Neuadd y Sir / County Hall, Llandrindod, Powys, LD1 5LG

Os yn galw gofynnwch am - If calling please ask for

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PLANNING, TAXI LICENSING & RIGHTS OF WAY COMMITTEE
Thursday, 27th April, 2017

S U P P L E M E N T A R Y P A C K

1.	**MINUTES OF THE PREVIOUS MEETING**	**PTLRW44 - 2017**

To authorise the Chair to sign the minutes of the previous meeting of the Committee held on 20 April 2017 as a correct record.

(Pages 1 - 8)

1.1. **Updates**

Any Updates will be added to the Agenda, as a Supplementary Pack, wherever possible, prior to the meeting.

(Pages 9 - 72)

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MINUTES OF A MEETING OF THE PLANNING, TAXI LICENSING & RIGHTS OF WAY COMMITTEE HELD AT COUNCIL CHAMBER - NEUADD MALDWYN, WELSHPOOL, POWYS ON THURSDAY, 20 APRIL 2017

PRESENT
County Councillor D R Price (Chair)

County Councillors M J Jones, L V Corfield, S Davies, W J Evans, J C Holmes, E M Jones, G M Jones, F H Jump, P J Medlicott, R H Mills, D A Thomas, D G Thomas and J M Williams

1.	APOLOGIES	PTLRW38 - 2017

Apologies for absence were received from County Councillors DR Jones, Eldrydd Jones, WD Powell and KS Silk and from County Councillors DH Williams and GSI Williams who were on other Council business.

2.	MINUTES OF THE PREVIOUS MEETING	PTLRW39 - 2017

The Chair was authorised to sign as a correct record the minutes of the meeting held on 6 April 2017.

Planning

3.	DECLARATIONS OF INTEREST	PTLRW40 - 2017

(a) There were no declarations of interest.

(b) County Councillor JM Williams requested that a record be made of his membership of Machynlleth Town Council where discussion had taken place of application P/2016/1227. Councillor Williams advised that he had left the meeting of the Town Council when the application had been discussed.

(c) County Councillor JM Williams (who is a member of the Committee) declared that he would be acting as 'local representative' in respect of application P/2016/1227.

(d) The Committee noted that County Councillor SM Hayes (who is not a member of the Committee) would be speaking as the 'local representative' in respect of application P/2016/1163.

The Committee noted that County Councillor VE Evans (who is not a member of the Committee) would be speaking as the 'local representative' in respect of application M/2003/0613

4.	PLANNING APPLICATIONS FOR CONSIDERATION BY THE COMMITTEE	PTLRW41 - 2017

The Committee considered the report of the Head of Regeneration, Property and Commissioning (copies filed with the signed minutes).

4.1. Updates

The Members confirmed that they had received and had time to read the update circulated the previous day and prior to the meeting.

4.2. P/2016/1227 Land adjoining cemetery Machynlleth, SY20 8HE

Application No:	P/2016/1227	**Grid Ref:**	275758.08 300886.9
Community Council:	Machynlleth	**Valid Date:** 05/12/2016	**Officer:** Louise Evans/Tamsin Law
Applicant:	Powys County Council		
Location:	Land adjoining cemetery, Machynlleth, Powys, SY20 8HE		
Proposal:	Change of use of land to form a Gypsy and Traveller Site for 5 families to include erection of 3 buildings to house welfare facility units, improvements to existing vehicular access shared with cemetery, formation of footway link and internal roadway, installation of a sewage treatment plant and all associated works		
Application Type:	Application for Full Planning Permission		

County Councillor JM Williams spoke as the Local Representative raising issues about the proposed site and then left the Chamber.

With regard to flooding, mitigation measures were proposed which should ensure that the site would be flood free in a 1 in 1000 year event. With regard to highway safety, the Committee was asked to give delegated authority to the Lead Professional for Development Management to issue an approval subject to any further conditions suggested by Welsh Government if the direction to withhold permission is withdrawn. The issue of exchange of common land would be determined by Welsh Government.

It was moved and seconded that consideration of the application be deferred until the Welsh Government gave approval for the access onto the trunk road. This was put to the vote and lost.

RESOLVED:	Reason for decision:
that the Professional Lead for Development Management be given delegated authority to grant approval	**As officers recommendation as set out in the report which is filed with the signed minutes.**

subject to any further conditions suggested by Welsh Government if the direction to withhold permission is withdrawn and subject to the conditions set out in the report which is filed with the signed minutes.	

County Councillor JM Williams returned to the Chamber.

4.3. P/2016/1036 Land adjacent to Windy Ridge, Arddleen, Llanymynech, SY22 6PY

Application No:	P/2016/1036	**Grid Ref:**	325504.56 315560.38
Community Council:	Llandrinio	**Valid Date:** 06/10/2016	**Officer:** Kate Bowen

Applicant: Mr & Mrs RG & JB Ashton, c/o Roger Parry and Partners

Location: Land adjacent to Windy Ridge, Arddleen, Llanymynech, Powys, SY22 6PY

Proposal: Development of up to 9 dwellings, formation of vehicular access and associated works (outline)

Application Type: Application for Outline Planning Permission

RESOLVED:	**Reason for decision:**
that the application be granted consent, subject to the conditions set out in the report which is filed with the signed minutes.	**As officers recommendation as set out in the report which is filed with the signed minutes.**

4.4. P/2016/1163 Land adjoining The Siding, Caerhowel, Montgomery, SY15 6HF

Application No:	P/2016/1163	**Grid Ref:**	320360.3, 297956.31
Community Council:	Montgomery	**Valid Date:** 11/11/2016	**Officer:** Bryn Pryce

Applicant: Mr James Evans & Mrs Lisa Ayers Evans & Ayers Goulfian Lane 34, The Paddock, Aldridge, Walsall WS9 OLX

Location: Land adjoing The Sidings, Caerhowel, Montgomery, Powys SY15 6HF

Proposal: Erection of 9 dwellings with garages, improvements to existing vehicular access and formation of new vehicular access and all associated works (outline)

Application Type: Application for Outline Planning Permission

County Councillor SM Hayes spoke as the Local Representative in support of the application.
Mr Ian Price spoke as the agent.

RESOLVED:	Reason for decision:
that the application be granted consent, subject to the conditions set out in the report which is filed with the signed minutes.	**As officers recommendation as set out in the report which is filed with the signed minutes.**

4.5. M/2003/0613 Former Morgan Bros depot, Bridge Street, Llanfair Caereinion, SY21 0SA

Application No:	M/2003/0613	**Grid Ref:**	310467.85 306612.46
Community Council:	Llanfair	**Valid Date:** 04/06/2003	**Officer:** Steve Packer

Applicant: M D Broxton & Co Castle Works, Hendomen, Montgomery, Powys

Location: Former Morgan Bros depot, Bridge Street, Llanfair Caereinion, Welshpool, Powys, SY210SA

Proposal: Erection of 10 dwellings, conversion of existing building into 2 self contained residential units, erection of a building to form 10 self contained residential units, construction of vehicular access and car parking

Application Type: Application for Full Planning Permission

County Councillor VE Evans spoke as the Local Representative in support of the application.
Mr Ian Price spoke as the agent.

Officers confirmed that the amended conditions circulated with the update removed the condition to commence work within five years as development had already commenced.

RESOLVED:	Reason for decision:
that the application be granted	**As officers recommendation as set**

consent (part retrospective), subject to the signing of a Section 106 Agreement relating to a financial contribution of £10,000 towards recreational facilities and the provision of a footpath link to Glan-yr-Afon and to the conditions set out in the report which is filed with the signed minutes. **That the Professional Lead for Development Management be given delegated authority to change the condition in respect of affordable housing.**	**out in the report which is filed with the signed minutes.**

4.6. P/2016/0965 Bridge Stores & Post Office, Clyro, HR3 5RZ

Application No:	P/2016/0965	**Grid Ref:**	321429.03 243845.61
Community Council:	Clyro	**Valid Date:** 20/09/2016	**Officer:** Tamsin Law

Applicant: Mr David Hood, Bridge Stores & Post Office, Clyro, Herefordshire, HR3 5RZ

Location: Bridge Stores & Post Office, Clyro, Hereford, Powys, HR3 5RZ

Proposal: Full: Change of use of commercial premises to residential

Application Type: Application for Full Planning Permission

RESOLVED:	**Reason for decision:**
that the application be granted consent, subject to the conditions set out in the report which is filed with the signed minutes.	**As officers recommendation as set out in the report which is filed with the signed minutes.**

4.7. P/2017/0130 Oak House Farm,Tirabad, Llangammarch Wells, LD4 4DU

Application No:	P/2017/0130	**Grid Ref:**	289762.46 242629.24
Community Council:	Llangamarch	**Valid Date:** 30/01/2017	**Officer:** Thomas Goodman

Applicant: Mr Peter Smith & Mrs Lisa O'Neil Smith, Oak House Farm, Tirabad, Llangammarch Wells, Powys, LD4 4DU

Location: Oak House Farm, Tirabad, Llangammarch Wells, Powys, LD4 4DU

Proposal: Section 73 application to remove condition 3 of permission B/96/0182 relating to occupancy restrictions

Application Type: Application for Removal or Variation of a Condition

RESOLVED:	Reason for decision:
that the application be granted consent.	**As officers recommendation as set out in the report which is filed with the signed minutes.**

4.8. P/2017/0130 Awelon, South Street, Rhayader, LD6 5BH

Application No: P/2017/0173 **Grid Ref:** 297267.47 267811.62

Community Council: Rhayader **Valid Date:** 10/02/2017 **Officer:** Luke Jones

Applicant: Mrs Rita Lawrence, South Street, Awelon, Rhayader, Powys, LD6 5BH.

Location: Awelon, South Street, Rhayader, Powys, LD6 5BH.

Proposal: Full: Proposed dormer dwelling

Application Type: Application for Full Planning Permission

RESOLVED:	Reason for decision:
that the application be granted consent, subject to the conditions set out in the report which is filed with the signed minutes.	**As officers recommendation as set out in the report which is filed with the signed minutes.**

4.9. NMA/2017/0019 Archdeacon Griffiths Primary School, Llyswen, LD3 0YB

Application No: NMA/2017/0019 **Grid Ref:** 312839.69 238465.66

Community Council: Bronllys **Valid Date:** 27/03/2017 **Officer:** Gemma Bufton

Applicant: Powys County Council.

Location: Archdeacon Griffiths Primary School, Llyswen, Brecon, Powys, LD3 0YB.

Proposal: Application for Non-Material Amendment to P/2016/0801 in respect of the approved plans, on site infrastructure, and access road.

Application Type: Non Material Amendments

RESOLVED:	**Reason for decision:**
that the application be granted consent.	**As officers recommendation as set out in the report which is filed with the signed minutes.**

5.	**DECISIONS OF THE HEAD OF REGENERATION, PROPERTY AND COMMISSIONING ON DELEGATED APPLICATIONS**	**PTLRW42 - 2017**

The Committee received for information a list of decisions made by the Head of Regeneration, Property and Commissioning during the period between 29 March and 10 April 2017.

Members sought advice on an email received by Members of the Committee regarding a development adjacent to Highland Moors Hotel, Llandrindod Wells. The Lead Professional for Development Management confirmed that he would acknowledge and investigate.

County Councillor D R Price (Chair)

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Planning, Taxi Licensing and Rights of Way Committee Report

Application No:	P/2014/0672	**Grid Ref:**	313083.41 260357.03
Community Council:	New Radnor	**Valid Date:** 14/07/2014	**Officer:** Andrew Metcalfe (Planning Consultant)
Applicant:	Hendy Wind Farm Limited		
Location:	Land off A44 SW of Llandegley, Llandrindod Wells, Powys		
Proposal:	Full: 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, hardstanding and temporary compound and associated works		
Application Type:	Application for Full Planning Permission		

UPDATE REPORT

New Representations

Since the publication of the committee report, 42 objections have been received from local residents. Several more representations have been received from organisations and these are set out in full below.

New material views/matters/considerations contained in the representations from local residents that are not already addressed in the main report are set out below.

- The decision be deferred until after purdah and/or the updated evidence base for the emerging LDP (currently at examination) is published.
- Low flying planes over the application site.
- Concern over whether all information has been made available on the planning application file (including reports by Enplan, Atkins and Dick Bowdler).
- Impacts on tourism & the economy, landscape and historic environment have been underplayed and given insufficient weight.
- Insufficient consideration of the Environment Act, the Historic Environment Act and Well-Being and Future Generations (Wales) Act 2015.
- There are better alternative sites for wind farm development.
- There is insufficient wind speeds at this location based on the AECOM Renewable Energy Assessment 2016 and Welsh Government advice.
- That the wind farm's estimated electrical output has been overestimated in the report. The report cites a capacity factor of 30% which would equate to 0.015% of

average National Grid power, the respondent believes this figure would be nearer 0.013%.
- The outcome of a previous application and appeal, such as Bryn Blaen, should not influence the decision of a separate application.
- Good progress is being made towards renewable energy targets, the need for this type of development is therefore not as strong as cited in the report.

CPRW – *letter dated 24th April 2017*

Summary of our Objection

The application should be refused:

- Inappropriate timing of determination for a wind energy project, of extremely high public interest, 2 weeks before publication of evidence on suitable sites for windfarms in Powys (highly unlikely to include this site because it was excluded in the September 2016 evidence which is being refined to be less inclusive).
- No application to Inspectorate or offer of compensatory common land to legalise common land issues.
- Insufficient weight given to clear assessments from NRW, CADW, CPAT and own consultants about landscape and historic environment concerns of regional significance.
- Officer's recommendation of approval is predetermined by Bryn Blaen appeal decision, irrationally classifies the application as "exceptional", and fails to assess the planning balance according to the merits of the application before the Committee and in light of nearby Pentre Tump Appeal decision.
- Significant Ecological safeguarding plans, which should be subject to Environmental Impact Assessment consultation prior to determination, are relegated to "conditions" in breach of ecosystem duties under Environment (Wales) Act.

Please also see Objection from the Director: National Campaign for Protection of Rural Wales

1. WHY DETERMINATION SHOULD BE POSTPONED

1(i) The timing of this Planning Committee Determination is contrary to the public interest:
- Two weeks before publication of revised and refined report on appropriate areas for wind farm developments 5 - 25MW in Powys (promised to Planning Inspector for 12th May 2017). In the absence of any Powys County Council Landscape Officer post and any current landscape policy with respect to wind farms, this Enplan report would have been a particularly useful guide to determination.
- Date of determination clashes with Powys LDP Examination: Hearing Session 11 "Safeguarding of local Assets", dealing with landscape, biodiversity and public rights of way, the very issues at stake in the Hendy decision, also on 27th April. Individuals wishing to attend the Hendy Planning Committee Meeting are listed participants in the Inspector's hearing.

