

Planning, Taxi Licensing and Rights of Way Committee Report

Application No:	P/2015/0803	Grid Ref:	277025.28 207387.59
Community Council:	Ystradgynlais	Valid Date:	Officer: 17/09/2015 Gemma Bufton
Applicant:	Ystalyfera Wind Energy Ltd		
Location:	Varteg Hill, Land South of Ystalyfera, Neath and Port Talbot.		
Proposal:	Construction and improvement of access track and improvement to the junction access point to serve wind farm comprising four wind turbines (with tip height upto 115m), internal access tracks, substation building, associated infrastructure		
Application Type:	Application for Full Planning Permission		

The reason for Committee determination

This application is accompanied by an Environmental Statement.

Site Location and Description

The application site is located within the Community Council area for Ystradgynlais. The access is sought off the County Class III Highway, C0199 which runs to the eastern boundary of the application site.

Consent is sought for the construction and improvement of access track and improvement to the junction access point to serve wind farm, internal access tracks, substation building and associated infrastructure.

It is noted that the actual siting of the wind turbines falls within Neath Port Talbot and therefore an application has been submitted to their Planning Authority for consideration.

Consultee Response

Ystradgynlais Town Council-

At its meeting held on Thursday 5th November 2015 the Ystradgynlais Town Council discussed the above application and resolved to comment as follows:

To offer an objection on the grounds that as it appears the proposed Wind Farm is not being sited within the refined Strategic Search Area it suggests that the application is contrary to the interim Planning Guidance for medium scale wind farm (NPTCBC) and therefore the need for the highway to serve the development can be regarded as unnecessary.

In addition the Rhos Common is an unlit section of road subject to poor visibility in bad weather and prone to encroachment and crossing by farm animals. A road junction on the common could prove to be an unacceptable potential hazard to users of this highway. It is also noted that planning application P/2015/0301 and P/2015/0343 were both recently been refused accesses onto this road and it would be consistent practice for this access road to be similarly refused.

Highway Authority-

The County Council as Highway Authority for the County Class III Highway, C0199

Wish the following recommendations/Observations be applied

Recommendations/Observations

This application should be refused.

Reasons for Refusal

Whilst this application will have little impact on the Powys Highway network I am aware that the point of access from the adopted highway is within Powys.

It is totally unacceptable to offer just 63m visibility to the north along the county class III road in an area where traffic regularly travels at the national speed limit of 60mph. A minimum of 215m visibility is required as demonstrated to the south.

Unless this visibility can be adequately provided the application represents a serious hazard to highway safety.

Welsh Water-

We have no comments to make on the above planning application.

Wales and West Utilities-

According to our mains records Wales and West Utilities has no apparatus in the area of your enquiry. However, Gas pipes owned by other GT's and also privately owned may be present in this area. Information with regard to such pipes should be obtained from the owners.

Safe digging practices, in accordance with HS(G) 47, must be used to verify and establish the actual position of mains, pipes, services and other apparatus on site before any mechanical plant is used. It is your responsibility to ensure that this information is provided to all persons (either direct labour or contractors) working for you on or near gas apparatus.

Natural Resources Wales-

NRW does not object to the proposed development subject to any planning consent incorporating the advice set out below.

Please do note that we will provide a separate consultation response to the application submitted to Neath Port Talbot for the remainder of the proposal which will include the wind farm.

Technical Appendix 6.4 of the ES is acknowledged which includes details of the Protected Species Baseline Surveys.

We advise that the improvement scheme is subject to a condition requiring the approval of an Ecological Method Statement, which gives consideration to all protected species including dormouse.

Bats

It is not considered that the proposal is not likely to be detrimental to the maintenance of the favourable conservation status of local bat populations.

Dormouse

The proposal includes the realignment of a small section of existing hedgerow.

The section of hedgerow that is to be removed must be replaced to ensure functionality for foraging and or dispersal purposes.

Given the limited working area of works, together with uncertainty in respect of the actual presence of dormouse within this hedgerow, we advise that any planning consent includes a condition requiring the approval of an Ecological Method Statement associated with the access improvement scheme includes provisions, based on Reasonable Avoidance Measure in respect of dormouse.

