

Adroddiad

Ymchwiliad a gynhaliwyd ar 11-14/03/14;
20/03/13; 19/11/14

Ymweliad â safle a wnaed ar 18/12/12;
10/03/14; 14/03/14; 18/11/14

gan Mrs Helen Slade MA FIPROW

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 24/02/15

Report

Inquiry held on 11-14/03/14; 20/03/14;
19/11/14

Site visit made on 18/12/12; 10/03/14;
14/03/14; 18/11/14

by Mrs Helen Slade MA FIPROW

an Inspector appointed by the Welsh Ministers

Date: 24/02/15

**Erection of Anemometer mast (temporary), 16 Wind Turbine Generators and
associated development**

**Mynydd y Gwair, Banc John, Banc Maestir Mawr, Mynydd Pysgodlyn, Graig-y-
Bedw, Pentwyn Mawr, Banc Myddfai, Garn Fach, Banc Darren Fawr, Goppa
Hill and Bryn Bach Commons**

Community of Mawr, Swansea,

Section 16 Commons Act 2006: Deregistration and Exchange of Common Land

Section 38 Commons Act 2006: Consent for works on Common Land

Cyf ffeil/File ref: APP/B6855/X/2012/515645
Cyf ffeil/File ref: APP/B6855/X/2013/515872
Cyf ffeil/File ref: APP/B6855/X/2013/515873
Cyf ffeil/File ref: APP/B6855/X/2013/515874
Cyf ffeil/File ref: APP/B6855/X/2013/515875
Cyf ffeil/File ref: APP/B6855/X/2013/515876

File Ref: APP/B6855/X/2012/515645

'Application A'

Site address: Land at Mynydd Pysgodlyn, part Graig-y-Bedw, Pentwyn Mawr, Banc Myddfai, Garn Fach, Banc Darren Fawr¹, Swansea

Common Land Unit: CL74

■ The application was made for consent under Section 38 of the Commons Act 2006.

■ The application is made by RWE Innogy UK Ltd.

■ The application affects 150 sq metres.

■ The work proposed is the erection of a temporary meteorological anemometry mast and associated fencing.

■ Thirty two objections were received in response to the Notice of the application.

Summary of Recommendation: I recommend that consent be granted.

File Ref: APP/B6855/X/2013/515872

'Application B'

Site address: Land at Goppa Hill and part Craig-y-Bedw², Swansea

Common Land Unit: CL68

■ The application was made for consent under Section 38 of the Commons Act 2006.

■ The application is made by RWE Innogy UK Ltd.

■ The application affects a total of 2.45 hectares on a temporary basis, and 0.77 hectares on a permanent basis.

■ The work proposed is the surfacing and improvement of the proposed access route (to the proposed wind farm) including associated retaining structures, gates, cattle grids and temporary fencing.

■ Over 200 objections were received in response to the Notice of the application.

Summary of Recommendation: I recommend that consent be not granted.

File Ref: APP/B6855/X/2013/515874

'Application C'

Site address: Mynydd Pysgodlyn, part Graig-y-Bedw, Pentwyn Mawr, Banc Myddfai, Garn Fach, Banc Darren Fawr, Swansea

Common Land Unit: CL74

■ The application was made for an Order under Section 16 of the Commons Act 2006.

■ The application is made by RWE Innogy UK Ltd.

■ The proposal is to deregister 26.36³ hectares of common land at CL74 required for the construction of 9 wind turbines, meteorological mast, sub-station, access tracks and construction compound, and associated development, in exchange for 8.46 hectares of replacement land at Blaen Gerdinen, Felindre, Swansea.

■ Over 200 objections were received in response to the Notice of the application.

Summary of Recommendation: I recommend that an Order be not made.

¹ For the avoidance of doubt, the names and descriptions of all the Common Land Units are taken from the entries in the Common Land Register, regardless of how they are spelt in the applications

² Spelling taken from Common Land Register but assumed to be other part of Graig-y-Bedw as shown in Common Land Unit CL74

³ This figure was corrected at the inquiry by the applicants from 26.24 hectares

File Ref: APP/B6855/X/2013/515873

'Application D'

Site address: Land at Mynydd y Gwair, Banc John and Banc Maestir Mawr, Swansea

Common Land Unit: CL77

The application was made for an Order under Section 16 of the Commons Act 2006.

The application is made by RWE Innogy UK Ltd.