- The purdah period for local elections is inappropriate for a Planning Meeting of such high public interest. The status of local representatives and their ability to object is unclear.
- Interested parties were only informed on afternoon of Thursday preceding Good Friday leaving just under 14 days and only 7 working days prior to determination.
- Local Community Councils were only informed on 24th April 2017 which makes consideration at local Council meetings and responses impossible.
- We are not aware of any notification being made to graziers on common land.
- Powys County Council Planning department is well aware of the public concern about inappropriate wind farm construction since 86% of the public responses to the LDP FFC consultation addressed this issue. The correspondence with Cunnane suggests that an understanding was reached with PCC by 15/3/17 that determination should be imminent.

1(ii) Critical documents are not available for public assessment

- The Officer's Report mentions:
  - o A Review of the Environmental Statement - Landscape and Visual Impact Assessment Chapter prepared by Enplan,
  - o Professional opinion on the acceptability of the cultural heritage impacts of the proposed scheme for Hendy Wind Farm by Atkins.

There is no reason to withhold these documents form the public.

- Planning Conditions. This is a significant omission given that integral ecological information has been postponed until post-determination (see below).

1(iii) Information which should form part of the application, or has been requested by consultees, and has not been provided:

- The lack of pre-determination Habitat Management Plan, Construction Ecological Management Plan and Protected Species Protection Plan makes this proposal unfit for approval. ES Vol 1 7.16 to 7.16.3 claims that the project has no significant ecological impacts and therefore no mitigation of operational and long term effects is necessary. However The Local Authority has a duty under the Environment (Wales) Act to maintain and enhance the resilience of ecosystems and it is inconceivable that the habitat disturbance and destruction involved in the construction of 7 wind turbines with large concrete bases and infrastructure including 3.5 km of 5m (including drainage) track as well as the impact of the operating turbines on birds and bats can be regarded as negligible and NRW (22/12/14) describes the effect on bird populations as "moderate significance". Compensatory habitat creation is mandatory, as for example, associated with the suggested felling of a starling (red-listed bird) roosting site of regional importance.
- Mitigation and compensation should be set out in the ES so that it is open to public consultation and contributes to the planning balance (T&CPA Sh4 Part 1.5) and should not be postponed until after determination. Tan 5 is clear about this, stating at 4.3.2 :

"To facilitate the efficient and timely processing of planning applications developers should ensure that applications are carefully prepared with all relevant information included and all material considerations addressed in the layout, design and related access, drainage and infrastructure. Landscaping proposals should be included together with any measures designed to avoid, mitigate or compensate for potential adverse effects on nature conservation. Any proposals for enhancement of nature

conservation interests should also be included. These matters should not normally be left for later submission under conditions imposed on any permission given, because they will be material to the determination of whether planning permission should be granted."

In 2014, PCC's Ecologist (29/8/14) and NRW (22/12/14) were unambiguous in requiring the CEMP, PSPP and Habitat Management & Enhancement Plan, including measures for site-enhancement, prior to determination. It is unacceptable that, in spite of the enhanced ecosystem duties now placed on local authorities, the current plan is to have these matters, which should be integral elements of the ES, subject to condition. So far, in Powys, proper public scrutiny has proved impossible to secure at this stage.

 Built Heritage Officer's report: The site is within a nationally/internationally important historic landscape (LANDMAP) with many listed buildings and scheduled ancient monuments (SAMs). CPAT and CADW are extremely critical of developer's work on SAMs and archaeology.

No Built Heritage Officer's report is provided, which would have enabled impartial assessment of impacts on listed buildings.

- Geophysical survey recommended by CPAT. CPAT state 1/12/2015: "Without this additional information we would consider that it is not possible to adequately determine the impact of the proposed scheme on potential sub-surface archaeology in the highlighted areas of interest".
- Cumulative assessment of impacts on heritage assets as requested by CADW.
- No Tree Survey is provided, although it is clear that both trees and hedgerows will be affected. (It is even suggested the trees forming the local starling habitat may be felled.)
- See project splitting2 (ii) below.

2. WHY P/2014/0672 SHOULD BE REFUSED

- 2(i) Common Land: The Common Land Issue has not been resolved.

The Officer's Report evades this issue, which is possibly unlawful because the development is in breach of an inclosure award.

The Developer made two applications (under Section 38 & Section 16) to the Planning Inspectorate for proposed works on Llandegley Rhos Common. These were rejected as invalid on 29th October 2015 (see attachment 1). Commons Registration had received no further information by 10/12/15.

CPRW understands that four of the proposed turbines and part of the access arrangements lie on common land subject to orders made under the Commons Act 1876. The Developer was proposing to offer exchange land for the access construction, however the exchange land was already part of the common land inclosure and therefore provided no additional compensatory benefit.

The applicants evidently attempted to resolve the Common Land issue and there is no explanation of why they did not persist. There is no guarantee that suitable compensation land is available.

 2(ii) Project splitting: ES Vol III 5.9 contains only unevidenced assertions regarding landscape and visual impacts of the proposed grid connection and excludes consideration of cumulative with the wind farm. No other environmental impacts of the grid connection are evaluated.

CADW maintain their position that "It is a concern that the visual impacts on the settings of scheduled monuments of the stone access tracks, hard standings, substation and other

associated infrastructure included within the application are not addressed by the HEDBA, which can therefore be argued not to have comprehensively addressed the full impact of the development" and NRW point out the absence of assessment of the impacts of infrastructure and grid connection (which is apparently planned on overhead poles).
The CPO letter of 1/4/2009 sets out that, when determining a wind farm application, the environmental impacts of any other development necessary to the construction or operation of the wind farm must be assessed: "The Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 set out the issues that need to be addressed in assessing the likely environmental impact of proposed developments – the direct, indirect, secondary and cumulative impacts all need to be taken into account". Schedule 4 Part 1 of the T&CPA requires description of the whole development (1a) and the environmental impacts (3); see also Annex IV of the EIA Directive.

2(iii) Significant adverse impacts (also see 3 below) in terms of:

- Landscape and visual impacts
- Impacts on historic landscape of national/international importance
- Impacts on heritage assets and their settings
- Local opposition

2(iv) Ecology: Starling Roost: The assessment and proposed management of this regionally famous, much-visited site, for up to half a million red-listed birds is nothing short of scandalous. The Officer's Report notes, but gives no weight to the observations of the Radnorshire bird recorder and the local Wildlife Trust. This is one instance of the general failure to address the undeniable impacts on biodiversity at the predetermination stage and a failure of duty under the Environment (Wales) Act.
2(v) Impacts on Public Rights of Way. The case officer states that, because Powys are to receive funds, overall impact on local rights of way will be positive. This is unreasonable and will not be the experience of users, who will instead suffer huge loss of amenity, and loss of safe use of several routes through the turbine site. It is not enough that an alternative route is provided – the alternative route represents a substantially poorer state of affairs for users and this is a material planning consideration.
NRW stress the prominent and prolonged views of the wind farm from many elevated rights of way and open access areas. Inspector Nixon, considering the Pentre Tump Appeal, for a smaller development in similar landscape on a neighbouring hill says: "Given the extensive network of recreational routes, both close to and further away, from which the turbines would be perceived as prominent, dominant or even overwhelming, and the level of sensitivity which users of these routes will have to the character of their surroundings, I conclude that the proposed development would have a seriously adverse effect on the character and appearance of this upland landscape and the amenity of its users."
The authority also has an obligation under the Road Traffic Regulation Act 1984 to ensure all traffic can safely and conveniently use a highway (any route or path with a public right of access). Countryside Services have not addressed the issue of the BOAT and bridleways which cross the turbine site, which will be rendered potentially unusable, as will the proposed alternative route also, for some categories of user as a result of cut and fill and of intersection with wind farm tracks.
The Officer's Report should also make clear that any proposed community benefit (which in the absence of a S106 agreement can't be quantified and is not guaranteed) is not a material planning consideration.
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3. INVALID RECOMMENDATION FOR APPROVAL

3(i) The Officer's Report argues that Landscape, Heritage and enjoyment of PRoW impacts weigh heavily in balance against approval but that exceptional circumstances outweigh these. There is no discussion of why the circumstances of the Hendy application are exceptional. CPRW considers that it is unreasonable for an LPA to maintain that Wind Energy projects should be approved at any cost and nor is this supported by the wording of UDP E3. Furthermore, the 15/3/16 CPO letter (quoted in the Bryn Blaen Appeal decision) says that "planning decisions need to be taken in the wider public interest and in a rational way, informed by evidence, where these (visual, landscape and amenity) issues are balanced against other factors". This is a request for balance and not for predetermination. Ministerial letters provide guidance rather than policy. Appeal decisions do not establish policy either: they merely provide clarification in particular sets of circumstances. One of the salient windfarm appeal outcomes in recent years has been the importance of protecting the historic environment.
We understand that the Planning Lead has written to a resident advising that policy has changed since the Pentre Tump appeal was dismissed in 2014. This is untrue. Planning policy for determination of wind applications is unchanged, with the exception that the Powys emerging LDP is now a relevant consideration, particularly the revised REA evidence to be published on 12th May which has already been partially shared with Powys Councillors. TAN8, which states "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" remains official guidance.
There is new legislation relevant to this application: the Environment (Wales) Act, the Historic Environment (Wales) Act and the Well Being of Future Generations Act, all of which act to tighten environmental protections and considerations of amenity, local democracy, residents' involvement in local decisions, and well being.

3(ii) Bryn Blaen Appeal: The Officer's Report suggests recommendation is predetermined by the previous upholding of Bryn Blaen Appeal in the North of Powys but, at the same time, the report says each case should be determined on own merit. The Professional Lead has also sent the Bryn Blaen Appeal Decision to some residents confirming that, in his opinion, this is sufficient to determine the Hendy decision. There is no discussion of why the Bryn Blaen decision is considered more relevant than the Pentre Tump decision (astonishingly, not discussed by the Case Officer in his report) in which the Appeal was refused for development in a very similar and adjacent landscape.
The Bryn Blaen appeal decision is not relevant to this application:
1. The degree of landscape impact: Bryn Blaen: NRW's concern was with the setting of the Registered Historic Landscape (RHL). This was not accepted by the Inspector in view of the distance, the presence of existing turbines in the setting of the RHL and lack of effect on key characteristics of the RHL. Hendy: Hendy is sited in a historic landscape of national/international importance (LANDMAP Guidance). Statutory consultees NRW, CADW, CPAT together with consultants Enplan, Atkins and Anthony Jellard for NRW have all expressed the view that Hendy Environmental Statement's landscape and visual assessment significantly understates impacts and these authorities confirm one another in their assessments of the severity of the landscape damage that would result from this development. NRW even state that Llandegley Rocks merit higher evaluation than given by LANDMAP and continue "… attractive views, tranquil, exposed, remote, wild and spiritual perceptual qualities can be experienced across the area … limited landscape

change and lack of modern development…. The scale and prominence of the development would create a new landmark in the landscape, with movement from rotor blades which attract attention and in the worst cases control and command views.
NRW consider the landscape and visual sensitivity of the area, which includes valued perceptual qualities of ridges and uplands of high scenic quality; attractive views, tranquillity and historic landscape integrity across much of the area; and the areas access and openness to views from the public right of way network, open access land, national cycle trail and main roads; is a context within which the proposed development cannot be accommodated without significant adverse regional scale effects."

2. The importance of the historic environment and heritage assets: Bryn Blaen: Impacts on a barely visible funerary mound and several hillforts, the nearest at 4km. Intervisibility not considered an issue, all sites already have turbines in view, and CADW, familiar with the sites, made no objection. Hendy: The local area is rich in archaeology. CPAT states: "The upland ridges are covered in a dense scatter of prehistoric enclosed settlement, prehistoric funerary and ritual activity and medieval and post medieval agricultural and settlement activity. The Llandegley ridge to the north is an area of particularly well-defined landscape retaining much of its character, landforms and cultural palimpsest in semi-improved or unimproved pasture. To the east and south the views are extensive across to the Radnor Hills, which are rich in a broadly similar array of archaeological sites.
We consider that there will be a significant adverse visual impact upon the historic landscape and the currently identified components of that landscape by this wind farm. The primary visual influence is within the 5km ZTV, but also extends beyond this into the 10km ZTV radius. A high number of nationally important designated sites are visually influenced within the 5km ZTV. A number of these monuments have key shared views blocked by the intervening turbines."
CADW is extremely critical of the quality of assessment, lack of site visits, points out lack of assessment of ancillary development and lack of cumulative assessments (neither inadequacy has been addressed) and states:
"The scale of the turbines dictates that the impact of the development is likely to be more than a local one, as demonstrated by the large number of SAMs and undesignated monuments falling within the ZTV.
… These potential multiple impacts can be viewed collectively as a significant adverse impact on the broader historic environment within the study area."
No independent assessment of impacts on listed buildings has been provided.

3. Degree of development in study area: Bryn Blaen: within 10-15 km of several large existing and proposed wind farms. Hendy: several single wind turbines in locality but no large scale development within 20km. Hendy sits in an undeveloped and unspoilt landscape, of such quality that it was recommended for designation in the 1947 Hobhouse report.

4. Public rights of way: Bryn Blaen: Impacts on one bridleway. Hendy: Direct physical impacts on two bridleways and a BOAT crossing the site. Severe amenity impacts on a dense network of rights of way and on open access and common land – as emphasised by NRW. (Further comments 2 (v) above.)

5. Local Search Areas: Bryn Blaen: at time of appeal decision it was not known that Powys Council would be evolving a strategy for RE development and designating Local Search Areas (LSAs) to direct 5-25MW wind development towards least sensitive areas of

optimal wind resource. Hendy: LDP now emerging and therefore has weight. The proposed LDP LSAs for 5-25MW wind projects were severely criticized for ignoring landscape and other constraints, but even the broad-brush and aggressively scaled wind LSAs in Powys LDP FFCs did not include the Hendy site.

6. Need for renewable Electricity: This is the reason given by Inspector McCooey to support the Bryn Blaen appeal. TAN8 (2005) target of an additional 800MW of onshore wind to be constructed in Wales by 2020 has been exceeded by almost 50%. UK Government public database shows 1117MW as having been consented or constructed since 2005 as at March 2017 (https://www.gov.uk/government/publications/renewable-energy-planning-database-monthly-extract). It's inappropriate to put forward urgency of wind development as a reason for approving a wind farm in an extremely sensitive location without sight of new LDP RE strategy & policy and reasonable figures for sustainable wind development within the county.

7. Local support: Inspector McCooey cites a degree of local support for the Bryn Blaen development among reasons for approval. This is not the case for Hendy which has attracted vehement objections from 7 local community councils and over two hundred individual objections from residents appalled at the proposal and its implications.
For all the above reasons we believe that the application should be refused and any decision to approve is open to challenge. We trust our views will be forwarded in full to the members of the planning committee.