Subject to the imposition of the above mentioned planning condition it is not considered that the proposal is likely to be detrimental to the maintenance of the favourable conservation status of any extant dormouse populations.

Nesting Bird

We advise that you consult your internal ecologist with regards to the potential impact of the access improvement on nesting birds.

Biosecurity

Biosecurity is considered to be a material consideration. It is advised that the Ecological Method Statement associated with this component of the overall scheme includes prescriptions in respect of biosecurity. Such prescriptions should include (i) appropriate measures to control any INNS on site; and (ii) measures or actions that aim to prevent INNS being introduced to the site for the duration of development and restoration.

Protected Sites

The access improvement works required to serve the proposed wind farm which will include removal of hedgerow is to take place adjacent to Nant y Rhos SSSI.

It is considered unlikely due to the nature of the work that this development will have a significant adverse effect upon the protected species.

PCC Ecology-

Planning Application Reference	P/2015/0803
Project Name / Description	Construction and improvement of access track and improvement to the junction access point to serve wind farm comprising four wind turbines (with tip height upto 115m), internal access tracks, substation building, associated infrastructure At , Varteg Hill, Land South of Ystalyfera, , Neath and Port Talbot,
Consultation Deadline	29/09/2015

Ecological Topic		Observations
EIA Screening Requirement	Not applicable	The development as a whole falls within Schedule 2 of the Town and Country Planning (Environmental Impact Assessment) (England & Wales) Regulations 1999. Following a Screening Opinion in August 2011 an Environmental Statement has been completed and submitted with the planning application.
Protected Species & Habitats ¹	European Species <input checked="" type="checkbox"/>	<p>The following information, suggestions and conditions are based on as review of the details provided in Chapter 6 of the submitted Environmental Statement.</p> <ul style="list-style-type: none"> • One medium – high potential roost building in Farteg Isaf, adjacent to the proposed access corridor, but direct impacts on this building unlikely. • Nine trees of moderate – high potential for roosting bats, mostly adjacent to the proposed access track. However, these trees understood to be retained so no significant impacts have been predicted. • No direct impacts on flightlines or commuting routes used by bats as no tree or hedgerow removal proposed for the access tracks. Disturbance during construction unlikely as construction limited to times of day when bats are inactive.

¹ Species records within 1km (minimum). Change distance dependant on project type, scale, etc.

		<ul style="list-style-type: none"> • Peregrine Falcon breed on cliffs 80m away from the proposed access track and are therefore at risk of disturbance during the construction phase. Sensitive timing of works within 500m of the nest is required. • Red Kite breed within 3km of the site and are at risk of disturbance during the construction phase.
	UK Species <input checked="" type="checkbox"/>	<ul style="list-style-type: none"> • Evidence of Badgers recorded in the vicinity of the access track, but no setts. • Variety of breeding bird species recorded throughout the site, including the access corridor are at risk of loss of disturbance during construction, loss of foraging/breeding habitat and displacement by the new access track.
	Sect. 42 Species & Habitat <input checked="" type="checkbox"/>	Dry Heath/Acid Grassland, Broadleaved Woodland and Watercourses in the form of a ditch are Habitats of Principal Importance present in the vicinity of the proposed access track. Nightjar is a Species of Principal Importance and has been recorded nesting in the vicinity of the access track.
	LBAP Species & Habitat <input checked="" type="checkbox"/>	Coniferous woodland has a Habitat Action Plan within the Powys LBAP. Nightjar and Red Kite have Species Action Plans within the Powys LBAP. Peregrine is a species of conservation concern on the Powys LBAP, as are various other breeding bird species recorded at the site.
Protected Sites	International Sites (within 2km) ² <input type="checkbox"/>	No SACs within 2km. No SPAs within 5km – the closest SPA for breeding raptors is over 30km to the north.
	National Sites (within 500m) ³ <input checked="" type="checkbox"/>	Nant y Rhos SSSI is within 100m of the access junction. No impacts on this site are anticipated.

² Identify International designated site within 2km of the proposals. Consider International sites within 15km of proposals with bats as qualifying features, and 10km with otters as qualifying features if the proposal is likely to affect these features.

