

## Planning, Taxi Licensing and Rights of Way Committee Report

<b>Application No:</b>	DIS/2016/0258	<b>Grid Ref:</b>	291676 281370
<b>Community Council:</b>	Llangurig	<b>Valid Date:</b>	<b>Officer:</b> 04/01/2017 Gemma Bufton
<b>Applicant:</b>	Mr Radford, Bryn Blaen Wind Farm Limited.		
<b>Location:</b>	Blaen y Glyn, Llangurig, Llanidloes, Powys, SY18 6SL.		
<b>Proposal:</b>	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.		
<b>Application Type:</b>	Application for Approval of Details Reserved by Condition.		

### The reason for Committee determination

This application comes before Members of the planning committee as Cllr Graham Jones requested it is called in due to it being potentially controversial and in the wider public interest

### Site Location and Description

Conditional consent was granted under appeal by the Planning Inspectorate for the construction and operation of 6 wind turbines with a maximum tip height of 100 metres and maximum hub height of 59 metres together with ancillary development comprising substation, control building, new and upgraded access points and tracks, new alternative recreational track, hardstanding and temporary compound and associated works.

This application sees to discharge conditions 9, 33, 39, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 56 and 60 of planning consent P/2014/1102. Application P/2014/1102 was accompanied by an Environmental Statement and therefore environmental information has been taken into consideration when determining this application.

Condition 9 states:

#### *Development Micro-siting*

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 development's 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 asset, bats, health and safety and any other identified environmental or engineering constraint.
- (b) Turbines, crane pads and directly associated infrastructure may be located up to 30m from the positions shown on the approved plans.

- (c) Access tracks may be located up to 20m from the positions shown on the approved plans.
- (d) Notwithstanding the above allowances, the substation and track adjacent to it shall be constructed in the location shown on the approved plans to avoid areas of deep peat.

Condition 33 states:

*Highways and Transport*

No development shall take place until detailed plans of all highway works on the C2176 have been submitted to and approved in writing by the Local Planning Authority. The details submitted shall include:

- (a) drainage details;
- (b) road markings and signage proposals;
- (c) a programme for the implementation of the works; and
- (d) the works shall be implemented in accordance with the approved details.

Condition 39 states:

*Bat Protection Plan*

No development shall commence until a pre-construction bat survey has taken place.

Condition 41 states:

*Badgers*

No development shall commence until pre-construction badger surveys have been carried out at all development infrastructure locations. The results of the surveys and any necessary mitigation measures shall be prepared in consultation with NRW and submitted to and approved by the Local Planning Authority before any development commences.

Condition 42 states:

*Badgers*

If any badger setts are located within 30 metres of any development infrastructure, the infrastructure shall be moved. If infrastructure cannot be moved then a plan to construct replacement setts shall be prepared in consultation with NRW and submitted to and approved by the Local Planning Authority. Alternative setts shall be constructed at least six months prior to exclusion.

Condition 43 states:

*Great Crested Newts*

No development shall commence until environmental DNA surveys to determine the presence of great crested newts on the site have been undertaken and provided to the Local Planning Authority and NRW. The results of the surveys and any necessary mitigation measures shall be prepared in consultation with NRW and submitted to and approved by the

Local Planning Authority before any development commences. The approved mitigation measures shall be implemented as approved.

Condition 44 states;

*Dormice*

No development shall commence until surveys to determine the presence of dormice on the site have been undertaken and provided to the Local Planning Authority and NRW. The results of the surveys and any necessary mitigation measures shall be prepared in consultation with NRW and submitted to and approved by the Local Planning Authority before any development commences. The approved mitigation measures shall be implemented as approved.

Condition 45 states:

*Schedule 1 Birds*

No development shall commence until a pre-construction survey on Schedule 1 birds has been undertaken and the results and any suggested mitigation have been prepared in consultation with NRW and submitted to and approved by the Local Planning Authority.

Condition 46 states:

*Schedule 1 Birds*

If the pre-construction survey identifies that construction will occur during the breeding season of any Schedule 1 bird then a buffer shall be adopted to ensure that construction does not take place within the vicinity of any Schedule 1 bird nest sites until the chicks have fledged or breeding has failed. The size of the buffer must be approved in writing by the Local Planning Authority subject to prior consultation with NRW and the buffer must remain in place until written confirmation is given by the Local Planning Authority that construction can take place within the buffer.

