



**Campaign for the Protection of Rural
Wales
Brecon and Radnor Branch
Upper Noyadd, Clyro, HR3 5JS
01497 820814**

16th January 2019

Dear Holly-Ann Hobbs,

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

Application for discharge of condition 39 from P/2014/0672 (APP/T6850/A/17/3176128):Bat Protection Plan (BPP)

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. Any plans, construction or management arrangements that differ from the requirements of Condition 2 require new applications.

OVERVIEW of BPP

The BPP submitted to discharge Condition 39 does not provide a front-page with author, qualifications and date in the Bat Protection Plan. These should be required for professional reports.

A large part of this report is copied directly from the Bryn Blaen report dated 2016, written by Chris Forster Brown of ADAS to discharge Condition 40 of the Bryn Blaen permission. The copied material is p1 para. 1-4 and p3 para.1 to the end of the Hendy Report. It refers to particular problems with T6 , referring to the Bryn Blaen T6:

Mortality data should be collected for the period specified at (f) at four periods during the year at turbine T6, i.e. spring, early summer, mid to late summer and autumn, to coincide with different stages in bat lifecycles. Searches for bats would be carried out at dawn at the turbine locations (Catharine and Spray, 20093).

measures will be employed such as further limiting the operation of the turbine at night. Land management changes will also be discussed as appropriate with NRW. These may include the removal of stock from the location of turbine T6 (thus reducing available insect prey).

The remainder , the middle of the report - p1 Para 4 to the end of p2 - is newly written for Hendy (as opposed to Bryn Blaen) but it is directly culled from the Protected Species Protection Plan submitted to discharge Condition 38 and validated by Powys on 23.11.18. **This PSPP is defunct, having now been superseded by a Revised PSPP, validated on 13.12.18, which is still within the new consultation period until 4.2.19.** Neither the earlier PSPP nor the Revised PSPPs has front-page with author, qualifications and date. These should be required for professional reports.

The fact that the Bat Protection Plan submitted to discharge Condition 39 does not accord with the revised PSPP plan for discharge of Condition 38 means that it cannot be accepted and the Condition cannot be discharged.

CONDITION 39

39. No development shall commence until a Bat Protection Plan has been submitted to and approved in writing by the Local Planning Authority. The bat protection plan must be implemented as approved and include details of:

- a) any necessary mitigation measures to ensure the protection of the species during site clearance works and construction of the development;**
- b) a monitoring procedure to record bat activity and weather conditions;**
- c) a monitoring procedure to record bat mortality at wind turbines;**
- d) a requirement for the annual reporting of the results of monitoring, and where necessary details of any remedial action to reduce bat mortality;**
- e) a procedure for agreeing and implementing remedial measures aimed at reducing or avoiding bat mortality, such measures must include wind turbine curtailment and/or land management changes; and**
- f) an agreed timeframe for monitoring, sufficient to determine the impact of the operation of the authorised development on bats and the efficacy of any remedial measures to be implemented.**

DEVELOPER UNDERTAKINGS TO DISCHARGE CONDITION 39

“Pre-commencement Surveys”

Static detectors for 5 consecutive nights in Spring, Summer and Autumn:

There is no indication of the number of paired detectors or where they are to be placed within 100m of commuting/foraging distance from a turbine. There is no plan of likely commuting/foraging habitats provided nor of which will be disrupted by construction, nor of any commuting/foraging habitat enhancement or plantings.