³ Any designated sites within 500m of the proposal, extending to 2km dependant on features of interest i.e. wetlands (Powys LDP)

	Local Sites (within 500m) <input type="checkbox"/>	None within 500m.
Invasive Non-Native Species	No	None recorded within the site.
Cumulative Effect	No	This application forms part of a larger application to provide four wind turbines and associated infrastructure. The cumulative effect of the whole development with other developments within 10km has been considered in the ES that has been submitted. No significant cumulative effects on biodiversity have been identified.
Summary of recommendations / further assessment or work		<p>1) Paragraphs 6.6.26 and 6.6.28 (Chapter 6, Environmental Statement) refer to the main bird breeding season as being March to July inclusive. To accord with RSPB and Powys County Council guidance I suggest that this is extended up to the end of August.</p> <p>2) Paragraph 6.6.6 (Chapter 6, Environmental Statement) proposes agreement of mitigation requirements with Neath CBC, but does not mention the inclusion of Powys CC. I suggest that Powys CC is involved in agreeing mitigation requirements for the element of the development that falls within the Powys unitary boundary.</p>
Recommended Conditions		<p>Should you be minded to approve this application, I recommend the inclusion of the following conditions:</p> <p>1) <i>The recommendations and mitigation measures proposed in Section 6.6 (Mitigation) and summarised in Table 6.2.4 of Chapter 6 of the Environmental Statement shall be adhered to and implemented in full unless otherwise agreed in writing with the LPA.</i></p> <p><u>Reason:</u> To comply with Powys County Council's UDP Policies SP3, ENV3 and ENV7 in relation to The Natural Environment and to meet the requirements of Planning Policy Wales (Edition 7, July 2014), TAN 5: Nature Conservation and Planning and the NERC Act 2006.</p>

