



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

Chair: Jonathan Colchester

Correspondence: secretary@brecon-and-radnor-cprw.wales

26th July 2020

PRESS RELEASE: HENDY WIND FARM

Mid-Wales: the Wild West of Planning or how not to do it.

Under the cover of Covid-19 measures, the developer of Hendy Wind Farm (HWF) near Llandegley in Mid-Wales, backed by **U + I** property investment company, has been busy constructing his second unauthorised access for major construction in 18 months. Who are HWF? We don't know whether Steven Radford of Njord Energy, developer of the notorious Bryn Blaen windfarm, is still involved but, whoever they are, they are in a hurry to get this wind farm construction done so **U + I** can sell off the yet to be accredited wind farm and they can pocket a share. **U and I** are relying on huge public subsidies to make an estimated profit of 4-6 million (according to their annual statement).

We have an overwhelming climate change crisis, a disastrous biodiversity crisis and a Prime Minister who makes a sidelong swipe at environmental protection with his aspiration to build, build, build without any pesky "newt-counting" obstacles.

More than ever we need clear heads, integrity in planning and public support to reconcile our two most essential goals: protection of our fragile natural environment and a drive for renewable energy.

We do need the right thing in the right place but we do **NOT** need what is happening at Hendy in Mid Wales, the Wild West of Planning, - a story of cowboys, greed, deception and lies. A Minister over-rides her Inspector and a planning authority is incapable of and/or unwilling to exert any authority over unauthorised development by a scheming developer. How much is explained by lobbying and negotiations behind the scenes and how much by Powys County Council's fear of being sued for lost income by aggressive lawyers? We will probably never know.

Hendy is a windfarm site for seven 110 m high turbines off the A44 gateway to mid-Wales, sitting below the road in a highly visible bowl of land surrounded by an iconic fringe of rocks and four scheduled ancient monuments. The site is criss-crossed by public rights of way and drains into the River Wye Special Area of Conservation (SAC). It is a noted ornithological hot-spot with protected raptors and one of largest starling roosts in Britain. For eighteen months, one motionless turbine has stood in the middle to taunt the public with the fate of a much-loved place.

A planning application made in 2014 was suddenly resuscitated in 2017, also reviving the huge public opposition. The Powys Officers' recruited En-Plan consultancy to help with their recommendation of approval but, nevertheless, the Planning Committee voted roundly for refusal.

They had just made a site visit and witnessed the stunning beauty of the location. The right thing but in a very wrong place. The developer appealed and there was an expensive two- week Planning Inspectorate Public Inquiry in March 2018, with barrister Tina Douglass acting for CPRW.

In Wales (where the threshold is only 10Mw as opposed to 50mw in England) these 7 turbines count as “National Infrastructure” so the final decision was in the hands of Lesley Griffiths, Welsh Minister for Environment, Energy and Planning and Rural Affairs (yes, all four at once!).

The Inspector had estimated his report would be ready in May but nothing happened until late October. Nothing, that is, except the appearance of survey work around the grazier’s entrance to Llandegley on 22nd October. Just days later in October, three documents arrived together: the Inspector’s report (11/5/18), the Inspector’s obligatory “Appropriate Assessment” of the possible impact on the Wye SAC (19/10/18) and the Minister’s decision (25/10/18). The inspector’s report strongly recommended refusal but the Minister’s report used her prerogative to over-ride the Inspector’s balanced judgement and allow the Appeal.

In the “Appropriate Assessment”, the Planning Inspector thought the planning conditions would guarantee the safety of the Wye SAC but he did note: *“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.”*

Looking back, we remembered how the Appellant had not even bothered to respond to all our ecological material about inadequate ecological reports, starlings, raptors and the Wye SAC, and had piped up at the end of their less than brilliant performance that the decision remained with the Minister. Did they have privileged information all along?

The Minister’s consent was signed just in time for HWF to prepare for action with a flood of flawed pre-commencement reports. HWF could not wait for approval of these and bulldozed on, flouting all the planning conditions and regulations and discarding the permitted access plans. Far north of the approved route, they hacked through from the A44 onto common land (with no Commons Consent), protected by HWF private security forces and also Powys Police. The local public were outraged. There were some angry scenes and an unpleasant accident with a concrete transporter. A single turbine was erected. Powered by a series of generators, it rotated briefly to be “commissioned” as “capable of producing electricity” before January 31st 2019, the very last day of the very last grace period for Renewable Obligations Certificate (RoC) subsidies. Throughout, Powys Planning informed the public that it was “not expedient” to interfere with the developer’s plans.