Open Spaces Society - *letter dated 20th April 2017*

The Open Spaces Society is Britain's leading pressure-group concerned with the protection of common land. We have already objected to this application more than once.

We are deeply concerned to leam that this is to come before the County Planning, Taxi Licensing and Rights of Way Committee on 27 April and wish to reinforce our objection to this application. Please bring our letter to the attention of all members of the committee.

The proposed wind-turbines would desecrate an area of natural beauty and high landscape value, which is enjoyed by residents and visitors. These vast turbines would dominate this very special and splendid landscape and would destroy the view of and from the magnificent Llandegley Rocks. There are several public paths crossing the area and users of these routes would be severely affected by the sight and noise of the turbines. People visit the area because of its natural beauty, peace and tranquillity. The turbines could deter them from coming and that would result in a serious loss of tourist income to the community.

The siting of the turbines would conflict with the British Horse Society's stated 'safety' distance for riders, and would therefore put equestrians at risk. If the turbines were to be erected here, Powys County Council, the highway authority, would know them to be dangerous and could be at risk of legal action should there be an accident.

Furthermore, the land on which it is proposed to construct at least four of the seven turbines, together with the associated development, is part of an area inclosed by orders made under the Commons Act 1876, for Llandegley Rhos and Hendy Bank. The order

gives the public a right of access here and decrees that no injury shall be done to the lands. Therefore, the construction of wind turbines here would be in breach of that order.

The access track to the turbines would be sited on common land. The applicants submitted applications under section 38 of the Commons Act 2006 for works on common land, and under section 16 of the Commons Act 2006 for exchange of common land, both of which were opposed. They then withdrew these applications. The replacement land which they proposed was unsuitable since it is already access land under the abovementioned Llandegley Rhos inclosure award. We consider that it is not possible to provide suitable land to compensate for that to be taken and we shall oppose any future applications under the Commons Act 2006.

We urge your council to reject this damaging application. In the deeply regrettable circumstances that you decide to grant the application we request that you issue an advisory that the construction of the wind turbines on the inclosure award land would be unlawful and that ministerial consents are required for any works on, or exchange of, common land.

CPRW – *letter dated 20th April 2017*

I write on behalf of the Campaign for the Protection of Rural Wales (CPRW) to formally object to the proposed determination of the above application at the forthcoming Powys Planning Committee meeting on April 27th.

This objection is founded on the premise that the timing and hence consideration by the Committee of this application, is inappropriate on the grounds of prematurity. We cite the following legitimate reasons to substantiate this contention below, all of which we assert are directly material to the determination of this proposal.

- The outcome Authority's ongoing work in respect of its Local Development Plan currently undergoing Public examination, will provide the necessary evidence and hence clarity, regarding those areas of the County, outside the current Strategic Search Areas, which the Authority may consider suitable for future renewable energy proposals of the scale proposed in this application.
- The findings of this work will be made public within the next three weeks (but after the date of the Planning Committee meeting) and are therefore sufficiently imminent to be considered directly relevant to the decision making process which the Authority is obliged to take into consideration.
- The Authority therefore does not at present have sufficient information or the necessary evidence on which to make an objective judgement of the proposal's acceptability.

Irrespective of these circumstances, evidence that the Authority has already published in support of the policy approach it wishes to pursue regarding the future Renewable energy generation in the context of its LDP, clearly indicates that the proposed scheme, a 17.5MW project is not only outside any existing Strategic Search Area but in addition is also not located within an area earmarked as and Local Search Area and in principle potentially acceptable for wind farm proposals of the size proposed in this application.

The proposal is therefore situated within an area where there is an anticipated presumption to refuse proposals of the type proposed.

Whilst we accept the LDP has yet to be finalised and adopted, the proposals within the current Deposit Plan, have relevance and carry a degree of weight in the determination of this application, should the Authority be minded not to defer its consideration.

Should these circumstances prevail, CPRW therefore contends there is already a strong presumption against the approval of this proposed application at its proposed location. In addition there are no other national or local material considerations which would override this presumption.

CPRW therefore contends the Authority has only one of two choices, either

- to defer the application on the grounds that its determination would be premature or
- to refuse the application on the grounds that it is not compatible with the current policy approach of the Authority's own emerging version Local Development Plan.

I would be grateful for your acknowledgement of the safe receipt of this objection and confirmation this representation will be presented in its entirety to the relevant Planning Committee.

Commentary new representations

Hydrology

An email has been received from Environmental Health that states:

> *'Following discussion with Nia, I have read briefly through the application and can only find a small section regarding hydrology which doesn't provide sufficient information in relation to protecting Private Water Supplies.*
> *There is a note in the non-technical summary that all development will be 25m from any watercourse, there is nothing about Private Water supplies.*
> *Could you attach the following condition to the application:*
>
> *'No development shall commence until the details of a scheme for monitoring of water quality in private water supplies within the site, groundwater beneath the site before construction, every [TBA] months throughout the construction period, and annually until the wind farm is fully decommissioned and the site restored, has been submitted to and approved in writing by the local planning authority. The scheme shall identify:*
>
> 1. *The properties and private water supplies that may be affected by the development (either located within the site or dwellings located outside the site boundary but served by water supplies originating within the site boundary)*
> 2. *Minimum acceptable water quality and parameters to be tested, in relation to drinking water*
> 3. *Identify measures to be taken to protect private water supplies. (Wells, Springs or Boreholes)*
> 4. *Consider methods of mitigation should the quality of water deteriorate below that standard.*

A condition ensuring drinking water supplies are not compromised as a result of the proposed development was already included in the draft set of conditions. This condition has been updated to reflect the above in the conditions set out below.

Socio-Economic & Tourism

The report states on page 74 that *'there are not any promoted local, regional or national routes in the locality'*. This statement is incorrect. Sustrans Route 825 passes within circa 1km of the proposed development to the west of the site in a north/south direction. It is not considered to have any material impact on the planning balance or recommendation.

Timing of considering the application

A number of responses consider that the application should not be determined at this time due to the upcoming elections and/or the ongoing examination of the LDP. Others criticise taking this application to Committee as being rushed.

The application was submitted in 2014 with a 16 weeks target determination date.

PPW states:

'2.14.2 Where an LDP is in preparation, questions of prematurity may arise. Refusing planning permission on grounds of prematurity will not usually be justified except in cases where a development proposal goes to the heart of a plan and is individually or cumulatively so significant, that to grant permission would predetermine decisions about the scale, location or phasing of new development which ought properly to be taken in the LDP context. Where there is a phasing policy in the plan that is critical to the plan structure there may be circumstances in which it is necessary to refuse planning permission on grounds of prematurity if the policy is to have effect. The stage which a plan has reached will also be an important factor and a refusal on prematurity grounds will seldom be justified where a plan is at the pre-deposit plan preparation stage, with no early prospect of reaching deposit, because of the lengthy delay which this would impose in determining the future use of the land in question.

2.14.3 Whether planning permission should be refused on grounds of prematurity requires careful judgement and the local planning authority will need to indicate clearly how the grant of permission for the development concerned would prejudice the outcome of the LDP process.'

It is accepted that the examination of the LDP is underway and that the plan is currently at the Further Focussed Changes to the composite LDP (Deposit Draft 2015 with Focussed Changes January 2016). The evidence base in support of this is currently being reviewed in full with changes expected to the recommendation in relation to renewable energy. The LDP in its current form seeks to allocate Local Search Areas with policy to encourage development to be located in these areas. Given the 'being reviewed' status of the evidence base that supports the policies in the Local Development Plan at this time I consider that this evidence, and the policies the evidence supports can only be given very limited, if any, weight in the consideration of this application.

Consideration of recent Appeal Decisions

A number of concerns relate to the Bryn Blaen appeal decision being given too much weight in the planning balance and some consider this decision is irrelevant to the application being considered.

Previous appeal decisions and planning Inquiry reports are material considerations in the determination of planning applications. The weight to be given to them is a matter for the decision maker.

Other matters

Other matters raised in the new representations have already been covered in the main report and it is noted that many of the new representations highlight the findings of harm to the historic environment and landscape and question whether the ecological impacts of the proposed development have been properly assessed.

With regard to ecology, this is considered in the main report. No objection has been received from the internal PCC Ecologist or Natural Resources Wales who are the statutory consultee on such matters. Both of these parties have suggested conditions to ensure ecological impacts are acceptable and these are included in the schedule of condition included in this report.

The significant harm to the historic environment, landscape and visual receptors are accepted and acknowledged within the main report and planning balance. These all weigh heavily against the grant of permission.

Climate change is one of the most important challenges and the Government has made commitment to tackling climate change (PPW paragraph 4.5.1). The aim is to promote the generation and use of energy from renewable and low carbon energy sources at all scales. The Welsh Government is committed to delivering an energy programme which contributes to reducing carbon emissions in accordance with the European Union Renewable Energy Directive 2009 which includes a UK target of 15% of energy from renewables by 2020. The need for wind energy is a key part of meeting vision for future renewable electricity production as set out in the Energy Policy Statement (2010) and should be taken into account by decision makers when determining such applications.

Good progress is being made towards meeting the 2015/17 targets. However it should be remembered that the next set of targets will be higher and it is increasingly apparent that targets for other forms of renewable energy are not being met so easily. There will be a need for more renewable energy projects to meet them.

There is therefore a clear and urgent need for further renewable energy development.

It is not considered that the matters raised in new representations present any new information that changes my recommendation as set out in the main report.

Conditions

It is recommended that the following conditions be included should members decide to grant permission.

Preamble: terms and time limits

In these conditions, unless the context otherwise requires:
"AIL" means abnormal indivisible loads;
"approved plans" means those plans listed in Condition 4;
"commencement", in relation to the authorised development, means the date on which the authorised development begins by the carrying out of a material operation as defined in section 56 of the Town and Country Planning Act 1990 and "commence" and "commenced" shall be construed accordingly;
"construction environmental management plan" means the plan as described in Condition 44;
"Construction Period" means the period from work commencing on the Development until the date 18 months after first export;
"dB" refers to the Decibel noise measurement unit;
"dB(A)" refers to a Decibel noise measurement unit, with the inclusion of the A-weighting filter in the measurements as referred to in ETSU-R-97;
"development" means the works that are permitted to take place as a result of this permission. This includes;

(a) 7 (110m tip height) wind turbines (2.5 MW each) and associated infrastructure including crane hard standing areas;
(b) 1 no. new site entrance to the east off the A44;
(c) Construction of c. 3.3 km of new access tracks;
(d) C.1km of existing track to be upgraded;
(e) Construction of temporary site compound (20m x 30m) close to turbine T5;
(f) Construction of a new on-site substation (circa. 40m x 20m) which includes a control building (25m x 10m) south of turbine T3.
(g) upgrading of the byway through the applicant's property.

"emergency" means circumstances in which there is reasonable cause for apprehending imminent injury to persons, serious damage to property or danger of serious pollution to the environment;
"expiry of this permission" means the date 25 years from the date of the erection of the first turbine on site;
"ETSU-R-97" means the ETSU Report number ETSU-R-97 'The Assessment and Rating of Noise from Wind Farms' published in September 1996;
"first export" means the date the authorised development first exports electricity to the Grid on a commercial basis;
"LA90" means the decibel (dB) level exceeded for 90% of each sample period;
"Local Planning Authority" means Powys County Council;
"NRW" means Natural Resource Wales, a Welsh Government sponsored body and statutory consultee on environmental protection; regulation; and maintenance of natural resources;
"peat management plan" means the plan as described in Condition 48;
"Public Holiday" means a day that is, or is to be observed as a public holiday;

"Schedule 1 birds" means the species of birds listed in Schedule 1 to the Wildlife and Countryside Act 1981 as amended;
"site" means land within the development boundary; and
"wind turbines" means the wind turbines forming part of the development and "wind turbine" shall be construed accordingly.

Timings & Plans

1. The development shall begin not later than five years from the date of this decision.

2. Subject to the conditions attached to this permission, the development shall be set out in accordance with the approved plans and be constructed in accordance with the application documents:

   Design and Access Statement – 27th June 2014
   Supporting Planning Statement - 27th June 2014
   Environmental Statement (Vols I – IV) and Non-Tech Summary – June 2014
   Statement of Community Involvement – 9th June 2014
   Transport Assessment – May 2014
   Traffic Management Plan – March 2014 (Revised Jan 2015)
   Supplementary Information submitted on 23rd March 2015, 24th March 2015 (including Appendices A- J) and 15th March 2017.

   Site Location Map and Application Boundary (Revision A Sept 2014)
   Site Layout Plan

3. The permission hereby granted shall endure for a period of 25 years from the first export. Written confirmation of the first export date shall be sent to the Local Planning Authority within one month of the first export date.

Site Recording

4. No development shall commence until all areas that will be disturbed by the development have been photographically recorded and these photographs, alongside a plan detailing the precise location and bearing of these photos have been submitted to the Local Planning Authority in writing.

Site Decommissioning & Restoration

5. At least 24 months prior to the expiry of this permission, details and methodologies for a full ecological survey to be undertaken to inform a site decommissioning and restoration scheme shall be submitted to and agreed in writing by the Local Planning Authority.

6. Within the 18 months prior to decommissioning of the site, but no later than 12 months prior to decommissioning, a full ecological survey of the site shall be undertaken to inform decommissioning, as required by condition 5. A survey report shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of

decommissioning and then implemented as approved. The report shall include ecological mitigation measures, as appropriate, based on the ecological assessment findings to be followed during decommissioning, and beyond.

7. No later than 12 months before the expiry date of this permission hereby granted a decommissioning and site restoration scheme shall be submitted in writing to the Local Planning Authority. The site decommissioning and restoration scheme shall be implemented as approved and be completed within 12 months from the expiry date of this permission. The site decommissioning and restoration scheme shall include, but not be limited to:
   (a) details of the removal of all the wind turbines and the surface elements of the development plus one metre of the wind turbine bases below ground level;
   (b) details of means of the removal, including how this will avoid effects on protected species and habitats;
   (c) phasing of the removal of tracks, structures, buildings and other associated infrastructure;
   (d) earth moving and soil replacement;
   (e) restoration of the landscape;
   (f) temporary protective fencing around landscape features to be retained on-site (and when the fencing is to be removed);
   (g) reinstatement of any public rights of way, paths and footpaths; and
   (h) monitoring and remedial actions.

8 No movement of traffic associated with any decommissioning of the development shall take place until a traffic management plan dealing with such decommissioning has been submitted and approved in writing by the local planning authority and thereafter the approved TMP shall be implemented.

Turbine Failure

9. In the event of a wind turbine failing to produce electricity to the grid for a continuous period of 6 months or more, other than required by Conditions 41, 58 and 62, a scheme for the repair or removal of that turbine shall be submitted to the Local Planning Authority for its written approval within 2 months of the end of that 6 month period and implemented within 6 months of approval unless a longer period is agreed in writing by the Local Planning Authority.