Condition 47 states:

*Curlew*

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

Condition 48 states:

*Curlew*

No development shall commence until the results of the Pre-Construction Curlew Survey and Breeding Bird Protection Plan have been prepared in consultation with NRW and submitted to and approved by the Local Planning Authority.

Condition 49 states:

## *Curlew*

If the pre-construction survey identifies that construction will occur during the curlew breeding season then an 800 metre buffer shall be adopted to ensure that construction does not take place within the vicinity of any curlew nest sites until the chicks have fledged or breeding has failed. The buffer must remain in place until written confirmation is given by the Local Planning Authority that construction can take place within the buffer.

Condition 50 states:

## *Otters*

No development shall commence until a Pre-Construction Otter Survey has taken place. The methodology for the Pre-Construction Otter Survey is to be prepared in consultation with NRW and submitted to and approved by the Local Planning Authority.

Condition 51 states:

## *Otters*

No development shall commence until the results of the Pre-Construction Otter Survey and an Otter Protection Plan prepared in consultation with NRW have been submitted to and approved by the Local Planning Authority. The otter protection plan shall include:

- (a) updated construction drawings and plans showing otter holts and resting places within 100 metres of specific working locations;
- (b) details of proposed mitigation including:
  - i. construction activities will be 100 metres outside of known holts for otters and 30 metres of known resting places to minimise disturbance and risk to species;
  - ii. appropriate exclusion zones will be created around holts and resting places, using temporary fencing or some similar method to delineate and highlight the area;
  - iii. construction activities involving heavy machinery and blasting within 100 metres from a resting place / holt will not commence until one hour after sunrise, ceasing one hour before sunset;
  - iv. all open excavations will be ramped to enable easy exit by otter;
  - v. culvert pipes stored on site will be capped or if caps are not available, stored vertically, to prevent entrapment;
  - vi. work on culverts will only take place during the day and at the end of each working day the watercourse will be cleared of any construction material so otters can pass through unobstructed;
  - vii. design of any permanent or temporary lighting will be such that it will be directed away from watercourses;
  - viii. all felling and construction personnel will be provided with an emergency telephone contact for the ecological clerk of works; and
  - ix. a site speed limit of 19 mph for all construction traffic will be imposed across the site.

Condition 56 states;

### *Cultural Heritage*

No development shall take place until a scheme of works in relation to the Dolen Giw Cairn (Scheduled Ancient Monument No.MG267) has been approved by the Local Planning Authority. The scheme of works shall include:

- (a) realignment of the modern post and wire fence that currently runs across the top of the mound so that the whole mound can be explored;
- (b) a non-intrusive survey of the mound and surrounding area using geophysics;
- (c) details of a signboard to be erected nearby to explain the archaeological/cultural context and significance of the mound to visitors; and
- (d) A timetable for the completion of the approved scheme of works.

Condition 60 states:

### *Community Liaison*

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.

## **Consultee Response**

### Natural Resources Wales

*Consultation response received 27/01/2017*

Thank you for referring the above application, which we received on 09/01/2016. NRW does not object to the discharging of conditions 9, 39, 41, 43, 44, 45, 46, 47, 48, 49, 50, & 51 of planning approval P/2014/1102. In our opinion, as explained below, the proposal is not likely to adversely affect any of the interests listed.

NRW has reviewed the following documents:

- 'Pre-construction Survey for Badger at Bryn Blaen Wind Farm' by ADAS referenced 'CEN4157' dated October 2016.
- 'Bat Protection Plan at Bryn Blaen Wind Farm' by ADAS referenced 'CEN4157' dated November 2016.
- 'Pre-construction Survey for Otter at Bryn Blaen Wind Farm' by ADAS referenced 'CEN4157' dated October 2016.

- 'Species Protection Plan for Otter at Bryn Blaen Wind Farm' by ADAS referenced 'CEN4157' dated November 2016.
- 'Pre-construction Monitoring Methodology for Dormouse at Bryn Blaen Wind Farm' referenced 'CEN4157' dated November 2016.
- 'Great Crested Newt Survey Bryn Blaen Wind Farm, Llangurig, Powys' by ADAS dated May 2016.
- 'Breeding Bird Protection Plan at Bryn Blaen Wind Farm' by ADAS referenced 'CEN4157' dated November 2016.
- 'Bryn Blaen Protocol to take account of the effects on peat, blanket bog, habitat, curlew, protected species, watercourses, public and permissive rights of way, heritage asset, and bats.'