		<p>2) <i>Mature Oak and Ash trees that are retained alongside the access track shall be protected from being damaged during the construction works in accordance with BS 5837:2012.</i></p> <p><u>Reason:</u> To comply with Powys County Council's UDP Policies SP3 and ENV3 in relation to The Natural Environment and to meet the requirements of Planning Policy Wales (Edition 7, July 2014), TAN 5: Nature Conservation and Planning and the NERC Act 2006.</p> <p>3) <i>Prior to commencement of development the Site-specific Ecological Mitigation Strategy referred to in Paragraph 6.6.3 (Chapter 6, Environmental Statement) shall be submitted to the Local Planning Authority and implemented as approved and maintained thereafter unless otherwise agreed in writing with the LPA.</i></p> <p><u>Reason:</u> To comply with Powys County Council's UDP Policies ENV3, ENV5 and ENV7 in relation to The Natural Environment and to meet the requirements of Planning Policy Wales (Edition 7, July 2014), TAN 5: Nature Conservation and Planning and the NERC Act 2006.</p> <p>4) <i>Prior to commencement of development the Pre-construction Ecological Mitigation Strategy referred to in Paragraph 6.6.5 (Chapter 6, Environmental Statement) shall be submitted to the Local Planning Authority and implemented as approved and maintained thereafter unless otherwise agreed in writing with the LPA.</i></p> <p><u>Reason:</u> To comply with Powys County Council's UDP Policies ENV3, ENV5 and ENV7 in relation to The Natural Environment and to meet the requirements of Planning Policy Wales (Edition 7, July 2014), TAN 5: Nature Conservation and Planning and the NERC Act 2006.</p> <p>5) <i>Prior to commencement of development the Habitat Management Plan referred to in Paragraph 6.6.13 (Chapter 6, Environmental Statement) shall be submitted to the Local Planning Authority and implemented as approved and maintained thereafter unless otherwise agreed in writing with the LPA.</i></p>
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	<p>Reason: To comply with Powys County Council's UDP Policies ENV3, ENV5 and ENV7 in relation to The Natural Environment and to meet the requirements of Planning Policy Wales (Edition 7, July 2014), TAN 5: Nature Conservation and Planning and the NERC Act 2006.</p> <p>Informatives</p> <p><i>Birds - Wildlife and Countryside Act 1981 (as amended)</i></p> <p>All nesting birds, their nests, eggs and young are protected by law and it is an offence to:</p> <ul style="list-style-type: none"> intentionally kill, injure or take any wild bird intentionally take, damage or destroy the nest of any wild bird whilst it is in use or being built intentionally take or destroy the egg of any wild bird intentionally (or recklessly in England and Wales) disturb any wild bird listed on Schedule 1 while it is nest building, or at a nest containing eggs or young, or disturb the dependent young of such a bird. <p>The maximum penalty that can be imposed - in respect of a single bird, nest or egg - is a fine of up to 5,000 pounds, six months imprisonment or both.</p> <p>The applicant is therefore reminded that it is an offence under the Wildlife and Countryside Act 1981 (as amended) to remove or work on any hedge, tree or building where that work involves the taking, damaging or destruction of any nest of any wild bird while the nest is in use or being built, (usually between late February and late August or late September in the case of swifts, swallows or house martins). If a nest is discovered while work is being undertaken, all work must stop and advice sought from Natural Resources Wales and the Council's Ecologist.</p> <p>Bats - Wildlife & Countryside Act 1981 (as amended) and The Conservation of Habitats and Species Regulations 2010 (as amended)</p> <p>It is an offence for any person to:</p> <ul style="list-style-type: none"> Intentionally kill, injure or take any bats.
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	<ul style="list-style-type: none"> Intentionally or recklessly damage, destroy or obstruct access to any place that a bat uses for shelter or protection. This is taken to mean all bat roosts whether bats are present or not. Under the Habitats Regulations it is an offence to: Damage or destroy a breeding site or resting place of any bat. This is an absolute offence - in other words, intent or recklessness does not have to be proved. <p>The applicant is therefore reminded that it is an offence under the Wildlife and Countryside Act 1981 (as amended) and The Conservation of Habitats and Species Regulations 2010 (as amended) that works to trees or buildings where that work involves the disturbance of a bat is an offence if a licence has not been obtained from Natural Resources Wales. If a bat is discovered while work is being undertaken, all work must stop and advice sought from Natural Resources Wales and the Council's Ecologist. You can also call the National Bat helpline on 0845 1300 228 or email enquiries@bats.org.uk</p>
Relevant UDP Policies	<p>UDP SP3 – Natural, Historic and Built Heritage Policy E3 – Wind Power Policy Env 3 – Safeguarding biodiversity and natural habitats Policy Env 5 – Nationally important sites Policy Env 7 – Protected Species</p>

Document Author	Chris Jones	Approved by	Rhydian Roberts
		Approved Date	19/10/2015

The application site falls within the defined Development High Risk Area, therefore within the application site and surrounding area there are coal mining features and hazards which need to be considered in relation to the determination of this planning application.

The Coal Authority is a non-departmental public body sponsored by the Department of Energy and Climate Change. As a statutory consultee, the Coal Authority has a duty to respond to planning applications and development plans in order to protect the public and the environment in mining areas.

The Coal Authority Response- Material Consideration

The application site falls within the defined Development High Risk Area; therefore within the application site and surrounding area there are coal mining features and hazards which need to be considered in relation to the determination of this planning application.

The Coal Authority records indicate that four mine entries (shafts and adits) are located within or within 20 metres of the application site boundary and that the site has been subject to past surface mining operations. Our records also indicate that the site has been subject to historic recorded underground shallow coal mining and is likely to have been subject to historic unrecorded underground shallow coal mining associated with coal which outcropped across the site.

The applicant has obtained appropriate and up-to-date coal mining information which has been used to inform Chapter 8 of the Environmental Statement (Undated, prepared by West Coast Energy Ltd), which accompanies the planning application.

Based on this review of existing mining information, the Report correctly identifies the risks to the development posed by coal mining legacy. Whilst the site layout does appear to have been informed by the coal mining legacy of the site, with all the turbines being located outside of the defined Development High Risk Area, the Coal Authority welcomes the commitment made within Table 8.12, which confirms that further investigations will be undertaken to identify any necessary mitigation.