   Reason:

Micro-Siting

10. No development shall commence until a micro-siting protocol has been submitted to and approved in writing by the Local Planning Authority. It shall set out a protocol for deciding on micro siting of all development to minimise the impact on environmental constraints. The protocol shall be implemented as approved and include, but not be limited to, the following criteria:

(a) Take account of peat, blanket bog habitat, curlew, protected species, watercourses, public and permissive rights of way, heritage assets, bats, health and safety and any other identified environmental or engineering constraints.

(b) Turbines 2 and 3, their crane pads and directly associated infrastructure may be located up to 30m from the positions shown on the approved plans so as to be further away from PROW.

Turbine design

11. No development shall take place until details of the external finish of the turbines hereby permitted have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.

12. The wind turbines hereby approved shall have a blade tip of no greater than 110 metres.

13. All wind turbine blades shall rotate in the same direction.

14. All electricity cables connecting the wind turbines and the substation, and other services within the site boundary shall be installed underground and alongside tracks which are constructed on the site as part of the development. Any variation shall be submitted to and approved in writing by the Local Planning Authority before development commences. The development shall be carried out in accordance with the approved details.

15. No development shall commence until detailed design of the layout, external treatment, design, materials, and orientation and screening of the on-site substation have been submitted to and approved in writing by the Local Planning Authority. The substation shall be constructed in accordance with the approved details.

16. No development shall commence until details of any permanent outdoor lighting provision have been submitted to and approved in writing by the Local Planning Authority. Outdoor lighting should only be provided to comply with health and safety requirements. Any outdoor lighting shall be provided in accordance with the approved details.

17. No symbols, signs, logos or other lettering, other than those required by law for health and safety reasons, shall be displayed on any part of the wind turbines nor any building or structures without written approval from the Local Planning Authority.

Construction Work

18. No construction work (other than the delivery of abnormal loads) shall take place outside the hours of 07:30 and 19:30 Monday to Friday inclusive, 07:30 and 13:00 on Saturdays with no construction work at all on Sundays and public holidays. Outside these hours, works at the site shall be limited to emergency works, erection of turbines, dust suppression, and the testing and maintenance of plant and equipment, or construction work that is not audible from any noise sensitive property, unless otherwise approved in

writing by the Local Planning Authority. The Local Planning Authority shall be informed in writing of emergency works within three days of occurrence.

19. Notwithstanding the provisions of Condition 18, delivery of wind turbine and crane components may take place outside the times specified in Condition 18 subject to such deliveries first being approved by the Local Planning Authority.

20. All activities associated with the construction of the development shall be carried out in accordance with British Standard BS5228:2009: Code of Practice for noise and vibration control on construction and open sites - Part 1: Noise and Part 2: Vibration.

Grid Connection

21. No development or site preparation is to commence until planning permission for the connection of the proposed development from the substation to the National Grid have been secured.

Construction Environmental Management Plan

22. No development, including site clearance, scrub and vegetation removal and tree felling works, shall commence until a detailed, site specific Construction Environmental Management Plan covering the periods of site clearance, construction and the restoration of all work areas is prepared in consultation with NRW and submitted to and approved by the Local Planning Authority. The Construction Environmental Management Plan must be implemented as approved and include, but not be limited to:
    (a) the mitigation measures to be implemented to avoid harm to protected species and minimise damage to species and habitats;
    (b) the timing of construction works, including the timing of vegetation removal to avoid the potential for effects on reptiles, amphibians and nesting birds;
    (c) the wheel washing facilities, including siting;
    (d) the timing of works and methods of working for cable trenches, foundation works and erection of the wind turbines;
    (e) the timing of works and construction of the substation / control building;
    (f) the cleaning of site accesses, site tracks and the adjacent public highway and the sheeting of all heavy goods vehicles taking spoil or construction materials to / from the site to prevent spillage or deposit of any materials on the highway;
    (g) A Pollution Prevention Plan containing measure to be implemented including:
        i. sediment control;
        ii. the bunding of fuel, oil and chemical storage areas;
        iii. sewage disposal;
        iv. measures for the protection of water courses and ground water and soils; and
        v. a programme for monitoring private water supplies, water courses and water bodies before and during the authorised development, including details of the action to be taken if monitoring indicates adverse effects on private water supplies, water courses or water bodies;
    (h) the disposal of surplus materials;

(i) the management of construction noise and vibrations (including identification of access routes, locations of materials lay-down areas, details of equipment to be employed, operations to be carried out, mitigation measures and a scheme for the monitoring of noise);
(j) the handling, storage and re-use on site of site-derived soil;
(k) the handling, storage and management of any peat excavated in accordance with the peat management plan;
(l) the location, design and construction methods of the access tracks including drainage provisions, and the pollution prevention measures to be implemented to ensure there are no polluting discharges from tracks and disturbed areas including provision to ensure that no polluting discharge from the access tracks and disturbed areas enters any watercourse;
(m) Invasive Non-Native Species Control Plan
(n) the landscaping of the access track;
(o) the nature, type and quantity of materials to be imported on site for backfilling operations or construction of the access track;
(p) the management of ground and surface water (including mitigation to protect private water supplies);
(q) the management of dust;
(r) the proposed temporary site compound for storage of materials, machinery and parking within the sites clear of the highway, including the siting of the temporary buildings and all means of enclosure, oil/ fuel and chemical storage and any proposals for temporary lighting, and details of proposals for restoration of the sites of the temporary compound and works within 12 months of the first export date;
(s) the design and construction of any culverts (to include the use of open bottomed culverts);
(t) the restoration of all areas of the site which will be temporarily used for construction;
(u) methods, timing and location of archaeological investigations;
(v) protocols and programme for any required environmental monitoring to be made publicly available on an annual basis;
(w) proposed communications protocol and mechanism for investigating complaints, including the action to be taken where complaint investigations indicate materially adverse effects have occurred as a result of the construction of the authorised project;
(x) routeing strategy to ensure that construction vehicles use agreed routes;
(y) a protocol for ecological compliance auditing;
(z) Reporting and liaison mechanisms between the contractor, Ecological Clerk of Works (ECoW), the local planning authority and NRW
(aa) measures to prevent the importation or export of alien or invasive plant or animal species, as well as measures to prevent the spread of animal or plant diseases;
(bb) measures to restore the contractor's compound and revegetation of crane hard standing areas and to stabilise of all verges, embankments and cuttings;
(cc) the landscape mitigation measures to be implemented including:
    i. measures to ensure the retention and re-use of site derived materials including the stockpiling of site derived subsoil and topsoil for reuse when reinstating any temporary works;
    ii. temporary protective fencing around landscape features to be retained on-

site;

iii. the use of locally sourced aggregate for the surfacing of the access track;

iv. seeding of all restored and reinstated areas, including the temporary contractor's compound, crane hard standing areas, verges, embankments, cuttings and reinstated sections of the access track;

v. planting of any planting on the site; and

The construction environmental management plan must be implemented as approved unless otherwise agreed in writing by the Local Planning Authority.

23. Before any wind turbine is removed or replaced a revised Construction Environmental Management Plan dealing solely with that removal or replacement shall be submitted to and approved in writing by the Local Planning Authority, and implemented as approved.

Hydrology

24. No development shall commence until a Surface Water Management Plan containing details of the surface water drainage system (including means of pollution control) has been prepared in consultation with NRW and submitted to and approved by the Local Planning Authority; and

The plans must be implemented as approved unless otherwise agreed in writing by the Local Planning Authority.

25. No development shall commence until the details of a scheme for monitoring of water quality in private water supplies within the site, groundwater beneath the site before construction, every [3] months throughout the construction period, and annually until the wind farm is fully decommissioned and the site restored, has been submitted to and approved in writing by the local planning authority. The scheme shall identify:
    1. The properties and private water supplies that may be affected by the development (either located within the site or dwellings located outside the site boundary but served by water supplies originating within the site boundary)
    2. Minimum acceptable water quality and parameters to be tested, in relation to drinking water
    3. Identify measures to be taken to protect private water supplies. (Wells, Springs or Boreholes)
    4. Consider methods of mitigation should the quality of water deteriorate below that standard.

Public Rights of Way

26. 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. To include 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. 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;

(c) details of any fencing or barriers to be provided during the construction period;

(d) details as to how public rights of way, paths and roads will be inspected prior to and monitored 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 including the upgrading of the byway through the applicant's property;

(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; and

(k) details of the routing, signage and surfacing of the new permissive right of way to be provided from the footpath to the south of the substation GC1570 to the BOAT. This new permissive right of way shall be kept in good condition and remain in as such until the proposed development is decommissioned.

Highways & Traffic Movements

27. Prior to the commencement of any construction works on site, a scheme to provide for the remediation of any incidental damage or deterioration directly attributable to the development to the parts of the highway network which will be utilised during the construction of the development including street furniture, structures, highway verge and carriageway surfaces shall be prepared in consultation with the Welsh Government as Welsh trunk road highway authority and Powys County Council as the local highway authority and submitted to and approved by the Local Planning Authority. Such a scheme shall include but not be limited to:

    (a) The undertaking of a condition survey of the proposed highway to be used as AIL and construction delivery routes prior to the commencement of development;

    (b) The undertaking of further condition survey work after the first export (this being the date when Hendy wind farm wind turbine development first exports electricity to the National Grid on a commercial basis) and;

    (c) Provision of details and timescale for works to remediate damage or deterioration to all parts of the highway including street furniture, structures, highway verge and carriageway and footway surfaces.

    The scheme shall be implemented as approved.

28. No development shall take place until detailed engineering drawings of all highway works on the A44 and U1574 have been submitted to and approved in writing by the local planning authority. The works shall be designed in accordance with the standards in the Design Manual for Roads and Bridges. The details submitted shall also include:
    (a) Drainage details;
    (b) Road markings and signage proposals
    (c) A programme for the implementation of the works
    (d) Details of visibility splays that shall be kept free of obstruction exceeding 0.26 metres above the carriageway level.
    (e) The submission of Road Safety Audits prior to the works being undertaken and upon completion of the highway works.

    The works shall be implemented in accordance with the approved details.

29. No deliveries by Abnormal Indivisible Loads shall take place until an assessment of the capacity and impact on the highway and all structures forming part of the highway along the delivery route including layover areas, passing places, bridges, culverts, retaining walls, embankments, drainage systems, street lighting, street signs, safety barriers is carried out and submitted to and approved by the local planning authority and full engineering details and drawings of any works required to such structures to accommodate the passage of abnormal indivisible loads have been submitted to and approved by the local planning authority and the approved works shall be completed prior to any abnormal indivisible load deliveries to the site.

30. AILs associated with the development shall be delivered strictly in accordance with a AIL Traffic Management Plan (AILTMP). In this respect, the AILTMP shall be prepared in consultation with the Welsh Government as Welsh trunk road highway authority and Powys County Council as the local highway authority prior to the commencement of any works. AIL's shall be delivered along the routes specified in Sections 1,2,4,5 of the Strategic Traffic Management Plan for Mid-Wales Wind Farms dated August 2012 unless the Newtown Bypass is constructed. The AILTMP shall include:
    (a) proposals for transporting AILs from their point of entry to the Welsh trunk road network to the site that minimise any impact on the safety and free flow of trunk road traffic;
    (b) management and maintenance of layover areas, passing places and welfare facilities while AIL deliveries take place;
    (c) details of temporary signage;
    (d) details of any alterations to any works that are carried out to enable AIL movements proposed to be implemented after such movements;
    (e) management and maintenance of layover areas, junctions and crossings and any other public rights of way while AIL deliveries take place;
    (f) evidence of trial runs that mimic the movement of the worst case AILs along the access route;
    (g) number and size of AILs, including loaded dimensions and weights;
    (h) number and composition of AIL convoys, including anticipated escort arrangements;
    (i) methodology for managing trunk road traffic during AIL deliveries, including identification of passing places and holding areas as necessary;
    (j) convoy contingency plans in the event of incidents or emergencies;

(k) estimated convoy journey durations and timings along the route, including release of forecast traffic queues;
(l) swept path analysis modelling the movement of the worst case AILs at all potential horizontal and vertical constraints along the access route;
(m) proposals for the temporary or permanent modifications required to the highway or its associated infrastructure along the access route and details of how this would be managed;
(n) plans for the reinstatement of any temporary works after completion of the construction phase;
(o) A review mechanism in light of the construction of the Newtown Bypass;
(p) Land ownership must be clarified on all drawings showing proposed highway modifications. The developer shall be responsible for the acquisition and reinstatement of all third party land including re-instatement of boundary features;
(q) proposals to liaise with all relevant stakeholders (including the relevant highway and planning authorities, Police, members of the public and local communities, hauliers, developers and landowners) prior to the submission of notifications for AIL deliveries and applications for special orders for AIL deliveries;
(r) consideration of the cumulative impact of other wind farm schemes proposing to use all of part of the same access route and coordination with those schemes where possible;
(s) the appointment and role of a transport coordinator to administer the abnormal indivisible load delivery strategy;
(t) means of control of timing of delivery of AIL movements;
(u) temporary traffic diversions and traffic hold points; and
(v) Restrictions of AIL movements during the Royal Welsh Show; and
(w) details of banksmen and escorts for abnormal loads.

31. No AIL shall be made to the site until an Abnormal Indivisible Load management strategy has been submitted to and approved in writing by the local planning authority. All AIL deliveries shall be carried out in accordance with the approved AIL management strategy which will include details of the following:
    (a) Means of control of timing of delivery of AIL movements;
    (b) Temporary traffic diversions and traffic hold points;
    (c) Details of banksmen and escorts for abnormal loads;
    (d) Coordination with all other AIL deliveries (including without limitation to other wind farms in Mid Wales)
    (e) Description of procedures for the allocation of delivery slots including delivery slot triggers and trading;
    (f) The appointment and role of a Transport Coordinator to administer the Abnormal Indivisible Load delivery strategy;
    (g) Liaison with relevant highway and planning authorities and the Police;
    (h) Liaison with members of the public and local communities;
    (i) Liaison with hauliers, developers and landowners prior to the submission of notifications for AIL deliveries and applications for Special Orders for AIL deliveries.

32. No development works shall be undertaken until full details of any highway works associated with the construction of layover areas, passing places and highway improvements including:

(a) the detailed design of any works;
(b) geometric layout;
(c) construction methods;
(d) drainage; and
(e) street lighting;

have been prepared in consultation with the Welsh Government as Welsh trunk road highway authority and Powys County Council as the local highway authority and submitted to and approved in writing by the Local Planning Authority. The highway works shall be completed in accordance with the approved details prior to the commencement of any AIL deliveries to the development site.

