



**Campaign for the Protection of Rural
Wales
Brecon and Radnor Branch
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7th January 2019

Dear Holly-Ann Hobbs

HENDY WIND FARM: Land Off A44 SW Of Llandegley Llandrindod Wells Powys

Application for discharge of condition 25 from P/2014/0672 (APP/T6850/A/17/3176128): Public Rights of Way

CPRW Brecon & Radnor Branch reserves the right to make further representations in response to this application.

Phasing of development: It has emerged from documents submitted for discharge of condition 21 that the developer is treating this development as consisting of two phases, Phase One being the installation of Turbine 5 and the remaining construction work making up Phase Two. Phase One construction has failed to adhere to approved plans and the developer is in breach of Condition 2. The developer has not made clear even how Phase One is to be completed and how, for example, AILs will arrive on site. Once Phase One is complete, it is not clear whether the developer intends to revert to approved plans and access and AIL routes for the remainder of the development or not. It follows that information submitted in relation to Phase One is not sufficient for discharge of conditions which, of course, have application to the entire development. All new development and site access options that are now being raised by the developer or all those for which he has previously received planning permission must be treated as possible elements in this development and must be fully taken into account before conditions can be discharged.

Consultation period: Please note that the following new environmental information was uploaded to the Powys website on 6th December 2018 and requires re-advertisement and a corresponding extension of the consultation period:

- Access Management Plan v2
- Access Management Plan Annex 1
- Access Management Plan Annex 2
- Access Management Plan – Version 3

Condition 25: *No development shall commence until an Access Management Plan (AMP) has been submitted to and approved in writing by the Local Planning Authority. The AMP shall be implemented as approved and include:*

- a) *details of how safe access by the public on public rights of way during construction of the authorised development will be maintained including details of any temporary*

closures of public rights of way required and the diversions that would be put into place;

- b) details of the provision of signage and other information alerting the public to construction works;*
- c) details of how construction traffic and construction workers are informed and trained about public rights of way and their use by members of the public;*
- d) details of any fencing or barriers to be provided during the construction period;*
- e) details of the new permissive route from the footpath south of the substation to the BOAT which is to be designated as a permissive right of way for the life of the scheme;*
- f) details of improvements to Public Rights of Way within the site;*
- g) details of how the AMP shall not conflict with the ecological provisions contained in these conditions;*
- h) details of maintenance and any required restoration work to all Public Rights of Way (including repairs to any damage caused at the construction stage) to an acceptable standard;*
- i) provision of suitable interpretation boards; and*
- j) details of a promotional day to be held on site after first export and all Public Rights of Way improvements on site have been completed.*

The Access Management Plan (AMP - now on its third iteration) sets out to deal with each of a) to j) above.

The second objective of the AMP (P1) is stated to be “to maintain a safe separation between commercial activities and public use”.

The AMP completely fails to recognise that the interaction between the public and construction work does not only take place on Rights of Way within a fenced construction site, but that there are public rights of access to the Llandegley Rhos Common (Reg CL34) and the areas of enclosed commons within the site which are also impacted.

In consequence, HWF have entirely failed to acknowledge their legal responsibility under the Health and Safety at Work Act s3, which places general duties on employers and the self-employed to conduct their undertakings in such a way as to ensure, so far as is reasonably practicable, that persons other than themselves or their employees are not exposed to risks to their health or safety.

A fundamental principle of the Act is to make those who create risks, in the course of work activity, responsible for protecting workers and the public from the consequences of their activities. The HSE requires duty-holders to identify and address *“hazards which are a reasonably foreseeable cause of harm, taking account of reasonably foreseeable events and behaviour”*.

Public and other rights on Llandegley Rhos Common (Reg CL34): The AMP must be redrafted to take full account of the public rights, and also specifically the Graziers’ and Commoners’ rights, across the Llandegley Rhos Common (Reg CL34), tracks on which are being used by Hendy Wind Farm for access

by large numbers of construction vehicles for access to the site. It was quite clear on 3rd January 2019 that vehicle drivers and security staff have no understanding of the rights of the public across the common (and were even impeding access through a bridleway gate onto the common) and that public safety was recklessly put at risk. Access to the northern graziers' track has also been blocked on multiple occasions by construction and/or security vehicles.

Public rights on enclosed common land within the site: The AMP must also fully take into account the impact of the development and its construction on public rights to air and exercise under the Enclosure Awards [extract from Enclosure Awards below – same wording in each] for Llandegley Rhos (enclosed land) and Hendy Bank. These issues were raised at the time of the Public Inquiry. The developer has been provided with full information concerning the nature and extent of these rights, which cover the majority of the wind farm site, so it is disappointing that no reference is made in the AMP. We attach map setting out these enclosures relative to the development plan.

Extract from Enclosure Awards:

“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.”