The Coal Authority Recommendation the LPA

The Coal Authority concurs with the recommendations made within Table 8.12 of the Environmental Statement (Undated, prepared by West Coast Energy Ltd); that coal mining legacy features potentially pose a risk to both public safety and the stability of the proposed development (excluding the wind turbines). Consequently, intrusive site investigation works should be undertaken in order to establish the exact situation regarding them and to identify any appropriate mitigation.

The Coal Authority is therefore able to recommend that the LPA impose a planning condition should planning permission be granted to the proposed development requiring site investigation works prior to commencement of development.

In the event that the site investigations confirm the need for remedial works to the mine entries beneath any parts of site where development is proposed, this should be conditioned to ensure that the site layout is amended to avoid it. The condition should also ensure that any remedial works identified by the site investigation to consolidate any shallow mine

workings/ unconsolidated opencast backfill are undertaken prior to commencement of development.

A condition should therefore require prior to the commencement of development;

- The submission for approval of a remediation scheme to afford public safety and the stability of the proposed access tracks from the risks posed by the recorded mine entries (shafts and adits);
- The submission of a scheme of intrusive site investigations
- The undertaking of that scheme of intrusive site investigations
- The submission of a report of findings arising from the intrusive site investigations
- The submission of a scheme of remedial works for approval; and
- Implementation of those remedial works.

The Coal Authority therefore has no objections to the proposed development subject to the imposition of a condition or conditions to secure the above.

Public Response

Eleven letters of objections have been received at the time of writing this report. The letters can be summarised as follows:

- Noise
- Flicker
- Light Pollution from lights
- Impact to users of footpaths
- Not efficient energy
- Impact on birds
- Visual impact
- Impact on Residential amenity
- Impact on Highway Network

Planning History

None

Principal Planning Policies

National Policies

Planning Policy Wales (Edition 9, November 2016)

Technical Advice Note 5- Nature Conservation and Planning (2009)

Technical Advice Note 8- Renewable Energy (2005)

Technical Advice Note 11- Noise (1997)

Technical Advice Note 12 – Design (2016)

Technical Advice Note 13- Tourism (1997)

Technical Advice Note 18 – Transport (2007)

Technical Advice Note 20- Planning and the Welsh Language (2017)

Technical Advice Note 23 – Economic Development (2014)
Technical Advice Note 24- The Historic Environment (2017)

Welsh Government Circular 016/2014: The Use of Conditions

Welsh Office Circular 10/99: Drainage

Local Policies

Unitary Development Plan (March 2010)

SP3 – Natural, Historic and Built Heritage
SP4- Economic and Employment Developments
SP12- Energy Conservation and Generation
GP1 – Development Control
GP3 – Design and Energy Conservation
GP4 – Highway and Parking Requirements
ENV2 – Safeguarding the Landscape
ENV3 – Safeguarding Biodiversity and Natural Habitats
ENV4- Internationally Important Sites
ENV5- Nationally Important Sites
ENV6- Sites of Regional and Local Importance
ENV7- Protected Species
TR2- Tourist Attractions and Development Areas
DC9- Protection of Water Resources
DC13 – Surface Water Drainage
DC15- Development on Unstable or Contaminated Land
RL6- Rights of Way and Access to the Countryside
E3- Wind Power

RDG=Powys Residential Design Guide NAW=National Assembly for Wales TAN= Technical Advice Note UDP=Powys Unitary Development Plan, MIPPS=Ministerial Interim Planning Policy Statement

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.

Principle of Development

Consent is sought under this application for the construction and improvement to existing trackway and access for a proposed wind farm for the erection of four wind turbines the latter of which is located within the Neath Port Talbot Council boundary.

The proposed development under consideration is the construction and improvement of access track and improvement to the junction access, internal access tracks, substation building and associated infrastructure.

Policy GP4 of the Unitary Development Plan seeks to ensure that planning permission will be dependent upon adequate provision for access including visibility, turning and parking. The proposed access for the wind farm is sought off the County Class III highway, C0199.