The turbine is not connected to the grid and has not produced any electricity for 18 months but, according to Ofgem, the whole 7-turbine wind farm can still be accredited for the valuable subsidies if and when it is built and operating. Our understanding of the Ofgem literature suggests this turbine should not qualify towards accreditation of the entire windfarm for huge public subsidies. Ofgem claims they have not made their decision yet but have they already “decided what to decide”? The scale of **U + I** investment and plan to sell on an “accredited wind farm” implies that, somehow or other, **U + I** is confident about Ofgem’s forthcoming decision.

After their first unauthorised access, HWF declared plainly in writing to Powys that:

- all construction vehicles would now use the new northern access
- HWF committed not to do any more construction until Powys had approved their Construction Ecological Management Plan

- they would import all the stone required for tracks

These were empty promises. HWF was too impatient to wait for the planning decision on their Construction Ecological Management Plan. Nor could they wait for the part-retrospective full planning application for the northern A44 access, designed to right the wrongs of January 2019.

For the last two months they have taken heavy construction vehicles through a network of narrow country lanes, part of National Cycle Network, and along a public footpath to quarry volumes of stone and continue construction of turbine bases. HWF know they cannot get turbine transporters down winding one track lanes so they still need their northern access. The childish plans for this application have to be seen to be believed - the access ends abruptly without showing how it connects with the common land route. There are doubtless legal-weasel reasons for this but it does not seem to bother Powys. Like U + I with Ofgem, HWF is obviously relying on Powys having “decided what to decide” about the northern access Planning Application. It is likely to be determined by Officers under “delegated powers” but if it does go the Planning Committee, Members will be reminded that it is “expedient” to approve.

Powys were alerted by a local resident’s photographs on July 3rd and then by a series of complaints as development progressed and a vehicle belonging to contractor John Jones, already fined £50,000 (+£50,000 costs) for environmental crime in Herefordshire, was spotted on site. Eventually, Natural Resources Wales (the Welsh Environment Agency) responded to complaints and visited the site on 22nd July.

The plot thickens because, after gaining permission, HWF had submitted changed plans for the turbine layout. The new layout not only breaches the development outline approved by Welsh Government, it causes problems for public safety, disrupts enjoyment of the public byway crossing the windfarm site and risks turbine-blade collision for foraging bats. Powys confirms there is no consent for these plans and yet they haven’t been to check what is actually being built.

Peter Morris, Professional Lead for Powys Planning, told CPRW on 24th July that he would like to trust HWF. He also admitted that no-one from his Department, which is responsible for planning control, had been to see what was happening. This did not stop Planning Officer Holly Wilkinson writing once more to the distressed public that it is ‘*not expedient*’ to stop development and enforce against HWF.

That leaves HWF development free to continue with double-crossing developer, two separate unauthorised entrances from the public road network, repeated responses from the Local Councillor Martin Weale (until recently in charge of the Council’s Planning Portfolio) saying he does not object, no discharge of key pre-commencement planning conditions, no intention of seeking Commons consent, no clarity about what is being built and no site visit by Powys Planning Department three weeks after they were alerted.

The Inspector thought that the Powys experience in monitoring wind farm conditions to ensure compliance and the sanction of enforcement would be sufficient to protect the Wye SAC. He said “*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.*”

Little did the Inspector know.....

U + I reassure their investors in an engaging chart of “*how we are managing our biggest risks*”. The potential risk of construction is “*reputational impact*” to which **U + I** has a ready response “*we only work with trusted third-party experts to ensure the integrity of our schemes and strict compliance with changing legislation and regulation*” <https://www.uandiplc.com/media/2824/preliminary-results-presentation-structure-final-8-07-20-1.pdf>

Little do the investors know.....

As for Brecon and Radnor CPRW, we are on a dizzying learning curve. We always knew, from bitter experience, that the ‘suggested conditions’ (mainly suggested by HWF’s lawyer) would not be efficacious and would not be implemented or enforced. But we did not anticipate that a Planning Authority would tolerate such complete contempt for planning regulations.

We may never know what underlies the Hendy story. We do sometimes wonder why Wales maintains the farce of a Planning Inspectorate or a Planning System working in the public interest.