## Protected Species

### Badgers

Badgers are protected under the Protection of Badgers Act 1992.

The survey and assessment are considered to be satisfactory. It is noted that third parties have raised a badger sett issue in respect of the access road. The developers should be made aware of this. This matter can be addressed under licence issued by NRW.

### Bats

Bats and their breeding and resting places are protected under the Wildlife and Countryside act 1981 (as amended) and the Conservation of Habitats and Species Regulations 2010 (as amended), and are a material consideration for planning.

The submission is considered to be satisfactory for the purposes of informing the micro-siting. The post construction plans are considered to be satisfactory.

### Otters

Otters and their breeding and resting places are protected under the Wildlife and Countryside Act 1981 (as amended) and the Conservation of Habitats and Species Regulations 2010 (as amended), and are a material consideration for planning.

The otter survey and assessment are considered satisfactory, and the conclusions are considered appropriate.

### Dormouse

Dormice and their breeding and resting places are protected under the Wildlife and Countryside Act 1981 (as amended) and the Conservation of Habitats and Species Regulations 2010 (as amended), and are a material consideration for planning.

The surveys and assessments submitted are considered to be satisfactory. The conclusions and recommendations are considered to be appropriate. The pre-construction monitoring methodology for dormouse is also considered to be appropriate.

### Great Crested Newts

Great Crested Newts and their breeding and resting places are protected under the Wildlife and Countryside Act 1981 (as amended) and the Conservation of Habitats and Species Regulations 2010 (as amended), and are a material consideration for planning.

The surveys and assessment are considered satisfactory, and therefore we conclude with the conclusions.

#### Breeding Birds

The submitted Breeding Bird Protection Plan is considered to be satisfactory.

It is therefore considered the proposals in respect of habitat protection, creation, enhancement and management, and monitoring proposals to be appropriate.

#### Informative for the developers

It is advised that the data collected as part of the ongoing monitoring work for protected species are made available online and are made available to national and local record centres.

#### Micro-siting Protocol

The micro-siting protocol has been reviewed. The protocol is satisfactory, and therefore we have no further comments to add.

#### PCC Ecologist

*Consultation Response received 03/02/2017*

I have reviewed the information submitted by the applicant to discharge this condition which consists of:

- Bryn Blaen Windfarm – Micro-siting Protocol to take account of the effects on peat, blanket bog habitat, curlew, protected species, watercourses, public and permissive rights of way, heritage asset, and bats.
- Bat Protection Plan at Bryn Blaen Wind Farm (ref no. CEN4157) by ADAS (Chris Forster Brown) dated November 2016
- Pre-construction Survey for Badger at Bryn Blaen Wind Farm (ref no. CEN4157) by ADAS (Chris Forster Brown) dated October 2016
- Great Crested Newt Survey Bryn Blaen Wind Farm, Llangurig, Powys by ADAS (Chris Forster Brown) dated May 2016
- Bryn Blaen Wind Farm Hazel Dormouse Survey Report (ref no. CEN4157) by ADAS (Chris Forster Brown) dated December 2016
- Breeding Bird Protection Plan at Bryn Blaen Wind Farm (ref no. CEN4157) by ADAS (Chris Forster Brown) dated November 2016
- Breeding Curlew and Schedule 1 Birds 2016 Bryn Blaen Wind Farm (ref no. CEN4157) by ADAS (Chris Forster Brown) dated 26th September 2016
- Pre-construction Survey for Otter at Bryn Blaen Wind Farm (ref no. CEN4157) by ADAS (Chris Forster Brown) dated October 2016

- Species Protection Plan for Otter at Bryn Blaen Wind Farm (ref no. CEN4157) by ADAS (Chris Forster Brown) dated November 2016

Having reviewed the information submitted with regards to Condition 9, I consider that the measures identified and information submitted are appropriate and sufficient to comply with the requirements of the conditions, in addition NRW have identified in their response dated 27th January 2017, that they consider the micro-siting protocol to be satisfactory. I therefore consider that sufficient information has been submitted to enable discharge of Condition 9.