Single one hour vantage point survey in Spring, Summer and Autumn:

There is no mention of time of night, weather or temperature. There is no plan showing the vantage points. The previous survey in 2012 (see Ecology Technical Appendix 7.5: Bat Survey Report by Churton Ecology: 12 turbines/different layout) says at 2.4 : transect surveys “commenced 5 minutes prior to sunset and terminated anywhere from 2-3 hours thereafter” and The tables at 3.3.1 show the survey times to be 3h31mins, 2h15 mins and 2h20mins (average 2h42mins). The temperature records show that for the 2012 Autumn surveys, the temperature would have been under 10° for most of the time and therefore this was not reliable

The Bat Conservation Trust guidelines for manual bat surveys recommends:

Table 1: Recommended length of time over which manual bat surveys should be conducted

Survey objective	Dusk survey ¹	Dawn survey (if undertaken)
Bat activity away from roost (all species)	sunset to 2-3 hours after sunset ²	2 -1½ hours before sunrise to sunrise ¹

Table 2: Recommended visit frequency & timing for manual bat activity surveys away from and at roosts

Location of activity survey	Site/habitat being surveyed:	
	Moderate to high value	Low value
In habitat away from known roosts (bat detector transects) (all species) ⁴	<ul style="list-style-type: none"> • 3 surveys¹ during March² – September³ • Optimum period June to August • At least one of the three surveys should comprise dusk and dawn (or dusk to dawn) within one 24-hour period. 	<ul style="list-style-type: none"> • 2 surveys¹ during March² – September³ • Optimum period June to August

The ES classifies the site as of moderate value for bats and therefore **the proposals in the BPP do not meet best practice recommendations.**

Condition 39 (a) Mitigation measures

Mentions “*the mitigation measure proposed above*” but there is no mitigation measure proposed above in this BPP document.

“Construction Period”

Mentions standard trees in containers, Heras fencing and micro-siting of T5 to 49cm from potential foraging habitat. There is no mention of a Licence.

The Bat Conservation Trust (email to BRB-CPRW secretary dated 15.1.19) details “What you should expect from a Local Authority”:

“The planning authority has a legal obligation to consider whether bats are likely to be affected by a proposed development. If a survey has not already been undertaken to determine the potential for bats on site and/or the presence of bats, the authority should request that the developers commission an appropriate survey.

If a survey demonstrates that development is likely to affect bat foraging and/or commuting habitat then linear features such as tree lines should be retained, and compensatory planting should be considered wherever possible.

If a survey demonstrates that bats and/or a known roost are likely to be affected by the proposed development, and planning permission is to be granted, a condition should be placed on the decision notice requiring the developer to apply for, and obtain, a European Protected Species Licence before work commences.

The licence will specify planning conditions such as timing of works and mitigation to lessen impacts”

With respect to any mitigation measures, including tree or hedge planting, we have reviewed the application to discharge Condition 40: Habitat management and enhancement plan which does not admit to any construction period effects for fauna or bat habitats:

Predicted Effects and Conservation Management Objectives

No significant construction period effects were predicted for habitats on site as the habitats affected were, except for one area, either of low or very low ecological value. One area of dry and wet heath would be severed by the scheme and about 0.2 ha of this habitat would be removed.

No significant construction period effects were predicted for fauna; based on survey data gained at the time of the application. It is therefore possible that the location of some protected species and their use of the site may have altered and the main conservation objective of the scheme is to ensure that protected species are not significantly affected.

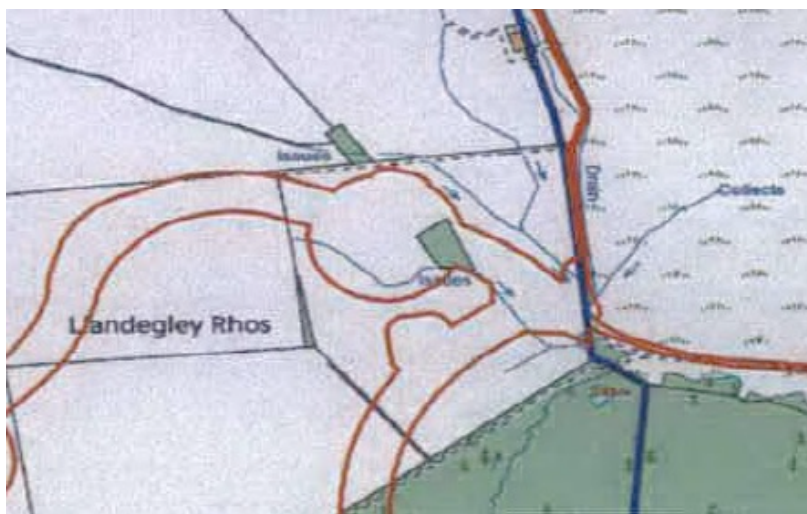
With respect to timing of works, we have seen construction taking place day and night since November at Hendy Wind Farm. We do not expect this developer to stop or to turn off the floodlights for the benefit of bats. Nor do we expect the construction timetable to be determined by anything but money and speed. Although the developer promises planting trees to narrow gaps (BPP p2 “*Construction Period*”), these will not provide the “*overhanging branches*” for many years. Since no plan has been provided of where this planting will be and it is not mentioned in the application to discharge Condition 40 and there is no mention of a bat licence, it cannot be effectively monitored and enforced.

