

## **Adroddiad Adendwm**

Ymchwiliad a gynhaliwyd ar 13-16 a 20-23/03/18

Ymweliad safle a wnaed ar 23/03/18

**gan Hywel Wyn Jones BA (Hons) BTP MRTPI**

**Arolygydd a benodir gan Weinidogion Cymru**

**Dyddiad: 19.10.2018**

## **Addendum Report**

Inquiry Held on 13-16 & 20-23/03/18

Site visit made on 23/03/18

**by Hywel Wyn Jones BA (Hons) BTP MRTPI**

**an Inspector appointed by the Welsh Ministers**

**Date: 19.10.2018**

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TOWN AND COUNTRY PLANNING ACT 1990 – Section 78

### **APPEAL BY HENDY WIND FARM LIMITED**

### **LOCAL PLANNING AUTHORITY: POWYS COUNTY COUNCIL**

Planning application for:

The development proposed is to construct and operate seven wind turbines with a maximum tip height of 110m (hub height 69m) together with ancillary development comprising substation, control building, new and upgraded access points and tracks, hardstanding and temporary compound with associated works

**Land off A44 South West of Llandegley, Llandrindod Wells, Powys, LD1 5UG**

**File Ref: APP/T6850/A/17/3176128**

**Site address: Land off A44 South West of Llandegley, Llandrindod Wells, Powys, LD1 5UG**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Hendy Wind Farm Limited against the decision of Powys County Council.
- The application (ref: P/2014/0672), dated 27 June 2014, was refused by notice dated 18 May 2017.
- The development proposed is to construct and operate seven wind turbines with a maximum tip height of 110m (hub height 69m) together with ancillary development comprising substation, control building, new and upgraded access points and tracks, hardstanding and temporary compound with associated works.

**Summary of Recommendation: the Appropriate Assessment be accepted.**

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**Preliminary Matters**

1. This Addendum report has been prepared at the request of Welsh Government. Its purpose is to report on the impacts of the scheme on the River Wye/Afon Gwy Special Area of Conservation (SAC). It takes the form of an Appropriate Assessment (AA) for consideration by the Welsh Ministers in their role as the competent authority and has been prepared in accordance with the requirements of Regulation 63 of the Conservation of Habitats and Species Regulations 2017. Mindful of the requirements of Regulation 63(3) I have had regard to the comments of Natural Resources Wales (NRW) in its letters dated 2 and 17 October 2018 in carrying out my assessment.

**Background**

2. During its consideration of the planning application the Council screened the scheme for the purposes of the Habitats Regulations and determined that it would not result in a likely significant effect on the SAC. This opinion was reached following the submission of a 'Habitats Regulations Assessment Screening Report', February 2015, by Chris Forster Brown on behalf of the appellant. In response to that report, NRW confirmed on 18 December 2015 that it was satisfied that the proposed development would not have any significant effects on any protected sites provided that the mitigation prescribed in the report is implemented in full.
3. The Screening Report identifies probable effects on the SAC particularly at the construction and decommissioning stages of the scheme. However, when factoring in identified mitigation measures, it found that there would be no significant impacts. During the inquiry the main parties agreed a list of planning conditions several of which would seek to secure mitigation works to protect the SAC.
4. Since the close of the inquiry a preliminary ruling by the Court of Justice of the European Union (C-323-17, dated 12 April 2018) has established that at the screening stage of the Habitats Regulations Assessment process, mitigation measures should not be taken into account in deciding whether an AA is required. On that basis it is evident that the possibility that the proposal would have significant adverse effects cannot be ruled out without further consideration, hence the need to undertake an AA.