Byway Open to All Traffic (BOAT) on Llandegley Rhos Common: This is not considered in the AMP. Although the developer has made some statements about not using this route to access the site, he has the planning permission to do so and has not committed to any alternative route for access by AILs to the site. It must be assumed that use of the BOAT remains a possibility and impacts of the use of this route as a site access track, on both the general public and on those with specific rights on the common, must be considered in the AMP. We note that Powys Countryside Services requested details regarding the safety of users of the BOAT in response dated 29th March 2017: *“The applicant is now offering a pre-development condition requiring an access management plan to be submitted to, and agreed by the council. This plan will set-out [sic], in detail, how the BOAT would be managed during the construction to allow safe access by all public users during construction.”* This information is still required.

The developer has not produced plans for the retaining structure required on the common just beyond Pye Corner. It remains possible that this will be built. There will be a very real practical problem creating a safe junction with the bridleway which leaves the BOAT at that point to head north. This is not discussed in the AMP; so long as the southern access route remains a possibility all impacts must be fully taken into account in the AMP. Drawings of the proposed structure will be required to assess suitability of treatment of the bridleway.

Note that the Protected Species Protection Plan still assumes use of the BOAT by construction traffic.

Byway Open to All Traffic (BOAT) within wind farm site: The AMP does not address the viability of use of the BOAT during the construction period, nor the fact that users may be on foot, on bicycles, on horseback, or in horse drawn and other vehicles.

There are particular problems for horse riders and horse drawn vehicles - site plan fails to provide for 200m separation between turbines and the BOAT. This BOAT is an important component of a network of routes which are much in use, not only by walkers but also by horse riders, some of them riding with local tourism businesses. British Horse Society recommendations in fact recommend a separation of 3 x tip-height if greater than 200m, which gives an indication of the seriousness of failing even to meet the 200m recommendation. The arrangement of turbines around the BOAT also contravenes other BHS recommendations in that the turbines create a 'corridor' around the BOAT, and turbines to the south will throw shadows across the BOAT. The developer's alternative route confers no advantage.

The problems and safety issues riders will face post-construction indicate some of the considerations which should be fully discussed in the AMP in relation to the construction period.

Development on the Llandegley Rhos Common: The developer has not formally withdrawn the plan to use a part of the Llandegley Rhos common to facilitate AILs accessing the common from the northern entrance. This therefore also remains a possibility (as do passing places and turning areas on the common itself) and the developer will need to advertise, negotiate with all Commons rights holders, and submit applications to the Inspectorate and to Powys etc. If this piece of development takes place, there will be impacts on users of the bridleway which crosses the north of the common and these should be discussed in the AMP.

Deviations from agreed site plans: The developer is in breach of Condition 2 having begun the construction of the wind farm with little regard for approved site plans. It is not known whether the turbine access track and construction compound so far constructed will be removed or whether the site plan will be adapted to include these new elements which have been constructed outside the site red line. Without this information, impacts on rights of way within the site cannot be fully known.

Junctions between Rights of Way and site tracks: The site undulates and site tracks will require cut and fill to adjust the gradient for heavy vehicles. This means that where existing Rights of Way cross site tracks there may be very significant level changes, which must be made safely negotiable by all users. This is not discussed in the AMP. There will be serious safety, access and amenity issues for the multiple classes of user entitled to use the BOAT.

f & h) Improvement, maintenance and restoration of rights of way: The AMP contains no commitment to improve, maintain or restore rights of way.

e) Permissive path: At present Annex 2 indicates that a permissive path is to be created to join a footpath to the south of the site to the BOAT, joining site tracks at the base of Turbine 3. Safety guidelines recommend a minimum 'topple' distance of tip-height + 10% between footpaths and turbines. We're told Turbine 3 may be microsited but the developer has not submitted any plans indicating new microsited turbine locations – without which sensible comment on this permissive route is made difficult.

Conclusions

The Access Management Plan fails to address the developer's legal obligations and its own objectives. It requires considerable amplification to address the following issues:

1. Public rights and public safety on the Llandegley Rhos Common
2. Public rights and public safety on the enclosed common land within the site
3. Public safety and amenity on the BOAT on the Llandegley Rhos common and within the wind farm site (plans for new structure on BOAT required)
4. Potential development on the Llandegley Rhos Common and its impacts on public rights and access
5. Potential for changed impacts on rights of way resulting from deviation from agreed site plans
6. Treatment of junctions between rights of way and wind farm site access tracks
7. Safety of users on intended permissive path (site plans including micrositing required)

Most importantly: HWF have entirely failed to acknowledge their legal responsibility under the Health and Safety at Work Act s3, which places general duties on employers and the self-employed to conduct their undertakings in such a way as to ensure, so far as is reasonably practicable, that persons other than themselves or their employees are not exposed to risks to their health or safety.

The Access Management is not at present fit for purpose: it will not serve to address issues of public safety and amenity which are a legal responsibility of the developer.

This response has been compiled by members of the CPRW Brecon & Radnor Branch Committee.

Sincerely

Jonathon Colchester

Chairman of CPRW Brecon & Radnor Branch