The “construction period” information:

- **Does not locate potential bat commuting/foraging habitat, where this will be disrupted or where mitigation measures and new planting will take place. This site-specific information should be provided and mapped.**
- Does not give the distance of T5 which has already been constructed from the potential foraging habitat. The figure on p X of the Revised PSPP is taken from the National England Bats and onshore wind turbines Interim Guidance (TIN051 2014). This says “*to minimise the risk to bat populations our advice is to maintain a 50m buffer around any feature (trees hedges) into which part of the turbine intrudes*” The formula in the revised

PSPP submitted to discharge Condition 38 would indicate a 67m setback from trees 7 m high and 73m setback from trees 15 high (assuming 40m blades and 67m hub height of Vestas 80 model). This is more than the 64.1m quoted on p7 of the Revised PSPP. There is no calculation of how much the promised 49m setback falls short of the recommended setback and, indeed, this should be possible to calculate now T5 base is already constructed (so that micro-siting, if any, is known) and the turbine model has been ordered. **This site-specific setback information for T5 should be given, particularly since it does not conform to NE interim guidelines which are omitted from the BPP.**

See the approved plan (Condition 2): Red-line amendment to include turbine radius of 71m (Sept 2014)



- **These are not “Pre-commencement surveys”. The Spring, Summer and Autumn Pre-commencement surveys will be DURING THE CONSTRUCTION PERIOD and will not yield reliable data. These unreliable data will be used to determine the operating program and curtailment**

See: extract from the Construction Timetable appended to the CEMP submitted for discharge of Condition 21

	Construct T1,2,3,4 Access Track Spur	50 days	Fri 01/02/19	Thu 11/04/19
	Construct T6,7 Access Track Spur	25 days	Fri 12/04/19	Thu 16/05/19
	Construct T4 Crane Pad & Foundation	25 days	Fri 01/03/19	Thu 04/04/19
	Construct T3 Foundation & Crane Pad	25 days	Fri 05/04/19	Thu 09/05/19
	Construct T2 Foundation & Crane Pad	25 days	Fri 10/05/19	Thu 13/06/19
	Construct T1 Foundation & Crane Pad	25 days	Fri 14/06/19	Thu 18/07/19
	Construct T6 Foundation & Crane Pad	25 days	Fri 17/05/19	Thu 20/06/19
	Construct T7 Foundation & Crane Pad	25 days	Fri 21/06/19	Thu 25/07/19
	Construct Control Building	50 days	Fri 12/04/19	Thu 20/06/19
	Array Cable Installation	30 days	Fri 26/07/19	Thu 05/09/19
	Control Building Electrical Installation	20 days	Fri 21/06/19	Thu 18/07/19
	Trim/Dress Access Tracks & Crane Pads Ready for Turbine Delivery	15 days	Fri 16/08/19	Thu 05/09/19

Operational Monitoring procedures to record bat activities, mortality, annual reporting, remediation and time-frame (Condition 39(b) to 39 (f))

Since this information comes from the Bryn Blaen application we will not comment further except to say that there is no reference supporting the low-wind speed for curtailment.

