key principles (see 4.3) and key policy objectives (see 4.4) of sustainable development in the planning system. In doing so, proposals should seek to maximise the contribution to meeting the local well-being objectives. Where these are not in place, the well-being goals contained in the Well-being of Future Generations (Wales) Act should be used. (Copy of those paragraphs at Appendix AC). Those goals include putting people and their quality of life at the centre of decision making, respecting environmental limits, and tackling climate change. In this case one of the more important is " using **scientific knowledge to aid decision-making**, and trying to work out in advance what knowledge will be needed so that appropriate research can be undertaken" as in this case the Environmental Statement has failed to undertake the necessary research.

2.13 The objectives which have to be taken into account in making decisions on planning applications are set out (4.4.1 onwards) and the use of relevant guidance in

Technical Advice notes is supported. When considering resilience PPW seeks that planning should "Contribute to the protection and improvement of the environment, so as to improve the quality of life, and protect local and global ecosystems. In particular, planning should seek to ensure that development does not produce irreversible harmful effects on the natural environment and support measures that allow the natural heritage to adapt to the effects of climate change. **The conservation and enhancement of statutorily designated areas and of the countryside** and undeveloped coast; **the conservation of biodiversity, habitats, and landscapes**; the conservation of the best and most versatile agricultural land; and enhancement of the urban environment **all need to be promoted** (4.10, 4.11.10, Chapters 5 and 13)" and "Minimise the risks posed by, or to, development on or adjacent to unstable or contaminated land and land liable to flooding...."

2.14 It should also "Help to ensure the conservation of the historic environment and cultural heritage, acknowledging and fostering local diversity (4.11.10 and Chapter 6)" and "Support the need to tackle the causes of climate change by moving towards a low carbon economy. This includes facilitating development that reduces emissions of greenhouse gases in a sustainable manner, provides for renewable and low carbon energy sources at all scales and facilitates low and zero carbon developments (Sections 4.7, 4.11 and Chapter 12)."

2.15 B&R CPRW supports facilitating such development when it is carried out in a sustainable manner. Unfortunately this proposal is ill located to achieve that objective.

2.16 Section 12.8 of PPW (4.5.7) addresses "facilitating the delivery of new and more sustainable forms of energy provision at all scales." B&R CPRW take the view that this is not a sustainable form of energy provision at this location.

2.17 PPW also notes that (4.6.4) "The countryside is a dynamic and multi-purpose resource. In line with sustainability principles, it must be conserved and, where possible, enhanced for the sake of its ecological, geological, physiographic, historical, archaeological and agricultural value and for its landscape and natural resources, balancing the need to conserve these attributes against the economic, social and recreational needs of local communities and visitors. Central to this is ensuring that the

countryside is resilient to the impacts of climate change and plays a role in reducing the causes of climate change through the protection of carbon sinks and as a sustainable energy source. "

2.18 Chapter 12 (12.8.6) identifies that "The Welsh Government's aim is to secure an appropriate mix of energy provision for Wales which maximises benefits to our economy and communities, whilst minimising potential environmental and social impacts...." and expresses the commitment of (12.8.8) the Welsh Government to "using the planning system to: optimise renewable energy generation". The word "optimise" indicates that the role of the planning system is to provide for such development in the right place, where the wider benefits of renewable energy are not outweighed by local harms. It is not the same as "maximise at any cost".

2.19 "Local planning authorities (12.8.9) should facilitate the development of all forms of renewable and low carbon energy to move towards a low carbon economy to help to tackle the causes of climate change Specifically, they should make positive provision by, inter alia, "considering the contribution that their area can make towards developing and facilitating renewable and low carbon energy, and ensuring that development plan policies enable this contribution to be delivered." (Appendix AC contains PPW paragraphs as above.)

2.20 Unfortunately the Powys LDP examination demonstrated that Powys had been ill-advised in their consideration of this issue having a Renewable Energy Assessment, based on flawed GIS data, which originally suggested scope for 1124MW of additional wind energy but on review advised that there was scope for only 4MW.

2.21 PPW advises that decision makers, whilst seeking to facilitate renewable energy developments, should (12.8.10) "ensure that international and national statutory obligations to protect designated areas, species and habitats and the historic environment are observed". The location chosen by the developer for this proposal signally fails to protect such areas, habits and species or the historic environment.

2.22 B&R CPRW accepts that onshore wind is a mature and commercially viable form of renewable energy. PPW advises that "The Welsh Government accepts that the introduction of new, often very large structures for onshore wind needs careful consideration to avoid and where possible minimise their impact". Given the climate change benefits of renewable energy "careful consideration" would only be necessary if such structures were capable of harming important interests. This is a location where the harms cannot be avoided or minimised. The harms to landscape and visual amenity are detailed by Ms Bolger; to ecology, including a European Site, by Dr Christine Hugh Jones; to ornithology by Mr Nick Myhill; to hydrology by Ms Sarah Bond; to tourism and tourism businesses by Mrs Jill Kibble and Mr Graham Williams; and to the Common by myself. Issues of personal hardship are dealt with in Mrs Penny Everett's statement.

2.23 TAN 8 advises that in areas outside SSA's, where large scale developments should be concentrated whilst "Most areas outside SSAs should remain free of large wind power schemes", "there is a balance to be struck between the desirability of renewable energy and landscape protection. Whilst that balance should not result in severe restriction on the development of wind power capacity, there is a case for avoiding a situation where wind turbines are spread across the whole of a county".

2.24 Annex D of TAN 8 advises that "There is an implicit objective in TAN 8 to *maintain the integrity and quality of the landscape* within the National Parks/AONBs of Wales i.e. no change in landscape character from wind turbine development.

2.25 In the rest of Wales outside the SSAs, the implicit objective is to maintain the landscape character i.e. no significant change in landscape character from wind turbine development

2.26 Annex C of TAN 8 advises that:

- The development of a wind farm is often a major civil engineering project and thus there are potentially very serious implications for bio-diversity. The major ecological impacts are most likely to be associated with site infrastructure rather than the turbines themselves and the advice contained with TAN 5 should cover all aspects of the development - other than the impact of the moving blades upon birds and bats.

- The impact of the moving blades upon birds and bats is a common concern but in most cases will not lead to significant numbers of deaths or injuries. “bird strike” is most likely to occur if a wind turbine is erected directly in a migration path or where there are high concentrations of a particular species for feeding. Early consultations with the Countryside Council for Wales and RSPB is essential and most large sites are likely to require a breeding bird survey in the spring and a winter survey as a minimum requirement.

2.27 Existing Planning Policy contains strong protections for communities, amenity and the natural environment. Progress towards national renewable target does not support any contention that these protections should be weakened to facilitate renewable energy development in inappropriate locations.