The Highway Authority has been consulted and notes that whilst the application would have little impact on the Powys Highway network given the proposed routing plan for the delivery of the turbines, the point of access itself is however located within Powys. The Officer notes that a visibility splay of only 63 metres in the northerly direction is provided on the County Class III highway where traffic regularly travels at the national speed limits of 60mph. In this instance they therefore confirm that a minimum of 215 metres visibility is required. The Officer concludes that until the visibility can be adequately provided the application would represent a serious hazard to highway safety. This was raised with the agent who confirmed that they would not be submitting any additional information in support of the application.

In light of the above it is considered that the proposed development is contrary to relevant planning policy relating to highway safety.

Landscape and Visual Impact

Development proposals should be designed in a way to be sensitive to the character and appearance of the surrounding area and landscape. The proposed development under consideration for this application is for the provision of a new access and track. It is considered that the landscape and visual impact from these proposed works would be minimal given the low nature of the works proposed. It is therefore considered that the proposed development fundamentally complies with relevant planning policy.

Biodiversity

An Environmental Statement has been submitted in support of the application in which Chapter 6 'Ecology and Ornithology Assessment' considers the potential impact of the development upon biodiversity features. The Ecologist and NRW have been consulted and both have raised no objection to the proposed development subject to recommended conditions and concluded that no significant cumulative effects on biodiversity have been identified. Subject to the recommended conditions it is considered that the proposed development fundamentally complies with relevant planning policy.

Coal Authority

The Coal Authority have been consulted and have confirmed that the application site falls within the defined 'Development High Risk Area' which means within the application site and surrounding area there are coal mining features and hazards. The Environmental Statement table 8.12 recommends that an intrusive site investigation should be undertaken. The Coal Authority concurs with this recommendation and recommends a condition. The Coal Authority therefore has no objection to the proposed development subject to an appropriately worded condition.

Public Representations

It is noted that a number of objections have been received at the time of writing this report. It is considered that the majority of the concerns expressed that have not already been addressed within this report regard impacts of the wind turbines rather than the access and track as proposed under this application and therefore whilst considered, carry little to no weight with regards to this application.

Other Legislative Considerations

Crime and Disorder Act 1998

Section 17(1) of the Crime and Disorder Act 1998 imposes a duty on the Local Authority to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area. This duty has been considered in the evaluation of this application. It is considered that there would be no significant or unacceptable increase in crime and disorder as a result of the proposed decision.

Equality Act 2010

The Equality Act 2010 identifies a number of ‘protected characteristics’, namely age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; sexual orientation; marriage and civil partnership.

Having due regard to advancing equality involves:

- removing or minimising disadvantages suffered by people due to their protected characteristics;
- taking steps to meet the needs of people from protected groups where these differ from the need of other people; and
- encouraging people from protected groups to participate in public life or in other activities where their participation is disproportionately low.

The above duty has been given due consideration in the determination of this application. It is considered that there would be no unacceptable impact upon persons who share a protected characteristic, over and above any other person, as a result of the proposed decision.

Planning (Wales) Act 2015 (Welsh language)

Section 31 of the Act clarifies that impacts on the Welsh language may be a consideration when taking decisions on applications for planning permission so far as it is material to the application. This duty has been given due consideration in the determination of this application. It is considered that there would be little to no effect upon the use of the Welsh language in Powys as a result of the proposed decision.

Wellbeing of Future Generations (Wales) Act 2015

Section 3 of the Act imposes a duty on public bodies to carry out sustainable development in accordance with the sustainable development principle to act in a manner which seeks to ensure that the needs of the present are met without compromising the ability of future

generations to meet their own needs (Section 5). This duty has been considered in the evaluation of this application. It is considered that the proposed development is in accordance with the sustainable development principle through its contribution towards the well-being objectives.

RECOMMENDATION

It is considered that the proposed development would be detriment to highway safety. The recommendation is therefore one of refusal.

Environmental Impact information has been taken into consideration when processing this application.

Reasons

1. Insufficient information has been submitted within the Environmental Statement to demonstrate that the proposed development would not have an unacceptable impact on highway safety. The proposed development is therefore contrary to policy GP4 of the Unitary Development Plan, Technical Advice Note 18: Transport (2007) and Planning Policy Wales (Edition 9, 2016).

Case Officer: Gemma Bufton- Principal Planning Officer
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