CURTAILMENT

Revised PSPP says “unless pre-construction monitoring suggests otherwise, curtailment will be fitted to all turbines”.

The BPP says “unless pre-construction monitoring suggests otherwise, curtailment will be fitted to those turbines that are close to known bat foraging or commuting routes, that is Nos 2,3,5,6 &7”.

Therefore Nos 1 and 4 will have curtailment according to the Revised PSPP but not according to the BPP. This is inconsistent and the BPP exclusion of T1 and T4 is not justified. The approved T4 is very close to the location of “previous-T5” (in the twelve-turbine layout which determined the original bat-protection data (ES Technical Appendices Parts 11, 12 & 13: Bats). “Previous-T5” is close to hedges used as foraging routes (Fig 1 spring, transect A 18/6/2012). Looking at the field boundaries, the approved T1 is in a position which was outside the 2012 survey area, just E of a hedge which may be used for foraging.

So-called “pre-construction surveys” are planned for the construction period and therefore the findings are likely to feed into inadequate protection during the operating period.

We may be wrong, but we are not aware of any single wind turbine in Powys for which curtailment undertakings have been maintained. In each case we have seen, the undertaking has been removed via amendment of Conditions. T5 is already in an unacceptable location with respect to bat protection at an alleged 49m from the copse: we have no faith in curtailment measures successfully protecting bats.

CONCLUSIONS

This application should be refused because:

- **So-called “pre-construction surveys” are planned for the construction period when disturbance (earth moving, habitat destruction, noise, lighting at night) will invalidate the conclusions. There is no reference to a licence to control timing of construction.**
- **“Pre-construction surveys” do not follow best practice: no site-specific information about bat habitats in relation to construction or habitat management is given to enable proper evaluation. There is no reference to a licence to control mitigation of construction.**
- **The BPP is incompatible with the revised PSPP and part of it describes Bryn Blaen, not Hendy**
- **The developer has allowed himself too much laxity for NRW and PCC to ensure curtailment measures will protect bats near T5 or any other turbine.**

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

NB We are copying in NRW and Radnorshire Wildlife Trust because Powys have told us that they will not put our objection on the planning Website

References

Bat Conservation Trust: The Planning System: Summary of Surveying.

Email to Christine Hugh-Jones see Appendix.

Sincerely

Jonathon Colchester

Chairman of CPRW Brecon & Radnor Branch

Appendix: email to Secretary of BRB-CPRW from BCT

Begin forwarded message:

From: Tristan Evans <tevans@bats.org.uk>

Subject: Bats and Development

Date: 15 January 2019 at 13:34:43 GMT

To: "ch306@icloud.com" <ch306@icloud.com>

Thank you for contacting the Bat Conservation Trust regarding bats that may be threatened by development. We are a small charity and regrettably cannot get involved in individual cases. We therefore rely on concerned residents like yourself to help us protect bats by bringing matters such as this to the attention of planning authorities and developers.

Bats and the law

In the UK, bats and their roosts are protected by law whether occupied or not. It is illegal to damage, destroy or disturb any bats or roosts without having taken the necessary precautions. A roost is defined as any place that a wild bat uses for shelter or protection and the roost is protected whether bats are present in it or not.

The 'Supporting Legislation' section in 'The planning system' leaflet attached provides a more in-depth overview of bats and the legal system.

How you can help

Contact your local authority or council building control (if it is regarding a demolition and not part of a wider planning application) to find out whether a bat survey has been carried out. If you know bats use the site or bat presence is likely then you are within your rights to request that a survey be completed if one has not been carried out.

The most effective way to contact your local authority is in writing, but we advise that you also follow this up with a phone call to ensure your enquiry is on record. Where possible we would also encourage you to send the letter to the applicant making them aware of possible bat presence.

Local authorities usually acknowledge receipt of letters within five working days so if you do not hear back from the local authority within this time we suggest that you contact them again. You may then need to follow up with them beyond this to request an update. We recommend that you retain a trail of correspondence in case evidence is required later on e.g. if contacting your Local Government Ombudsman if unsatisfied with the response from your local authority or if police require this as part of an investigation. Please refer to the attached leaflet for more information.