33. No construction works shall take place on site until a Construction Traffic Management Plan (CTMP) for non-abnormal indivisible load vehicles has been submitted to and approved in writing by the local planning authority. The approved Construction Traffic Management Plan shall thereafter be complied with and will include the following:
    (a) (a) construction vehicle routing, including specific measures to ensure that construction traffic uses the proposed haul road and proposals for dealing with any infraction;
    (b) Means of monitoring vehicle movements to and from the site including the use of liveried construction vehicles displaying the name of the developer, the vehicle number, a telephone number for complaints and procedures for dealing with complaints.
    (c) Timing of vehicle deliveries to the site;
    (d) The management of junctions and crossings of highways and other public rights of way;
    (e) Contractual arrangements for the control of construction traffic offsite and to ensure that complaints and breaches of the TMP requirements are able to be remedied;
    (f) A travel Plan aimed at maximising the use of sustainable travel by the construction workforce associated with the development;
    (g) Vehicle movements during the Royal Welsh Show;
    (h) Communications with members of the public and local communities;
    (i) A review mechanism in light of the Newtown Bypass

34. No development works shall be undertaken until the developer demonstrates rights of access to all proposed works that are not part of the highway network to the satisfaction of the Local Planning Authority.

35. Full details of the highway works associated with any new access onto the trunk road including the detailed design, geometric layout, construction and drainage, shall be prepared in consultation with the Welsh Government as Welsh trunk road highway authority and submitted to and approved by the Local Planning Authority prior the commencement of any works on the site.

36. No development shall commence until full construction details, detailed design drawings and calculations for the foundations and access track have been prepared in consultation with the Welsh Government as Welsh trunk road highway authority and submitted to and approved by the Local Planning Authority.

37. Adequate provision shall be made within the development to enable vehicles to turn around, so they may enter and leave the site in a forward gear.

38. No drainage from the site shall be connected to or allowed to discharge into the trunk road drainage system or onto the trunk road carriageway.

39. Wheel-washing facilities, or an alternative method to be approved by the Local Planning Authority in consultation with the Welsh Government, shall be provided at the site exit before any other development commences. Such facilities shall thereafter remain available during the construction period and be used by all vehicles exiting the site.

40. AILs associated with the maintenance and decommissioning of the development shall leave the site strictly in accordance with a Traffic Management plan prepared in consultation with the relevant highway authority. The Traffic Management Plan shall be submitted to and approved in writing by Local Planning Authority prior to commencement of any removal, replacement of decommissioning works.

41. No abnormal indivisible load movements associated with any repairs or replacement components shall take place during the life of the development until a traffic management plan dealing with such repair and/or replacement has been submitted to and approved in writing by the local planning authority and thereafter the approved TMP shall be implemented.

Ecology

42. No development shall commence, including vegetation clearance and tree felling, until a suitably qualified Ecological Clerk of Works (ECoW) has been employed. The ECoW shall be appointed at least one month prior to the commencement of any tree felling, site/vegetation clearance works or development. The scope of the ECoW shall include, but not be limited to:
    (a) monitoring compliance with and reporting on the success or failure of the approved mitigation works and in the event of failures advising on remedial mitigation measures;
    (b) advising the developer on the implementation of the approved mitigation proposals and the protection of important nature conservation interests on the site;
    (c) directing and consulting on the micro-siting and placement of turbines, roads and other infrastructure;
    (d) monitoring and reporting on the compliance with the Construction Environmental Management Plan, peat management plan and other associated environmental plans; and
    (e) attending liaison meetings with and reporting compliance with conditions and plans and mitigation measures to the Local Planning Authority and other parties as necessary.

43. No development shall commence until a Protected Species Protection Plan (PSPP) has prepared in conjunction with NRW and submitted to and approved in writing by the Local Planning Authority The PSPP shall include all mitigation measures outlined in the

Environmental Statement to ensure that the development has no detrimental effect of the maintenance of the favourable conservation status of protected species. The plan shall also include:

1. A detailed Pre-commencement Survey Programme including specification for pre-commencement surveys to be undertaken for (but not limited to) bats, otter, curlew, water vole, badger, great crested newt and reptiles and include:
    (a) survey methodology
    (b) schedule and timing
    (c) the development of casualty risk models for bats
2. Details of specifications for Mitigation or Reasonable Avoidance Measures including in relation to bats, great crested newts, otters, reptiles, breeding birds, water vole, pillwort and badgers to ensure their protection throughout the pre-construction, construction and operational phases of the development

44. No development shall commence until a Habitat Management and Enhancement Plan (HMEP) has prepared in conjunction with NRW and submitted to and approved in writing by the Local Planning Authority. The HMEP will set out detailed nature conservation management and enhancement objectives including the management, restoration or creation of priority habitats and/or species, and a timetable for its implementation. The plan will need to include confirmation of the deliverability of the identified measures and shall include all mitigation measures outlined in the Environmental Statement

45. No development shall commence until an Ecological Monitoring Plan (EMP) has been prepared in consultation with NRW and submitted to and approved by the Local Planning Authority. The EMP will need to include details of monitoring of Ecological features through construction, operation and decommissioning of the development, the monitoring will also need to be linked to appropriate contingency plans and identify when results would trigger implementation of relevant contingency measures identified in the CEMP. The EMP shall also include the monitoring arrangements for the Habitat Management Plan (HMP) and Protected Species Protection Plan (PSPP).

<u>Archaeology</u>

46. (a) No development shall take place until a Written Scheme of Investigation has been submitted to and approved by the local planning authority in writing. The scheme shall include an assessment of significance of heritage assets in the locality and:
    i. The programme and methodology of site investigation and recording including trenching where appropriate; and
    ii. The programme for post investigation assessment; and
    iii. A watching brief during construction works.
    iv. Provision to be made for analysis of the site investigation and recording; and
    v. Provision to be made for publication and dissemination of the analysis and records of the site investigation; and
    vi. Provision to be made for archive deposition of the analysis and records of the site investigation; and
    vii. Nomination of a professionally qualified archaeologist in accordance with condition 47.

    (b) No development shall take place other than in accordance with the Written Scheme

of Investigation approved under condition (a).

(c) The development shall not export energy until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the Written Scheme of Investigation approved under condition (a) and the provision made for analysis, publication and dissemination of results and archive deposition has been secured.

47. No development or site clearance shall commence until the Local Planning Authority have been informed in writing of the name of a professionally qualified archaeologist who is to be responsible for ensuring the Written Scheme of investigation approved under Condition 46 is carried out in a full and proper manner. He/She is to be present during the undertaking of any excavations in the development area so that the watching brief can be conducted. No work shall commence until the Local Planning Authority has confirmed in writing that the proposed archaeologist is suitable.

48. The developer shall afford access at all reasonable times to any archaeologist nominated by the Local Planning Authority, and shall allow him/her to observe the excavations and record items of interest and finds.

Television interference

49. Prior to the erection of any wind turbine a scheme providing for a baseline survey and the investigation and alleviation of any interference to television reception caused by the operation of the wind turbines shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall provide for the investigation by a qualified independent television engineer within 3 weeks of any complaint of interference with television reception, where such complaint is notified to the developer by the Local Planning Authority. Where impairment is determined by the qualified television engineer to be attributable to the development, mitigation works shall be carried out in accordance with the scheme which has been approved in writing by the Local Planning Authority.

Aviation / Defence

50. No wind turbine shall be erected before the following information has been provided to the Defence Geographic Centre of the Ministry of Defence:

(a) the date construction starts and ends;

(b) the maximum height of construction equipment; and

(c) (c) the latitude and longitude of every wind turbine.

Community Liaison

51. No development shall commence until a community liaison scheme for the construction and decommissioning period has been submitted to and approved by the Local Planning Authority. The community liaison scheme shall be implemented as approved and include:

(a) details of developer liaison with the local community to ensure residents are informed of how the construction or decommissioning of the development is progressing;

(b) a mechanism for dealing with complaints from the local community during the construction or decommissioning of the development; and
(c) a nominated representative of the developer who will have the lead role in liaising with local residents and the relevant planning authority.

Noise

52. No turbine shall be brought into operation before a scheme for the assessment and regulation of Excess Amplitude Modulation (EAM) has been submitted to and approved by the Local Planning Authority. That scheme shall be in general accordance with any guidance endorsed by the Welsh or UK Government at that time; or in the absence of this guidance published by the Institute of Acoustics. Should no guidance be available at the time of condition discharge the scheme shall reflect best practice at that time. The approval scheme shall be implemented for the life of the development.

53. The rating level of noise emissions from the combined effects of the wind turbines (including the application of any tonal penalty) when determined in accordance with the attached Guidance Notes (to this condition), shall not exceed the values for the relevant integer wind speed set out in, or derived from, the tables attached to these conditions at any dwelling which is lawfully existing or has planning permission at the date of this permission and:

a. The wind farm operator shall continuously log power production, wind speed and wind direction, all in accordance with Guidance Note 1(d). This data shall be retained for a period of not less than 24 months. The wind farm operator shall provide this information in the format set out in Guidance Note 1(e) to the local planning authority on its request, within 14 days of receipt in writing of such a request;

b. No electricity shall be exported until the wind farm operator has submitted to the local planning authority for written approval a list of proposed independent consultants who may undertake compliance measurements in accordance with this condition. Amendments to the list of approved consultants shall be made only with the prior written approval of the local planning authority;

c. Within 21 days from receipt of a written request from the local planning authority following a complaint to it from an occupant of a dwelling alleging noise disturbance at that dwelling, the wind farm operator shall, at its expense, employ a consultant approved by the local planning authority to assess the level of noise emissions from the wind farm at the complainant's property in accordance with the procedures described in the attached Guidance Notes. The written request from the local planning authority shall set out at least the date, time and location that the complaint relates to and any identified atmospheric conditions, including wind direction, and include a statement as to whether, in the opinion of the local planning authority, the noise giving rise to the complaint contains or is likely to contain a tonal component;

d. The assessment of the rating level of noise emissions shall be undertaken in

accordance with an assessment protocol that shall previously, have been submitted to and approved in writing by local planning authority. The protocol shall include the proposed measurement location identified in accordance with the Guidance Notes where measurements for compliance checking purposes shall be undertaken, whether noise giving rise to the complaint contains or is likely to contain a tonal component, and also the range of meteorological and operational conditions (which shall include the range of wind speeds, wind directions, power generation and times of day) to determine the assessment of rating level of noise emissions. The proposed range of conditions shall be those which prevailed during times when the complainant alleges there was disturbance due to noise, having regard to the written request of the local planning authority under paragraph (c), and such others as the independent consultant considers likely to result in a breach of the noise limits;

e. Where a dwelling to which a complaint is related is not listed in the tables attached to these conditions, the wind farm operator shall submit to the local planning authority for written approval proposed noise limits selected from those listed in the tables to be adopted at the complainant's dwelling for compliance checking purposes. The proposed noise limits are to be those limits selected from the Tables specified for a listed location which the independent consultant considers as being likely to experience the most similar background noise environment to that experienced at the complainant's dwelling. The rating level of noise emissions resulting from the combined effects of the wind turbines when determined in accordance with the attached Guidance Notes shall not exceed the noise limits approved in writing by the local planning authority for the complainant's dwelling.

f. The wind farm operator shall provide to the local planning authority the independent consultant's assessment of the rating level of noise emissions undertaken in accordance with the Guidance Notes within 2 months of the date of the written request of the Local Planning Authority for compliance measurements to be made under paragraph (c), unless the time limit is extended in writing by the local planning authority. The assessment shall include all data collected for the purposes of undertaking the compliance measurements, such data to be provided in the format set out in Guidance Note 1(e) of the Guidance Notes. The instrumentation used to undertake the measurements shall be calibrated in accordance with Guidance Note 1(a) and certificates of calibration shall be submitted to the local planning authority with the independent consultant's assessment of the rating level of noise emissions;

g. Where a further assessment of the rating level of noise emissions from the wind farm is required pursuant to Guidance Note 4(c), the wind farm operator shall submit a copy of the further assessment within 21 days of submission of the independent consultant's assessment pursuant to paragraph (d) above unless the time limit has been extended in writing by the local planning authority.

Table 1 – Noise limits expressed in dB LA90,10 minute to be applied at all times of Day or Night

	Easting	Northing	Standardised Wind Speed m/s					
			5	6	7	8	9	10
Bwlch-YCefn	312088	261106	36	38.4	40	40	40	40
Pye Corner	314385	260363	36	37.6	39.9	40	40	40
Nursery Cottage	311435	260061	36	36	36.9	40	40	40
Sunny Bank	311584	260601	36	36	36.9	40	40	40
Graig (South)	312730	258692	36	36	37.4	39.5	40	40
Blaen Edw	314571	259481	36	37.6	39.9	40	40	40
Penffynon	311423	260780	36	36	36.9	40	40	40
Bwlch Llwyn	311382	259545	36	36	36.9	40	40	40
Graig (North)	312577	261773	36	38.4	40	40	40	40
Hendy Farm	312380	258778	45	45	45	45	45	45
The Green	312450	258563	36	36	37.4	39.5	40	40
Gelynen	312328	258485	36	36	37.4	39.5	40	40
Bwlchau	311753	258555	36	36	37.4	39.5	40	40
Cornhill	314704	260670	36	37.6	39.9	40	40	40
Pen y Bank	311467	260526	36	36	36.9	40	40	40

Guidance Notes for Noise Condition 58

These notes are to be read with and form part of the noise condition. They further explain the condition and specify the methods to be employed in the assessment of complaints about noise immissions from the wind farm. The rating level at each integer wind speed is the arithmetic sum of the wind farm noise level as determined from the best-fit curve described in Guidance Note 2 of these Guidance Notes and any tonal penalty applied in accordance with Guidance Note 3. Reference to ETSU-R-97 refers to the publication entitled "The Assessment and Rating of Noise from Wind Farms" (1997) published by the Energy Technology Support Unit (ETSU) for the Department of Trade and Industry (DTI).

Guidance Note 1

(a) Values of the $L_{A90,10\ minute}$ noise statistic should be measured at the complainant's property, using a sound level meter of EN 60651/BS EN 60804 Type 1, or BS EN 61672 Class 1 quality (or the equivalent UK adopted standard in force at the time of the

measurements) set to measure using the fast time weighted response as specified in BS EN 60651/BS EN 60804 or BS EN 61672-1 (or the equivalent UK adopted standard in force at the time of the measurements). This should be calibrated in accordance with the procedure specified in BS 4142: 1997 (or the equivalent UK adopted standard in force at the time of the measurements). Measurements shall be undertaken in such a manner to enable a tonal penalty to be applied in accordance with Guidance Note 3.