The proposal is to deregister 8.19 hectares of common land at CL77 required for the construction of 7 wind turbines and associated development, in exchange for 10.98 hectares of replacement land at Blaen yr Olchfa Fach, Craig Cefn Parc, Swansea.

Over 200 objections were received in response to the Notice of the application.

Summary of Recommendation: I recommend that an Order be not made.

File Ref: APP/B6855/X/2013/515875

'Application E'

Site address: Land at Mynydd Pysgodlyn, part Graig-y-Bedw, Pentwyn Mawr, Banc Myddfai, Garn Fach, Banc Darren Fawr, Swansea

Common Land Unit: CL74

The application was made for consent under Section 38 of the Commons Act 2006.

The application is made by RWE Innogy UK Ltd.

The application affects 900 sq metres.

The development proposed is the erection of temporary fencing around Scheduled Ancient Monument GM202 (Penlle'r Bebyll Cairn).

Over 200 objections were received in response to the Notice of the application.

Summary of Recommendation: I recommend that consent be not granted.

File Ref: APP/B6855/X/2013/515876

'Application F'

Site address: Land at Mynydd y Gwair, Banc John and Banc Maestir Mawr, Swansea

Common Land Unit: CL77

The application was made for consent under Section 38 of the Commons Act 2006.

The application is made by RWE Innogy UK Ltd.

The application affects 144 sq metres.

The development proposed is the erection of temporary fencing around Archaeological Monument MG62 (Circular mound).

Over 200 objections were received in response to the Notice of the application.

Summary of Recommendation: I recommend that consent be not granted.

Abbreviations/terminology

AONB	Area of Outstanding Natural Beauty
BG	Replacement land at Blaen Gerdinen
ByrO	Replacement land at Blaen yr Olchfa
Cadw	The Welsh Government's Historic Environment service
CCW	Countryside Council for Wales (now NRW)
CL	Common Land (followed by unit number on the CLR where relevant)
CLR	Common Land Register
CRA	The Commons Registration Authority (the Council of the City and County of Swansea)
CMS	Construction Method Statement
EMP	Environmental Management Plan
ES	Environmental Statement
GGAT	Glamorgan-Gwent Archaeological Trust
GS	Gower Society
HMP	Habitat Management Plan
HRP	Habitat Restoration Plan
LPA	Local Planning Authority (the Council of the City and County of Swansea)
MyB	Mynydd y Betws
MyG	Mynydd y Gwair
NRW	Natural Resources Wales (formerly CCW)
OSS	Open Spaces Society
RWE	RWE Innogy UK Ltd (Formerly RWE NPower renewables) – the applicants
SAM	Scheduled Ancient Monument
SINC	Site of Importance for Nature Conservation
SMP	Species Monitoring Plan
SOCME	Save Our Common Mountain Environment, the principal objectors at the inquiry
UU	Unilateral Undertaking
WGCA	West Glamorgan Commoners Association
'the Council'	The Council of the City and County of Swansea
'the 1990 Act'	Town and Country Planning Act 1990
'the 2006 Act'	Commons Act 2006
References in the report in BOLD refer to inquiry documents (listed at the end of the Report)	

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Preliminary Matters

The Applications

1. I originally visited the area in December 2012 in connection with Application A in respect of the temporary anemometer mast. At that site visit, which was attended by representatives of RWE, the WGCA and County Councillor Ioan Richard, it became apparent that the applicants had not fully complied with the relevant regulations in respect of the consultations that were required. I therefore requested that the necessary procedures be fulfilled by RWE before determining the matter. At that stage I had been appointed by the Welsh Ministers to make the decision.
2. During the time taken to correctly re-advertise Application A, the situation changed significantly. On 11 September 2012 a revised planning application for 16 wind turbines and associated works at MyG Wind Farm was registered by the LPA (Reference 2012/1221). The related applications for Orders and Consents under the 2006 Act were made to the Planning Inspectorate on 20 December 2013⁴. At the time the applications under the 2006 Act were made, the planning permission remained to be determined.
3. A previous permission for 19 turbines on the same site had been refused by the Welsh Ministers on 21 February 2011 following an inquiry held in July and August of 2010 by Inspector Stuart Wild⁵. Inspector Wild also considered five associated applications made with regard to works on common land. It should be noted that Inspector Wild considered the commons applications under Section 147 of the Inclosure Act 1845 and Section 194 of the Law of Property Act 1925. The legislation under which such applications are made has subsequently changed and the criteria I am considering are therefore different (see Statutory Requirements below at paragraphs 138 to 147).
4. Planning permission for the MyG Wind Farm was finally granted by the Council on 10 March 2014, the day before my inquiry opened. The permission is subject to a large number of detailed conditions running to 38 in total and is also accompanied by an agreement under Section 106 of the Town and Country Planning Act 1990. A copy of the permission and associated documents can be found at **RWE4**.
5. The responsibility for making decisions for applications for the deregistration and exchange of common land under Section 16 of the 2006 Act remains with the Welsh Ministers and, as a consequence, the jurisdiction for all the related applications under the 2006 Act was recovered by the Ministers, so that they could be considered together.
6. This report therefore covers all six applications, including the original application for a temporary anemometer mast. Although each application has been considered on its own merits, and individual recommendations made accordingly, I have considered Applications C and D together as it is more practical to do so. With