Condition 39 requires a pre-commencement bat survey to be undertaken, Section 2 Bat Protection Plan at Bryn Blaen Wind Farm (ref no. CEN4157) by ADAS (Chris Forster Brown) dated November 2016 states that due to revising the location of T6 30m west of the area of valley mire it is considered that there is no purposes in undertaking a pre-construction survey as all possible avoidance measures will have been deployed. Whilst I do not disagree with the statements provided in the report regarding the need for bat activity surveys following micro-siting of the turbine away from the valley mire area, the wording of the condition is such that unless a pre-commencement bat survey is undertaken then the requirements of the condition will not have been complied with.

Conditions 41 and 42 relate to badgers, a pre-commencement survey has been undertaken and submitted, this report states that no active badger setts were identified within 50m of any infrastructure. Additional information has been submitted to the LPA from third parties stating that there are in fact active badger setts within 30m of the infrastructure – a badger sett within 10m of the access track has been referred to – no specific location has been provided. Given the additional information received regarding the presence of badger setts within 30m of the windfarm infrastructure which contradicts with the submitted report it is recommended that further information is required prior to discharge of these conditions.

Having reviewed the information submitted with regards to Condition 43 I consider that the information submitted and measures identified are appropriate and sufficient to comply with the requirements of the conditions, in addition NRW have identified in their response dated 27th January 2017, that they consider the surveys and assessment to be satisfactory. I therefore consider that sufficient information has been submitted to enable discharge of Condition 43.

Having reviewed the information submitted with regards to Conditions 45, 46, 47, 48 & 49 I consider that the information submitted and measures identified are appropriate and sufficient to comply with the requirements of the conditions, in addition NRW have identified in their response dated 27th January 2017, that they consider the Breeding Bird Protection Plan to be satisfactory. I therefore consider that sufficient information has been submitted to enable discharge of Conditions 45, 46, 47, 48 & 49.

Having reviewed the information submitted with regards to Conditions 50 and 51 I consider that the information submitted and measures identified are appropriate and sufficient to comply with the requirements of the conditions, in addition NRW have identified in their response dated 27th January 2017, that they consider the surveys and assessment to be satisfactory and the conclusions are considered appropriate. I therefore consider that sufficient information has been submitted to enable discharge of Conditions 50 & 51.

*Consultation response received 13/04/2017*



Subject to approval for the amendment of the wording I would also therefore consider that sufficient information has been provided with regards to condition 39 of planning permission P/2014/1102 (appeal reference - APP/T6850/A/15/3133966) in relation to DIS/2017/0258 to enable the condition to be discharged.

In my previous response with regards to the application to discharge planning conditions in relation to planning permission P/2016/1102 I requested further information to provide clarity with regards to condition 41 - this was due to conflicting evidence being provided by various parties with regards to badgers and the results of the pre-commencement survey submitted to discharge this condition.

Following this a site meeting was held on Monday 10th April in attendance were representatives from the Windfarm developer, Ecological consultants from ADAS and Julian Brown Consultancy Ltd, NRW, the Badger Group and the Wales Wildlife Crime Officer.

The site meeting's aim was to provide clarity over the assessment of the badger setts in the locality and the appropriateness of the mitigation measures identified to discharge condition 41.

Condition 41 Requires that -

No development shall commence until pre-construction badger surveys have been carried out at all development infrastructure locations. The results of the surveys and any necessary mitigation measures shall be prepared in consultation with NRW and submitted to and approved by the Local Planning Authority before any development commences.

In addition to the site visit the following information has been submitted by the applicant to discharge this condition:

- Pre-construction Survey for Badger at Bryn Blaen Wind Farm (ref no. CEN4157) by ADAS (Chris Forster Brown) dated October 2016
- Badger Sett Assessment Report by ADA dated January 2017
- Badger Activity Assessment Report by Julian Brown Consultancy Ltd dated 14th February 2017
- Letter from Aaron and Partners Solicitors (Reference DAH.KM.JPT.NJO2.8) dated 6th March 2017

In addition a report was submitted by the Dyfi Badger Group dated March 2017.

During the site visit details of the monitoring that had been undertaken and results and conclusions regarding the status and appropriate mitigation was discussed. Following this meeting and discussions with NRW I am satisfied that the survey undertaken and mitigation measures proposed are appropriate and achievable and provide sufficient information to enable the discharge of condition 41.