(b) The microphone should be mounted at 1.2 – 1.5 metres above ground level, fitted with a two-layer windshield or suitable equivalent approved in writing by the Local Planning Authority, and placed outside the complainant's dwelling. Measurements should be made in "free field" conditions. To achieve this, the microphone should be placed at least 3.5 metres away from the building facade or any reflecting surface except the ground at the approved measurement location. In the event that the consent of the complainant for access to his or her property to undertake compliance measurements is withheld, the wind farm operator shall submit for the written approval of the Local Planning Authority details of the proposed alternative representative measurement location prior to the commencement of measurements and the measurements shall be undertaken at the approved alternative representative measurement location.

(c) The $L_{A90,10\ minute}$ measurements should be synchronised with measurements of the 10-minute arithmetic mean wind and operational data logged in accordance with Guidance Note 1(d), including the power generation data from the turbine control systems of the wind farm.

(d) To enable compliance with the conditions to be evaluated, the wind farm operator shall continuously log arithmetic mean wind speed in metres per second and wind direction in degrees from north at hub height for each turbine and arithmetic mean power generated by each turbine, all in successive 10-minute periods. Unless an alternative procedure is previously agreed in writing with the Planning Authority, this hub height wind speed, averaged across all operating wind turbines, shall be used as the basis for the analysis. All 10 minute arithmetic average mean wind speed data measured at hub height shall be 'standardised' to a reference height of 10 metres as described in ETSU-R-97 at page 120 using a reference roughness length of 0.05 metres . It is this standardised 10 metre height wind speed data, which is correlated with the noise measurements determined as valid in accordance with Guidance Note 2, such correlation to be undertaken in the manner described in Guidance Note 2. All 10-minute periods shall commence on the hour and in 10- minute increments thereafter.

(e) Data provided to the Local Planning Authority in accordance with the noise condition shall be provided in comma separated values in electronic format.

(f) A data logging rain gauge shall be installed in the course of the assessment of the levels of noise immissions. The gauge shall record over successive 10-minute periods synchronised with the periods of data recorded in accordance with Note 1(d).

Guidance Note 2

(a) The noise measurements shall be made so as to provide not less than 20 valid data points as defined in Guidance Note 2 (b)

(b) Valid data points are those measured in the conditions specified in the agreed written protocol under paragraph (d) of the noise condition, but excluding any periods of rainfall measured in the vicinity of the sound level meter. Rainfall shall be assessed by use of a rain gauge that shall log the occurrence of rainfall in each 10 minute period concurrent with the measurement periods set out in Guidance Note 1. In specifying such conditions the Local Planning Authority shall have regard to those conditions which prevailed during times when the complainant alleges there was disturbance due to noise or which are considered likely to result in a breach of the limits.

(c) For those data points considered valid in accordance with Guidance Note 2(b), values of the LA90,10 minute noise measurements and corresponding values of the 10- minute wind speed, as derived from the standardised ten metre height wind speed averaged across all operating wind turbines using the procedure specified in Guidance Note 1(d), shall be plotted on an XY chart with noise level on the Y-axis and the standardised mean wind speed on the X-axis. A least squares, “best fit” curve of an order deemed appropriate by the independent consultant (but which may not be higher than a fourth order) should be fitted to the data points and define the wind farm noise level at each integer speed.

Guidance Note 3
(a) Where, in accordance with the approved assessment protocol under paragraph (d) of the noise condition, noise immissions at the location or locations where compliance measurements are being undertaken contain or are likely to contain a tonal component, a tonal penalty is to be calculated and applied using the following rating procedure.

(b) For each 10 minute interval for which LA90,10 minute data have been determined as valid in accordance with Guidance Note 2 a tonal assessment shall be performed on noise immissions during 2 minutes of each 10 minute period. The 2 minute periods should be spaced at 10 minute intervals provided that uninterrupted uncorrupted data are available (“the standard procedure”). Where uncorrupted data are not available, the first available uninterrupted clean 2 minute period out of the affected overall 10 minute period shall be selected. Any such deviations from the standard procedure, as described in Section 2.1 on pages 104-109 of ETSU-R-97, shall be reported.

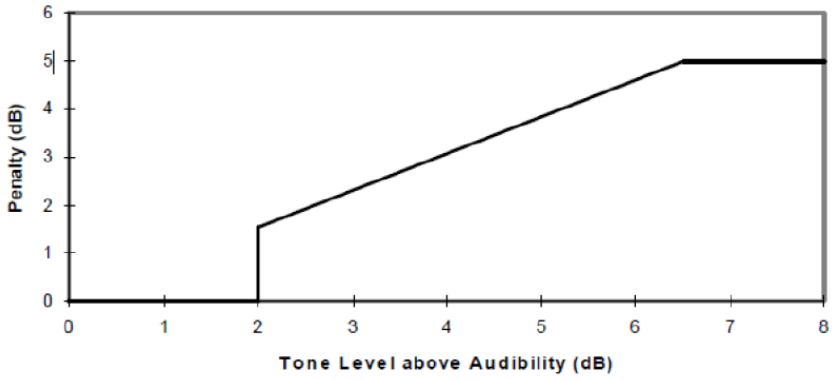
(c) For each of the 2 minute samples the tone level above or below audibility shall be calculated by comparison with the audibility criterion given in Section 2.1 on pages 104109 of ETSU-R-97.

(d) The tone level above audibility shall be plotted against wind speed for each of the 2 minute samples. Samples for which the tones were below the audibility criterion or no tone was identified, a value of zero audibility shall be used.

(e) A least squares “best fit” linear regression line shall then be performed to establish the average tone level above audibility for each integer wind speed derived from the value of the “best fit” line at each integer wind speed. If there is no apparent trend with wind speed then a simple arithmetic mean shall be used. This process shall be repeated for each integer wind speed for which there is an assessment of overall levels in Guidance Note 2.

(f) The tonal penalty is derived from the margin above audibility of the tone according to

the figure below.



Guidance Note 4

(a) If a tonal penalty is to be applied in accordance with Guidance Note 3 the rating level of the turbine noise at each wind speed is the arithmetic sum of the measured noise level as determined from the best fit curve described in Guidance Note 2 and the penalty for tonal noise as derived in accordance with Guidance Note 3 at each integer wind speed within the range specified by the Local Planning Authority in its written protocol under paragraph (d) of the noise condition.

(b) If no tonal penalty is to be applied then the rating level of the turbine noise at each wind speed is equal to the measured noise level as determined from the best fit curve described in Guidance Note 2.

(c) In the event that the rating level is above the limit(s) set out in the Tables attached to the noise conditions or the noise limits for a complainant's dwelling approved in accordance with paragraph (e) of the noise condition, the independent consultant shall undertake a further assessment of the rating level to correct for background noise so that the rating level relates to wind turbine noise immission only.

(d) The wind farm operator shall ensure that all the wind turbines in the development are turned off for such period as the independent consultant requires to undertake the further assessment. The further assessment shall be undertaken in accordance with the following steps:

(e) Repeating the steps in Guidance Note 2, with the wind farm switched off, and determining the background noise (L3) at each integer wind speed within the range requested by the Local Planning Authority in its written request under paragraph (c) and the approved protocol under paragraph (d) of the noise condition.

(f) The wind farm noise (L1) at this speed shall then be calculated as follows where L2 is the measured level with turbines running but without the addition of any tonal penalty:

$$L_1 = 10 \log\left[10^{L_2/10} - 10^{L_3/10}\right]$$

(g) The rating level shall be re-calculated by adding arithmetically the tonal penalty (if any is applied in accordance with Note 3) to the derived wind farm noise L1 at that integer wind speed.

(h) If the rating level after adjustment for background noise contribution and adjustment for tonal penalty (if required in accordance with note 3 above) at any integer wind speed lies at or below the values set out in the Tables attached to the conditions or at or below the noise limits approved by the Local Planning Authority for a complainant's dwelling in accordance with paragraph (e) of the noise condition then no further action is necessary. If the rating level at any integer wind speed exceeds the values set out in the Tables attached to the conditions or the noise limits approved by the Local Planning Authority for a complainant's dwelling in accordance with paragraph (e) of the noise condition then the development fails to comply with the conditions.

Reasons

1. For the avoidance of doubt.
2. For the avoidance of doubt.
3. For the avoidance of doubt.
4. To ensure the site is recorded to a suitable level to inform the restoration of the site when the scheme is decommissioned.
5. To ensure the decommissioning of the development and restoration of the site takes account of the current ecological conditions at the time of said decommissioning and restoration.
6. To ensure the decommissioning of the development and restoration of the site takes account of the current ecological conditions at the time of said decommissioning and restoration.
7. To ensure the decommissioning of the development and restoration of the site upon the expiry of this permission is carried out in a full, proper and controlled manner.
8. To ensure the impacts on the highway of the decommissioning of the development and restoration of the site upon the expiry of this permission are acceptable.
9. To ensure the beneficial impacts of the proposed development (renewable energy generation) are present to outweigh the negative impacts of the proposed development.
10. To allow for minor alterations to the proposed development to allow the impacts to be lessened to an acceptable level.
11. To ensure the turbines do not create unnecessary impacts by way of their external finish.
12. For the avoidance of doubt.
13. For the avoidance of doubt and to ensure that visual impacts of the proposed development are not increased unnecessarily.
14. For the avoidance of doubt and to ensure the ground disturbance is minimised.
15. To ensure the design of the proposed substation is appropriate and its impacts are minimised.
16. To ensure that light pollution from the proposed development is minimised.

17. For the avoidance of doubt and to ensure the proposed development does not introduce unnecessary visual impacts.
18. To ensure the construction impacts of the proposed development are considered acceptable.
19. To allow for the delivery of wind turbines at a time when its impacts on the highway will be minimised.
20. To ensure safe construction techniques that minimise its impacts on the surrounding communities.
21. To ensure no development or site preparation commences until there is a means for the renewable energy generated to be fed into the National Grid and the benefits of the proposed development realised.
22. To ensure that construction activities do not result in any unacceptable impacts on the environment.
23. To ensure that any construction activities associated with turbine removal or replacement do not result in any unacceptable impacts on the environment.
24. To ensure that impacts on hydrology are acceptable.
25. To protect private drinking water supplies.
26. To ensure the impacts on public rights of way are mitigated to an acceptable level.
27. To ensure the development has no lasting negative impact on the condition of the highway.
28. To ensure impacts on the highway are acceptable.
29. To ensure impacts on the highway are acceptable.
30. To ensure impacts on the highway are acceptable.
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40. To ensure impacts on the highway are acceptable.
41. To ensure impacts on the highway are acceptable.
42. To ensure the ecological impacts of the proposed development are overseen by a suitably qualified person.
43. In the interest of minimising ecological impacts and to ensure protected species are protected.
44. In the interest of minimising ecological impacts and to ensure ecological habitats are preserved and enhanced.
45. In the interest of preserving ecology on the site from construction to decommissioning.
46. To ensure the historic environment on site is properly investigated and recorded.
47. To ensure the historic environment on site is properly investigated and recorded.
48. To ensure the historic environment on site is properly investigated and recorded.
49. To ensure the ability to receive television broadcasts at receptors, including dwellings, are not damaged by the proposed development.
50. In the interest of aviation safety and defence.
51. To ensure impacts on the local community are minimised and that a proper system is in place to ensure any impacts can be reported and suitably addressed.

52. To ensure the impacts of Excess Amplitude Modulation are minimised to protect the amenity of nearby receptors.
53. To ensure the proposed development does not create unacceptable noise at nearby residential properties.

Informatives

1. Prior to any construction work on the area defined as common land consent under section 38 of the Commons Act 2006 must be obtained and a section 16 application must be processed and a ‘Deregistration and Exchange Order’ issued to the Commons Registration Authority.

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Planning, Taxi Licensing and Rights of Way Committee Report

UPDATE REPORT

Application No:	P/2016/0803	**Grid Ref:**	315874.33 236213.88
Community Council:	Bronllys C	**Valid Date:** 29/07/2016	**Officer:** Tamsin Law
Applicant:	Mr & Mrs G Hopkins C/O Agent		
Location:	Beacons Edge Pontithel Brecon Powys LD3 0RY		
Proposal:	Hybrid planning application comprising the change of use from 3 no dwellings to 1 no dwelling, the change of use of plots 1 and 4 and erection of plots 2 and 5 each becoming single holiday let units in lieu of each comprising 4 individual motel units approved under planning application B6022, the erection of a detached garage, access, parking and associated works (applied for in full), and the erection of 1 no dwelling (applied for in outline)		
Application Type:	Application for Full Planning Permission		

The reason for the update

This update has been produced to provide clarification on the Officer report.

Officer Appraisal

Legal Opinion

The Officer Report makes reference to legal opinions obtained in 2008 and 2013 in relation to the site. Legal opinion was received stating that counsel advice is legally privileged and should not be published. However, as the opinions have previously been made public it is considered acceptable to attach them to this update report.

As discussion surrounding this application will look at the extant 1991 consent, Members attention is drawn to paragraph 18 of the 2008 opinion which states the following;

“By way of summary, therefore, the 1991 permission was in my opinion lawfully implemented and is still alive. The owner has the option of completing the development in accordance with the approved plans.”

Current development on site

The current development on site in the Officer report states that Motel Unit 4 has been commenced; for the purpose of clarification this unit has been completed.

Proposed development

The report discusses the conversion of the motel units to single self-contained holiday let units. As units 2 and 5 have yet to be commenced this would not be the conversion of these building but would be the erection of holiday let units. Consent is still sought to convert units 1 and 4 to holiday self-contained holiday let units. Unit 3 already benefits from consent as a holiday let unit under planning application P/2014/0103 (APP/T6850/A/14/2221363).

Conclusion

Having carefully considered the proposed development and the extensive planning history, Officers consider that the proposal broadly complies with planning policy. The recommendation is therefore one of conditional approval subject to conditions outlined in the main report and a legal agreement securing the non-further implementation of the extant consent.

It is recommended that a time limit of two months is given for the legal agreement to be completed and in the event that it is not concluded within such time period, delegation is given to the Professional Lead for Development Management, to refuse the application, unless satisfied that the delay is unavoidable and that there is sufficient evidence to conclude that the matter will be concluded within a further reasonable time period.

Case Officer: Tamsin Law- Principal Planning Officer
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IN THE MATTER OF:

UNAUTHORISED DEVELOPMENT AT BEACONS EDGE, PONTITHEL, THREE COCKS, POWYS

ADVICE

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1. I am instructed by Powys County Council ("the Council"), and am asked to consider a series of questions arising from the planning history of a site located at Beacons Edge, Pontithel, Three Cocks, Powys ("the site").