## Appropriate Assessment

5. The site lies within some 1.3km of the River Wye/Afon Gwy SAC. The SAC is divided into a number of management units. The development is adjacent to Unit 3, River Wye (Tributaries) which extends from the River Edw to where it joins the River Wye. There are number of small watercourses within the appeal site that drain to the River Edw and its tributaries. The Screening Report (at Table 5.4) records the key and other important habitats and species of Unit 3 which include Atlantic salmon, otter and white-clawed (or Atlantic stream) crayfish and watercourses of plain to montane levels with the Ranunculion fluitantis and Callitriche-Batrachion vegetation. Table 5.5 of the Report records the conservation objectives for the relevant SAC features; these can be summarised as seeking to maintain or improve the water environment and the habitat that it provides for its special features in the long-term.
6. The Screening Report identifies several potential effects of the scheme on the conservation objectives of the SAC: sedimentation could particularly affect salmon spawning beds; flash flooding could damage important vegetation, otter holts and water quality; invasive species could be borne on wheels and transferred by water to affect habitats; toxic run-off particularly from concrete residue in water, oil and diesel could affect aquatic species; disturbance of otter breeding and resting sites within the appeal site could affect foraging and breeding success; disturbance to fish could harm spawning/breeding; and barriers to movement from culverts and ponds could harm the coherence of the site.
7. For most of these objectives the potential pre-mitigation impacts during the operational phase of the wind farm have been identified as 'no effect' with other impacts being described as unlikely with no significant impacts anticipated. During the construction and, to a lesser degree, the de-commissioning phases, the identified effects were markedly greater than the operational phase, including some that were deemed 'probable with significant impacts anticipated'.
8. Factoring in the proposed mitigation works which were included in the Environmental Statement significantly alters the predicted effects such that a few are identified as resulting in no effect whilst the remainder are described as being extremely unlikely with no significant impacts anticipated. The mitigation measures that influenced this Screening Report have been refined prior to inclusion in the recommended planning conditions set out in Annex A to my main report. These include: the requirement for, and thereafter adherence to, management plans to control construction work, environmental effects, pollution and hydrology; requirements for monitoring and responding to effects; and controls over de-commissioning work.
9. At the inquiry there was no suggestion that the findings of the 2015 Screening Report were out of date. In a letter dated 17 October 2018 NRW updated its earlier advice to take into account recent development proposals in the area, and reiterated its previous finding that the appeal scheme would not affect the integrity of the SAC. Taking into account this advice, I conclude that the Screening Report and other evidence submitted for the appeal provides sufficient information to make the AA.
10. On the basis of the identified mitigation measures NRW and the Council are satisfied that the scheme is not likely to cause significant effects to the SAC. As is explained in my main report, other parties, including the Campaign for the Protection of Rural Wales, Brecon and Radnor Branch, who were a Rule 6 party, disagree. They particularly question the efficacy of the suggested conditions and have concerns over their implementation and enforcement.

11. At the inquiry the appellant explained that the requirements contained in the suggested conditions, such as pollution control measures, were standard practice in schemes involving engineering works of the scale proposed. Specialist contractors were accustomed to carrying out their construction work in a responsible manner to avoid unacceptable impacts on the environment of the site and the wider area.
12. In agreeing with the suggested list of conditions the Council confirmed at the inquiry that it had relevant experience in relation to several other wind farms schemes in its area of discharging similar conditions and undertaking monitoring to ensure compliance. It also confirmed that in agreeing the additional details sought by the conditions it would call on the specialist advice of NRW when necessary. I consider that the suite of measures proposed to mitigate any harmful effect on the SAC can be relied upon to be effective. It is reasonable to assume that the conditions' requirements will be complied with and monitored effectively, particularly given the potentially serious consequences of not doing so in the case of the conditions in question.
13. I have taken into account all the available evidence, including the concerns raised by those who oppose the scheme and have adopted the precautionary principle in carrying out my assessment. I conclude that it is beyond reasonable scientific doubt that the scheme, either alone or in combination with other projects, would not have an adverse effect on the integrity of an European Site, namely the River Wye/Afon Gwy SAC. This conclusion is predicated on securing the identified mitigation measures through the imposition of the recommended planning conditions.

### **Recommendation**

14. For the reasons given above, and having had regard to all other matters raised, I recommend that this report be accepted as an Appropriate Assessment which complies with the requirements of Regulation 63 of the Conservation of Habitats and Species Regulations 2017.

*Hywel Wyn Jones*

INSPECTOR