With regards to condition 42 which requires that:

If any badger setts are located within 30 metres of any development infrastructure, the infrastructure shall be moved. If infrastructure cannot be moved then a plan to construct replacement setts shall be prepared in consultation with NRW and submitted to and

approved by the Local Planning Authority. Alternative setts shall be constructed at least six months prior to exclusion.

As stated in the Letter from Aaron and Partners Solicitors (Reference DAH.KM.JPT.NJO2.8) dated 6th March 2017 this condition applies throughout the construction phase of the development and it is therefore not necessary or appropriate to discharge the condition at this time. Should an active badger sett be identified during the course of construction then the requirements of condition 42 will need to be complied with either through the moving of infrastructure or through closure of the sett under licence from NRW and the provision of a replacement sett.

In addition it has also been brought to my attention that my response dated 03/02/2017 did not confirm whether the information submitted to discharge condition 44 with regards to dormice was appropriate. I did review the submitted information but my assessment of the suitability to discharge the condition was missed out of the response in error.

Condition 44 Requires that –

No development shall commence until surveys to determine the presence of dormice on the site have been undertaken and provided to the Local Planning Authority and NRW. The results of the surveys and any necessary mitigation measures shall be prepared in consultation with NRW and submitted to and approved by the Local Planning Authority before any development commences. The approved mitigation measures shall be implemented as approved.

I have reviewed the information submitted by the applicant to discharge this condition which consists of:

- Bryn Blaen Wind Farm Hazel Dormouse Survey Report (ref no. CEN4157) by ADAS (Chris Forster Brown) dated December 2016

Having reviewed the information submitted with regards to Condition 44 I consider that the information submitted and measures identified are appropriate and sufficient to comply with the requirements of the conditions, in addition NRW have identified in their response dated 27th January 2017, that they consider the surveys and assessment to be satisfactory. I therefore consider that sufficient information has been submitted to enable discharge of Condition 43.

PCC Highways Department

*Consultation response received 13/03/2017*

I recommend that the highway conditions can now be discharged.

CPAT

Thank you for the various attached documents relating to condition 56.

I can confirm that all aspects of condition 56 (a-d) relating to archaeology have been submitted and approved and the condition has been fully complied with and can now be discharged.

## **Public Representations**

Six public representations of objection have been received at the time of writing this report. The objections relate to and can be summarised as follows:

- Incorrect information relating to Badgers
- Insufficient information relating to Ecology

## **Officer Appraisal**

### Section 38 (6) of the Planning and Compulsory Purchase Act 2004

Members are advised to consider this application in accordance with Section 38 (6) of the Planning and Compulsory Purchase Act 2004, which requires that, if regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts, the determination must be made in accordance with the plan unless material considerations indicate otherwise.

### Discharge of Conditions

#### *Ecology*

Natural Resources Wales and Powys County Council's Ecologist have been consulted on the discharge of conditions 9, 39, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50 and 51 which relate to protected species, biodiversity and ecological matters.

In light of the above consultation responses received from Natural Resources Wales and Powys County Council's Ecologist, it is recommended that conditions 9, 39, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50 and 51 of the application P/2014/1102 can be formally discharged as the information provided is considered to be acceptable and sufficient to discharge the above conditions.

#### *Highways*

Additionally, Powys County Councils Highways department have been consulted on the discharge of condition 33 as indicated above.

In light of the consultation response received from Powys Highways Department, it is considered that the information as provided is acceptable.

#### *Cultural Heritage*

CPAT have been consulted with respect to the discharge of condition 56 which requests for a scheme of works in relation to the Scheduled Ancient Monument be submitted to and approved in writing by the Local Planning Authority.

CPAT have reviewed the information and have confirmed that sufficient information has been submitted to satisfy condition 56.

### *Community Liaison*

The Local Planning Authority has also reviewed the information submitted with regards to condition 60. Information submitted provides details regarding representatives of the developer to contact to deal with complaints, liaising with local residents to keep them informed of how the development is progressing. It is considered that sufficient information has been submitted and it is recommended that condition 60 of the application P/2014/1102 can therefore be formally discharged.

### **RECOMMENDATION**

It is considered that sufficient information has been submitted to discharge conditions 9, 33, 39, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 56 & 60. It is recommended that conditions 9, 33, 39, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 56 & 60 are therefore discharged.

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

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Applicant: Brynblaen Windfarm Ltd

Location: Blaen y Glyn, Llangurig