BACKGROUND

2. The planning history, insofar as pertinent to the questions raised, can be summarized as follows:

   a. On 10 April 1989 the Council granted planning permission, subject to conditions, for "conversion of guest house into hotel/motel and chalets" (B-4961). The approved plan shows 7 "motel" units. Condition 6 of the permission prohibited the use of the individual motel units as "independent permanent residential units", stating that they should "only be occupied by guests of the adjoining hotel".

   b. I have been provided with a letter from the owner's solicitor dated 24 February 2006 in which it is said that works of conversion referred to in this permission were carried out to the hotel/motel, but that the "chalets"

were not built.

c. On 11 March 1991 the Council granted planning permission for "new design of Motel Units and extension to function room and private accommodation …in accordance with the application and plan submitted to the council" (B006022). Although not clear on its face that it was permitting the *construction* of motel units, the submitted and approved plan referred to in the permission shows the provision of 6 motel units. Once again, the permission was subject to conditions, including one which mirrored Condition 6 on the 1989 consent. Condition 4 provided that "Before development commences the access at the west end of the site shall be closed off …" and Condition 5 stated that "Before development commences the access shall be constructed" as approved in the 1989 consent.

d. At some unspecified time following the grant of the 1991 permission, the then owner of the site constructed one motel unit. The letter from the owner's solicitors referred to above asserts that this was one of the units approved by the 1991 permission. I am instructed that this unit was not constructed in accordance with the plans approved under the 1991 permission. Those plans showed each unit sub-divided into four individual bedsits with four external doors to each unit. What was constructed was a unit comprising a kitchen diner and 2 bedrooms. Moreover, I am instructed that the completed unit had an additional small window in one of the elevations, not shown on the approved plans (the letter from the owner's solicitors suggests that in fact two additional windows were introduced). None of the other development referred to in this permission was undertaken.

e. At some unspecified point in time the constructed motel unit began to be used as a permanent residential dwelling. In January 2004 the owner

submitted plans showing amendments to the design of this unit, and requested that these be "treated as minor amendments to the originally approved plans". The development control manager of the council replied on 23 February 2004, stating that "I am satisfied with the amendments" and emphasized that all the other conditions on consent B5561 dated 15 January 1990 must be complied with. Clearly, both the date and reference number of the permission are incorrectly cited in this letter.

f. On 16 February 2005 the owner submitted a new application for 6 new holiday bungalows (i.e in addition to the one already built) and a new access (the access way and the configuration of the bungalows on site on the submitted plans is very different to that approved under the 1989 and 1991 permissions). I am assuming that this application was neither determined nor appealed.

THE ISSUES

3. Against this factual background, the owner's solicitors have written to the council to argue that both the 1989 and 1991 permissions have been implemented. The dispute revolves around the 1991 permission, with the owner asserting that he is entitled to complete the development permitted under that consent by constructing the remaining 5 motel units.

4. I am asked to consider the following questions:

Is the 1991 Permission a valid planning permission capable of being enforced?

5. I assume the question is whether the planning permission is capable of being implemented, rather than enforced.

6. This raises two questions:

   a. Was the development permitted by the 1991 permission begun before the expiry of the permission (i.e within five years)? and

   b. If so, were the operations that are now relied upon as constituting implementation lawful?

7. It will be noted that the first question is not addressed in the correspondence between the owner's solicitors and the council. The discussion has incorrectly focused on whether the unit as built is or is not in accordance with the approved plans. Whether the unit accords with the plans is a question which is relevant to the issue of whether enforcement action should be taken, a matter to which I shall return later. The question that needs to be addressed now is whether the 1991 permission is still alive, or whether it has expired.

8. Condition 1 of the permission provides that its duration "is limited as specified overleaf". Reason 1 of the reasons for the conditions printed overleaf states "Conditions imposed by the above mentioned Act". Although not expressed as well as it could have been, this is likely to be construed as meaning that condition 1 limits the permission as provided for by s.191 of the Town and Country Planning Act 1990. At the material time this section provided that development must be "begun not later than the expiration of five years beginning with the date on which permission is granted".

9. Section 56(2) of the 1990 Act provides that for "the purposes of the provisions of this Part mentioned in subsection (3) development shall be taken to be begun on the earliest date on which any *material operation comprised in the development* begins to be carried out" (emphasis added). Subsection (3) states that this rule applies to s.91, and defines "material operation" to include "any work of construction in the course of the erection of a building" and "the digging of a

trench which is to contain the foundations, or part of the foundations, of a building".

10. Case law makes it clear that even very minor works will constitute a "material operation" (*United Refineries Ltd v Essex County Council* [1978] JPL 110). The issue that this case raises is not whether a material operation took place within the relevant five year period, but whether that material operation was "comprised in the development" (i.e related to or formed part of the operations permitted by the consent). This issue was considered by Ouseley J in *Commercial Land Ltd/Imperial Resources SA v Secretary of State for Transport, Local Government and the Regions* [2003] JPL 358, in which he ruled that differences between the approved plans and the operations relied on is not in itself fatal to the argument that the development has been commenced:

> **"It is, in my judgment, necessary for an Inspector dealing with this sort of problem to consider not just the existence of differences between the plans and the operations relied on, but also to consider the significance of those differences. It is insufficient just to mark and measure the existence of differences. In my judgment this can be seen either as a question of the correct approach in law, or as a question of whether an Inspector has had regard to material considerations. Consideration of the similarities, or degree of compliance of the operations relied upon, with the approved plans is also relevant, together with substantial usability of those works in the permitted development, and the degree of alteration required to them in order for them to effective to that end. I do not consider that the Inspector took those other matters into account or examined the significance of the differences which he found to exist."**

11. The case was referred back to the inspector who decided that the works relied upon did not form part of the permitted development because the vast majority of

what had been built would have to be demolished in order to build what had actually been permitted (see *R (on the application of Imperial Resources SA) v FSOS* (2003) EWHC 658 Admin.). What the case demonstrates is that only in extreme cases is it possible to argue that none of the material operations in fact relate to that which was permitted. In the present case, it is clear that the works that were carried out (putting in the foundations, building the walls, putting on the roof etc.) formed part and parcel of what was permitted. To use Ousely J.'s phrase, regardless of whether the finished product was what was permitted, the works that were done were substantially usable for that which should have been built.

12. Accordingly, it follows that the 1991 permission was implemented.

13. The next question which arises is whether it was lawfully implemented. This question raises three further questions:

    a. Were conditions 4 and 5 pre-commencement conditions in the sense explained in *F.G Whitley and Sons v Secretary of State for Wales* (1992) 64 P&CR 296?

    b. If so, were they complied with?

    c. If not, would it now be rational for the Council to take enforcement action because of the failure of the owner to comply with the conditions?

14. If one applies the approach taken by Sullivan J in R (on the application of *Hart Aggregates Ltd) v Hartlepool BC* [2005] EWCH 840 (Admin.) it is difficult to construe conditions 4 and 5 as conditions precedent in the sense that a failure to comply means that the construction of unit 1 falls outwith the permission. The conditions in question do not expressly prohibit development taking place before the stipulated actions have been carried out. The alternative test alluded to in that case (whether the condition goes to the heart of the development) is virtually

impossible to apply.

15. My view is that confronted with a case such as this a court is likely to rule that the conditions are not true pre-commencement conditions. The factors likely to influence the decision are (a) the precise wording of the conditions, which do not contain an express prohibition (b) the period of time that has elapsed since Unit 1 was built without the Council taking enforcement action and (c) the fact that if construed as non pre-commencement conditions it leaves it possible for the Council to take enforcement action if the conditions have not been complied with.

16. As to whether conditions 4 and 5 were in fact complied with, I have little information on this issue. The letter from the owner's solicitors appears to contain fairly strong evidence that condition 4 was complied with (and I agree with them that the condition did not require the access to be kept closed permanently thereafter), and that condition 5 was either complied with prior to commencement or prior to expiry of the permission. If the solicitors are correct about these matters, the issue of lawful implementation does not arise.

17. In any event, on the facts of this case, it would be difficult to justify enforcement action on the basis of failure to comply with these conditions prior to commencement of development, since in substance both appear to have been complied with at some point.

18. By way of summary, therefore, the 1991 permission was in my opinion lawfully implemented and is still alive. The owner has the option of completing the development in accordance with the approved plans.

If the 1991 permission is a valid permission what is the effect, if any, of the letter of 23 February 2004? What is the status and effect of this letter?

19. Although not completely clear from my papers, it appears that the letter of 9th January 2004 sought amendments to the designs of all 6 units permitted by the 1991 permission. This amendment was granted by way of an informal letter, in which it was implicitly accepted that these were minor amendments.

20. The 1990 Act does not contain any provisions which permit a local planning authority to amend approved plans without a planning application being submitted either under s.62 or s.73. Accordingly, the practice (widely instituted) of accepting minor amendments is without statutory authority.

21. However, there have been examples of cases where local authorities have found themselves bound by letters approving minor amendments. One such example is *Camden LBC v SOSE* (1993) 67 P&CR 59, where an officer replied stating that "in my view the variations are ... minor and would not constitute development requiring planning permission". When the council tried to take enforcement action on the basis that the development had not been built in accordance with original, unaltered plans, the Inspector quashed the enforcement notice on the basis that the officer had acted with the ostensible authority of the Council and accordingly the Council was estopped from taking enforcement action . The High Court agreed, noting that there was no evidence before it that only the planning committee or the Head of Planning had the authority to grant such amendments.

22. There has, however, been a radical change in the approach the courts now take to informal determinations by local authority officers. In *R v Sussex CC Ex p Reprotech (Pebsham) Ltd* [2002] UKHL 8) the House of Lords made it clear that there was no scope within planning law for the operation of estoppel. A council cannot be estopped from taking action against unauthorized development merely because an officer has purported to grant a waiver of a condition on a planning

consent, or has agreed that a development may proceed in a manner otherwise than formally approved.

23. It follows that on the basis of that there is no scope for estoppel in planning law, the letter has no legal status. It is not a determination of the council on a planning application, because no new planning application had been submitted by the owner to change the design or to vary the conditions attached to the original consent.

What is the status of each structures erected on the site?

24. Each of the units must be constructed in accordance with the 1991 permission. Enforcement action may be taken if any of the units are not constructed in accordance with plans approved under the 1991 consent.

25. Unit 1 is an example of unauthorized development. What was approved was a four bedroom unit, each with its own external door. What has been constructed is a bungalow with a kitchen diner and two bedrooms. Moreover, the fenestration is not as shown on the approved plans. Arguments to the effect that the changes are *de minimis*, or that the internal arrangements fall outwith the definition of development, are without merit. What has been built is clearly different from that which was approved. The point was expressly addressed by the House of Lords in *Sage v SOSETR* [2003] UKHL 22:

"As counsel for Mr Sage accepted, if a building operation is not carried out, both externally and internally, fully in accordance with the permission, the *whole* operation is unlawful. She contrasted that with a case where the building has been completed but is then altered or improved. The demonstrates the fallacy in Mr Sage's case. He comes into the first category not the second."

26. If it were possible to build unit 1 as constructed without breach of planning control (on the basis that the alterations from the approved plans are de minimis), it would not have been necessary for the owner's architect to seek a minor variation of those plans. The fact is that, even leaving aside the *Sage* point regarding internal changes, putting in additional windows would materially change the exterior of the building and would require planning permission.

Expediency of Enforcement Action

27. In the case operational development, enforcement action cannot be taken "after the end of the period of four years beginning with date on which the operations were substantially completed" (s.171B(1). It follows that it is no longer possible to take enforcement action against the construction of unit 1, which it appears was completed as long ago as 1998. Neither is it possible to take enforcement action against its use, contrary to Condition 2, as an independent permanent residential unit because in the case of use as a dwelling house the time for taking action is limited to four years (s.171B(2)).

28. It is possible to take enforcement action against the units which the owner began to construct in 2007 if those units are not in accordance with the 1991 permission. Whether it is expedient to do so depends on whether the variation from the approved plans causes any planning harm. I do not have all the information on this issue, but it appears to me that it would be difficult to make the argument that different internal arrangements and the introduction of one or two small additional windows causes harm warranting enforcement action.

29. However, one concern that I do have is that having constructed the units in a manner different from that approved, the owner may, once four years have elapsed, seek to argue that the units were not built pursuant to the permission and accordingly are not controlled by the conditions which appear on the consent (including, importantly, the prohibition against using them as independent

permanent dwelling houses). An example of this is provided by *Handoll v Warner Goodman Streat* [1995] JPL 930, in which consent was given for a bungalow subject to an agricultural occupancy condition. The bungalow as built was located 90 feet away from the site for which permission had been given. The court held that the building as built was without permission, and the agricultural occupancy condition did not attach to the building.

30. Clearly, whether a building as built is at such variance from that which was approved that it can be described as not being what was approved is a matter of fact and degree. The present case probably falls within a grey area. Rather than take the risk, I advise that the council invite the owner to submit a planning application to vary the design. He should be given the reassurance that the Council will consider the issue of design only, given that the fall-back position is that he can build what has already been approved. The Council should openly state that the reason is so that the same conditions can be attached as were attached to the 1991 permission. If he refuses to co-operate, the Council would in my opinion be justified in taking enforcement action in order to protect its position.

CONCLUSION

31. I have addressed each of the matters raised in my instructions. If my instructing solicitor would like any of the matters addressed in greater depth, or there are further issues arising from the above analysis, I am available to advise further and can be contacted via my clerk.

Satnam Choongh
Number 5 Chambers
Birmingham-London-
Bristol

29 May 2008

IN THE MATTER OF DEVELOPMENT AT BEACONS EDGE PONTITHEL

ADVICE

Lynne Coughlan

Principal Solicitor

Legal Services Powys County Council

Cambrian Way

Brecon

Powys LD3 7HR

IN THE MATTER OF DEVELOPMENT AT BEACONS EDGE PONTITHEL

ADVICE

1. I have already advised extensively in conference and have also visited the site.

Instructions

2. This written Advice endorses the advice I gave in conference although as a result of the site visit considerably more information is now available about the current and past uses of the main "hotel/motel" building and the chalet building constructed in about 1998. The site visit was carried out in agreement with Mr Mrs Hopkins and was conducted after the conference taken place. The most important matters to arise from the site visit centred on essentially the use of Beacons Edge being run as a business providing accommodation to visitors with ancillary residential accommodation, which had not been previously understood in terms of the planning history after the grant of planning permission.

3. In my opinion, the history of the site in a planning context is somewhat difficult to piece together and the main objective is to secure a way in which the future of the site

can be satisfactorily resolved in both the interests of the County Council and the current occupiers Councillor and Mrs Hopkins.

Factual matrix

4. The relevant planning permission for the purposes of this advice was granted on 11 March 1991. Five planning conditions are attached to it. Condition 2 says that the motel units shall not be occupied as independent permanent residential units, they shall only be occupied by guests of the adjoining hotel.