Planning authorities must abide by a number of rules which, if known, can be used to enforce good practice and protect bats. The 'Getting Your Voice Heard' and 'Submitting a Written Objection' sections in the attached leaflet outline how best to approach this and give good guidance on how to compose an official letter.

You can find details of whether a survey has been carried out and what was found in the planning application documents. Most local authorities publish information on planning applications on their websites, or you can call the office directly and ask how this may be made available to you. You can find more information on the planning process and the website address for your local planning authority on the Planning Portal: <http://www.planningportal.gov.uk/inyourarea/searchapplications>.

You could also contact your local bat group for information about bats in the area, especially with regard to recorded bat roosts and bat sightings in the county. However, please be aware that bat groups are voluntary organisations and many do not have the resources to respond to planning related enquires. Bat group details can be found at: www.bats.org.uk/batgroups.

Your local biological record centre may hold information about bats rather than the bat group. Record centre details can be found at: <http://www.alerc.org.uk/find-an-lerc-map.html>.

You may also wish to approach your Local Wildlife Trust as they sometimes comment on planning applications. Find your nearest one at: <http://www.wildlifetrusts.org/your-local-trust>.

What you should expect of the local authority

The planning authority has a legal obligation to consider whether bats are likely to be affected by a proposed development. If a survey has not already been undertaken to determine the potential for bats on site and/or the presence of bats, the authority should request that the developers commission an appropriate survey.

If a survey demonstrates that development is likely to affect bat foraging and/or commuting habitat then linear features such as tree lines should be retained, and compensatory planting should be considered wherever possible.

If a survey demonstrates that bats and/or a known roost are likely to be affected by the proposed development, and planning permission is to be granted, a condition should be placed on the decision notice requiring the developer to apply for, and obtain, a European Protected Species Licence before work commences.

The licence will specify planning conditions such as timing of works and mitigation to lessen impacts. If you later suspect that a developer is contravening the conditions of their licence try to check the conditions of the licence with the authority that issued it, this varies depending upon the country (see contact numbers below) and alert the local planning office.

Licensing authority by country;

Natural England- 0300 060 3900

Natural Resources Wales- 0300 065 3000

Scottish Natural Heritage - 01463 725 364

Northern Ireland Environment Agency - 0845 302 0008

If you have viewed the survey report and are not happy with how or when the surveys were carried out, you may wish to take a look at the 'BCT Bat Survey Guidelines' to check whether best practice guidance has been followed. This can be downloaded in full via our website <http://www.bats.org.uk/pages/batsurveyguide.html>. I have also attached a shortened version of the decision process of surveying and licensing. Please inform your local authority if you find that insufficient surveying has taken place. Again we advise that you send a letter and follow up with a call and contact them again if you do not hear back within 5 working days. Please note that for resource reasons we are unfortunately unable to comment on any surveys which have been carried out.

If you witness an offence being committed (e.g. bats being disturbed, bat roost being destroyed, or access blocked) please inform the Police Wildlife Crime Officer in your local area by calling 101 or calling the local Police Force directly, mentioning the 'Investigative Guidance for bat offences' (which they can find in the Police Online Knowledge Area (POLKA)) and request an incident number. (If the Wildlife Crime Officer is not available it should not affect the reporting of the incident, please do so anyway). Please also report this incident along with the incident number obtained from the Police to the Bat Conservation Trust so we can follow this up. If you are aware of a licence breach in Scotland, Wales or Northern Ireland this should also be reported to the police in the same way. If the licence breach is in England however, then the matter should be reported to Natural England's Wildlife Enforcement Specialist on 0300 060 1099.

I hope that this information will be of some help.

Kind regards,

Tristan Evans Helpline Officer

National Bat Helpline, Bat Conservation Trust, Quadrant House, 250 Kennington Lane, London SE11 5RD