⁴ Later amendments have since been made

⁵ APP/B6855/A/09/2114013

respect to all the applications, where it is necessary and appropriate to do so, I have had regard to the related applications in assessing the impact on the criteria I need to consider in each case.

7. With respect to Application A, although 32 objections were made during the statutory re-advertisement period, no-one at the inquiry made any specific case either in support of, or against, the erection of the temporary anemometer mast in question. I sought the opinions of the parties present and it was agreed that I should rely on the written representations on file in reaching a recommendation on this application. The documentation in connection with this matter can be found in **CD95-112** and **TAM1-3**.

The Inquiry

8. Over 200 people objected to Applications B – C during the statutory period, including SOCME, a local community group with approximately 330 members, and H Byron Davies AM, the Regional Assembly Member for South West Wales and Shadow Minister for Transport and Regeneration, European Affairs and Whip. It was therefore appropriate for a public local inquiry to be held. For this inquiry, SOCME brought together a number of individuals and organisations willing to speak and give evidence on their own behalf and on behalf of the organisations to which they belonged. Other objectors appeared and spoke in their own right. The applicants were represented by Mr Marcus Trinick QC who called two witnesses.
9. I opened the inquiry on 11 March 2014 at the Dylan Thomas Centre in Swansea. It was not possible to complete the inquiry in the time available but, after adjourning, I carried out an accompanied site visit on the afternoon of Friday 14 March, attended by Mr Glyn Morgan, Mrs Sue Morgan, Mrs Brigitte Rowlands and Councillor Richard (for the objectors) and Mr Christopher Hadley (on behalf of the applicants).
10. The inquiry resumed on Thursday 20 March 2014 so that I could hear closing submissions, but it became apparent that there were aspects of the planning permission, the Section 106 Agreement and both the Unilateral Undertakings (one of which was submitted to me at the opening of the first inquiry and the second of which was submitted the day before the inquiry resumed) which were either so imprecise as to cause confusion as to their meaning (particularly Condition 33 of the planning permission) or inaccurate so as to render the documents invalid (incorrect cross referencing, for example). Furthermore, none of the objectors had seen the second Unilateral Undertaking ('UU'), signed and dated copies only being made available to the inquiry on the day I resumed. Since the UU directly related to the proposed management of the replacement land it was a material consideration in determining the applications and needed to be fully examined.
11. A request was made by RWE to adjourn the inquiry so that the defects and anomalies could be rectified. The objectors, whilst wishing to conclude the matter as soon as possible, recognised that it was in the interests of all parties that the matter be determined once and for all. It was therefore agreed by all parties to further adjourn the inquiry to allow the documentation to be corrected and for a full consultation with the objectors to take place before resuming so that I could hear

closing submissions. It was anticipated that this would allow for all matters to be fully dealt with and for the inquiry then to be closed.

12. The inquiry resumed on 19 November 2014 at the same venue. During the intervening period the applicants had prepared a new UU and sought to discharge the two earlier ones. The revised UU had been circulated to the principal parties⁶ and comments and responses had been made in writing prior to the inquiry resuming. Despite significant changes to the UU I was able to hear the responses to it and to hear views on issues where there continued to be disagreement, before hearing closing submissions. I closed the inquiry at the end of that same day.
13. At the resumed inquiry, it was agreed that a slight modification to the UU (Paragraph 7.2(a) of the Schedule) in respect of public access would be desirable. This change was subsequently made, and the signed and dated document (**RWE9**) was forwarded to me after the close of the inquiry by agreement. It was circulated to all the principal parties for information only, there being no other changes to it.