5. Condition 4 states the before development commences the access at the west end of the site shall be closed off in materials to be agreed in writing by the District Planning Authority. Condition 5 states that before development commences the access to the motel shall be constructed in accordance with the previously approved condition 10 on B. 4961 dated 10 April 1989. This is a reference to the 1989 planning permission. That planning permission was granted as a result of a section 106 agreement dated 13 April 1989. I note from the Second Schedule to the section 106 agreement that the application in 1988 was for planning permission to convert a guesthouse to a hotel/motel with swimming pool and seven chalets.

6. The number of chalets permitted in 1991 was subsequently reduced to 6 and they are shown on the plans.

7. The 1991 planning permission was not granted subject to a section 106 agreement nor does it incorporate the terms of the earlier permission. The 1991 planning permission was for *new design of motel units and extension to function room and private accommodation.*

8. The County Council has already taken advice from Counsel. For the avoidance of doubt, I agree overall with that advice save in relation to some aspects of the planning history which now, in the light of subsequent information, appear to be wrong. The general conclusion of earlier counsel is that the 1991 planning permission was lawfully implemented. I agree. This issue is of course separate from any enforcement action and the way the development should be completed.

The 1991 scheme

9. To put matters in context, the 1991 scheme involved extension to the then existing guesthouse on site was to create a 10 letting bed motel with associated dining room, function room and bar facilities together with private residence facilities arranged over three floors. In combination with the six chalets there were 10 letting bedrooms proposed in the main building which permitted hotel/motel development of letting rooms all of which utilised the dining and bar facilities in the main building.

10. Ancillary to that hotel/motel use is the residential accommodation comprised in the planning application and permitted by the planning permission.

Current proposal (2010 scheme)

11. The current proposal is that the occupiers will complete the development in accordance with the 1991 consent. One bungalow was completed in 1998 and another albeit of different dimensions from the original scheme is close to completion construction.

12. From the site visit it is clear that the original three storey building has not been constructed. In fact, substantial work at considerable expense will be required to be carried out if the development is to be completed in accordance with the planning

permission as the current owners contend through their planning agents. However, clearly some elements of the scheme beyond enforcement action.

13. If the current owners do not intend to complete the building(s) in accordance with the 1991 plans then they will need to submit a further application to vary. So far, the only application made to vary which has not yet been determined, involves the chalet buildings. However, it is also clear that the current building design was completed some time ago and may be immune from enforcement action in any event.

Chalet 1

14. In relation to the advice of counsel obtained on 29 May 2008 there is a suggestion that at some time in the past the constructed motel unit was used as and became permanent residential accommodation and used as a separate dwelling. However, from the site visit it is clear that chalet 1 has not been used as separate living accommodation as a dwelling house falling within C3 Use Classes Order 1995 as amended. In addition, no application has been made for a certificate of lawfulness in relation to that use.

15. Mrs Hopkins also confirmed on site that chalet 1 is let out on short-term lets or as holiday accommodation. It is clear on all available evidence that chalet 1 has probably never been used as a separate dwelling house.

Main building-1991 permission- 2012 CLU

16. I turn now to the issue of the way in which the main building or "hotel/motel" building has been used and the certificate of lawfulness application and subsequent grant.

17. In 1992 an application was made (B/6589) to raise the roof level and extend the property to the south west. The plans incorporate private residential accommodation in the upstairs floor. Although the application was approved it was not implemented

as this would be at odds with and contradict, the implementation of the 1991 planning permission.

18. The 1991 planning permission permits the use of the accommodation in conjunction with the hotel/motel use with common areas, toilet accommodation, the provision of guest accommodation etc. At some stage and prior to 2001 the upper ground floor level was converted to a single apartment on a single floor comprising entrance hall, cloakroom, sitting room, lounge/dining room, kitchen and three bedrooms.

19. The present upper ground floor accommodation is used by Mr and Mrs Hopkins as residential accommodation for their sole use without any use by guests of the chalets or flats 1 and 2.

20. At the site visit, it was manifest that the two lower ground floor apartments had not been rented out for some considerable time. Mrs Hopkins said that she had let out the apartments from time to time for holiday short rental accommodation. However, she had provided the apartments mainly for [redacted] She wanted somewhere for them to be able to stay.

21. Mrs Hopkins also told us that there had been a staircase which connected the lower ground floor apartments to the floor above. However, the staircase had been removed and therefore there were the two apartments below and the living accommodation above.

22. Next, in the planning history of the site is an application made for a certificate of lawfulness in March 2012. It is a confused and confusing application. The covering letter dated 8 March 2012 says that it is for an existing use of 2 lower ground floor self-contained apartments. Pre-application discussions had taken place. It is not said in the application form that there had been any breach of a planning condition but it was an application for an existing use. From an interview note on site Mrs Hopkins

said that the two flats were separate and independent of the main dwelling. Mrs Hopkins stated that they had always been used separately from the dwelling. Various council tax documents were submitted and there was interrogation of the information when the applicants were asked to provide further information. I have seen the council tax returns and they are all in the name of [redacted] The applicants produced the estate agents particulars and documentation which said that the property was formerly a restaurant and divided into three residential units and a detached two bedroom bungalow.

23. However, it does not seem to me that this was the case. There is no evidence that chalet 1 was ever used as separate residential accommodation in its own right and it is not used now as residential accommodation.

24. Flat 1 and flat 2 were described in the sales particulars as self-contained units ideal as granny accommodation or for letting. I do not know whether Mr and Mrs Hopkins used the accommodation in that way when they bought in 2001 but from the information provided by Mrs Hopkins, that has not been the case for some considerable time. Instead, they have been used as accommodation [redacted] ancillary to a residential use of the first floor or alternatively they have been let out. Neither of which would be contrary to the 1991 planning permission. They have in fact been used as an ancillary accommodation.

25. The report to committee for the certificate of lawfulness does not address the issue of C3 uses or use as separate dwellings nor is the application made on that basis. I note also that the 10 year rule has been applied when statute provides that a change to a residential use is subject to the four year rule. The certificate specifically refers to the 10 year rule rather than the four year rule relating to residential use.

26. The terms of the certificate of lawfulness granted immunity for the use of the lower ground floor as two self contained apartments. In that sense, they are self-contained.

27. This does not establish a separate C3 use. The certificate of lawfulness confirms that the two flats are now physically separate from the living accommodation above. If it were to be contended by the current owners that this establishes a C3 use, in my opinion such an argument should fail. Immunity is only granted in relation to the extent of the certificate. It confirms it is separate accommodation. The staircase no longer exists. There is no physical connection between the two apartments/flats and the accommodation above. However, the mere fact that there is no physical connection does not establish that they are separate residential units. The evidence submitted in support of the application does not establish that to be the case.

28. There is no prohibition in terms of the planning permission preventing [redacted] to occupy the lower ground floor accommodation in conjunction with their residential accommodation at first floor level. It does not establish in any way that the lower ground floor flats are separate residential accommodation or separate planning units. This is not the case as presented in the application and is not the case as a matter of law. In order to succeed I would have expected information demonstrating that there were, for example separate utility bills, agreements showing that the properties had been rented out and any other evidence demonstrating the separate residential use. What the certificate establishes is that the two flats are physically separate and are immune from enforcement action in the sense that the staircases have been removed and enforcement action could not be taken to have the two flats physically linked as was intended in the original planning permission. I have looked at the plans in relation to the original configurations of the lower ground floor area which consisted of bedrooms, shower rooms and a common hallway accessed from stairs from the above floor. Two flats have been created and are now physically separate. It is only to that extent that the certificate of lawfulness grants immunity.

29. Mr & Mrs Hopkins have not applied for a certificate of lawfulness relating to the first floor accommodation. It is likely however that since 2001 at least, they have used it as

residential accommodation without having the communal and guest facilities or indeed as a restaurant or bed and breakfast accommodation nor does it provide a function room.

Analysis of 1991 permission

30. However, the 1991 planning permission envisaged that the use of the premises would be as a business use for a hotel or motel providing accommodation with ancillary residential accommodation for the owners or operators of that business use.

31. In my opinion, it is arguable that the existing use of Brecons Edge remains a motel/hotel use with guests occupying the chalet buildings and the flats. I have had particular regard to the Town & Country Planning (Use Classes) Order 1987 (as amended) at Class C 1. As advised by Circular 03/2005 at paragraph 59 The C1 "*Hotels class includes not only hotels, but also motels, bed and breakfast premises, boarding and guesthouses. These are premises which provide a room as temporary accommodation on a commercial fee paying basis, where meals can be provided but where residential care is not being provided*". In other words, motels and hotels fall within the same use class.

32. I have looked at the Brecons Edge website and it is clear that the accommodation occupied by Mr and Mrs Hopkins is in conjunction with the letting of chalet 1 and presumably the same is proposed for the next unit which is nearing completion. This would also apply to the letting of what are called flats 1 and 2.

Resolving the present position

33. I do not know whether Mr and Mrs Hopkins would agree that this is the case. It should be discussed with them. If they disagree, then the appropriate way of resolving the issue is for an application to be made for what they consider to be the existing lawful use of the existing main building, the two flats and chalet 1 and the use of the

chalet nearing completion and the chalets they wish to construct under the 1991 permission.

34. If they do not agree, then in my opinion this gives rise to a complex planning situation and with enforcement implications against Mr and Mrs Hopkins if they intend to complete the 1991 planning permission. The 1991 planning permission has not yet been completed because a number of the chalets have not been constructed or the construction of unit 2 has not been completed. Chalet 1 is the only one which has been constructed and completed. The 1991 planning permission ties the use of those chalets both completed and as yet not built to the use of the motel or hotel use with its ancillary residential accommodation. Condition 2 says that the motel units shall not be occupied as independent permanent residential units and they shall only be occupied by guests of the adjoining hotel. Despite the changes that have taken place two flats 1 and 2 in terms of their physical configuration it also seems to me that the scope of the 1991 planning permission is that they must be used as part of the motel or hotel business.

35. For the avoidance of doubt and as I have already said in conference I agree with the previous advice given to the County Council that it is not bound as a matter of law by the actions of Mr Evans when writing on 23 February 2004 that he was satisfied as to the amendments.

36. I also agree with the advice that chalet 1 in terms of its construction is immune from enforcement action. Chalet 2 is close to completion but has not yet been completed. It is not built in accordance with the plans attached to the 1991 planning permission and if the Council so wishes, it could take enforcement notice action. This should also be explained to Mr and Mrs Hopkins. This position is also applicable to the as yet unbuilt chalets. They must comply with the plans attached to the 1991 planning permission and not the 2004 purported amendments.

37. Needless to say, the Council has a discretion whether to enforce against chalet 2 bearing in mind that Mr and Mrs Hopkins were warned about its non-compliance with

the 1991 planning permission and yet they have chosen to continue to build a chalet which differs considerably from the 1991 plans.

38. As will be evident from this Advice if Mr Mrs Hopkins disagree with the interpretation of the 1991 planning permission and the effect of the subsequent changes, then enforcement action will have to be considered.

39. Alternatively, there is nothing to prevent a fresh application which seeks to regularise the current position on site. I envisage that this could include permitting the residential element of the main building being ancillary to the business of letting out the chalets and flats 1 and 2 in conjunction with the construction of chalet 2, that the remaining chalets are built in accordance with the 1991 plans and linked to a section 106 agreement that ties the occupation of the residential accommodation in the main building to the letting of holiday chalet accommodation.

Overall conclusions

40. In my opinion, the position with regard to the changes that have taken place since the 1991 planning permission present a complex planning problem. In my opinion flats 1 and 2 are not separate residential units falling within C3. Changes have taken place to the main hotel building which are immune from enforcement notice action. However, it seems to me that the first-floor residential accommodation is still ancillary to the business of a motel or the letting of rooms/provision of accommodation.

41. The method of resolving any issues is first discuss matters with Mr and Mrs Hopkins and if there is dispute, to request them to make applications for certificates of lawfulness. If that is not done and the position is not resolved then enforcement action can be taken.

42. Alternatively, although I very much bear in mind that the County Council has shown considerable forbearance and has in the past suggested that a fresh application be made to regularise the planning position, that this should be pursued. It is of course a matter for Mr and Mrs Hopkins as to whether they make any such application.

43. I shall be pleased to advise further as is necessary and those instructing me should not hesitate to contact me on any matter arising out of this Advice.

Cornerstone Barristers

2-3 Gray's Inn Square

London WC1R 5JH

IAN ALBUTT

7 May 2013

Planning, Taxi Licensing and Rights of Way Committee Report

Application No:	DIS/2016/0258	**Grid Ref:**	291676 281370
Community Council:	Llangurig	**Valid Date:** 04/01/2017	**Officer:** Gemma Bufton
Applicant:	Mr Radford, Bryn Blaen, Wind Farm Limited.		
Location:	Blaen y Glyn, Llangurig, Llanidloes, Powys, SY18 6SL.		
Proposal:	Discharge of conditions 9,33,39,41,42,43,44,45,46,47,48,49,50,51,56 & 60 of planning approval P/2014/1102.		
Application Type:	Application for Approval of Details Reserved by Condition.		

The reason for Committee determination

This report forms an update to the previous report circulated to Members.

Consultee Response

PCC Ecologist

Further consultation response received 24/04/2017

Just to provide clarity with regards to the information submitted to discharge Condition 47 of planning permission P/2016/1102.

Having reviewed the information submitted regarding this condition I have advised that sufficient information has been submitted to enable the condition to be discharged.

Condition 47 Requires that –

No development shall commence until a two year Pre-Construction Curlew Survey has taken place.

The information submitted provided the results of 1 years' worth of survey for curlew undertaken in 2016 – whilst this does not strictly comply with the requirements of the wording of the condition the purpose of the surveys is to establish whether curlew breed at a site. The first year of survey effort confirmed that the site is used by curlew for breeding and an appropriate mitigation strategy has been identified and submitted to discharge condition 48.

Additional monitoring has been identified as being planned during 2017 to inform the implementation of the requirements set out in condition 49 – where an 800 metre buffer will be implemented from any identified curlew nests preventing construction activities during the breeding season until chicks have fledged or breeding has failed.

Whilst the information submitted does not strictly comply with the wording of the planning condition is considered that given curlew were confirmed as breeding during the first year of survey effort the need for a second year of survey to be completed before development could commence is somewhat unnecessary – 2 years of completed survey would be required if the applicant wished to demonstrate that there was no curlew breeding attempts on the site.

The confirmation and identification of locations of breeding attempts by curlew at the site during the survey completed so far combined with the detailed monitoring and mitigation strategy that has been identified as well as the requirements of condition 49 are considered to be appropriate and sufficient to protect breeding curlew and their breeding efforts during the construction of the windfarm

Recommendation

This updated report should be read in conjunction with the previous report. It is considered that sufficient information has therefore been submitted to discharge conditions 9, 33, 39, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 56 & 60 of planning consent P/2014/1102.

Environmental information has been taken into consideration when determining this application (DIS/2016/0258).

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