BACKGROUND

The Application Site and Surroundings

14. I carried out a full unaccompanied site visit on 10 March 2014 when the weather was warm and sunny throughout the day. I visited the sites affected by all the applications, including the replacement land, although I was unable on that occasion to actually walk over the proposed replacement land at ByrO, as permission to access the land was not clear to me. Neither did I walk over the replacement land at BG. I was, however, able to view much of the proposed replacement land from adjacent higher ground in both cases. I was also able to visit the adjacent, now operational, wind farm at Mynydd y Betws for comparison purposes. During the accompanied site visit (unfortunately undertaken in foggy conditions) I did walk across all the replacement land at ByrO but I did not consider it necessary to actually walk over the land at BG as it could be easily viewed from the perimeter, despite the weather conditions.
15. On 18 November 2014 I was able to return to the site, unaccompanied, when the weather was again sunny and the visibility clear. I made use of a track which I had been invited to use on the previous occasion, but which I had not taken advantage of at that time due to the foggy conditions. The track provides a route to a good vantage point on Mynydd Garn-Fach overlooking the area on which it is proposed to site the actual wind turbines. I was therefore able to get a good impression of the majority of the intended operational site.
16. The majority of the application site as a whole is grazed moorland, registered as common land and owned by the Somerset Trust. The commons affected by the proposal are CL68 (Goppa Hill) with a total area of 86 hectares; CL74 (Mynydd Pysgodlyn) with a total area of 837 hectares, and CL77 (Mynydd y Gwair) with a total area of 876 hectares. The commons are subject to grazing rights as set out in the CLR and summarised in **RWE3**. These rights are attached to a very large

⁶ Except for Councillor Ioan Richards and Mr and Mrs Carter; an oversight which was rectified at the inquiry

number of properties, but not all of them are exercised. Nevertheless, a significant number of graziers (120 according to SOCME) do turn out their animals onto the commons in exercise of their rights. The rights relate principally to sheep, cattle and horses or ponies, but other rights exist in relation to rights of estover⁷ and rights of taking bracken or fern for bedding. The flocks of sheep and cattle turned out onto the common largely keep to traditional areas to which they are accustomed which are called 'hefts'. There are no physical boundaries to these areas, but the stock is restrained by learned behaviour patterns.

17. The main part of the application site is located on the south facing slopes of MyG and Pentwyn Mawr (to which I will refer collectively as MyG), on land which rises to approximately 360m above sea level. It is part of a generally open upland area between Ammanford and the northern outskirts of Swansea. It lies close to the boundaries of Carmarthenshire and Neath Port Talbot and is about 5 kilometres to the south west of the boundary to the Brecon Beacons National Park. The whole of the application site now lies within Banc Darren Fawr SINC, the designation of the site having been verified on 31 March 2013, after planning permission was granted and whilst my inquiry was in adjournment.
18. The route of the proposed access road passes across a narrow strip of common land to the north-east of Pontarddulais, and then across an area which opens out to form a more extensive moorland area adjacent to the west side of the Lliw Reservoir. Both the reservoir and its adjacent woodland are surrounded by the application site and are visible from much of the northern part of the application site. The access route would utilise, in part, existing public roads, which would need to be widened in places and which themselves pass across the registered common land.
19. The views from the application site are wide-ranging and extensive: from beyond Swansea Bay and the Gower Peninsular to the south-west; to Port Talbot and the coast towards Porthcawl in the south-east; towards the Black Mountains and the Brecon Beacons to the east; north over Camarthen and Ceredigion, and west towards Pembrokeshire. In addition the views within the site itself are varied, encompassing undulating uplands; the valleys of several small watercourses; the Lliw Reservoir and its surroundings; and some isolated farmsteads and small communities. Photographs of the site and its surroundings are contained in Appendix 3 of the introductory proof of evidence of Mr Glyn Morgan on behalf of the objectors (**SOCME1**), and in Figures 6.8(a-x) in Volume 3 of the ES (**CD20**) submitted by the applicants. The site is also crossed by a number of public rights of way and other recreational routes, some of which are long-distance routes (The Gower Way and St Illtyd Way). In particular, the site is dissected by the Lliw Valley Walk, a local recreational route taking in the Upper Lliw Reservoir and the ancient monument Penlle'r Castell (GM255)⁸. Figure 14.1 of Volume 3 of the ES (**CD20**) depicts these features. Several heritage assets lie within, and adjacent to, the application site. Some of these are SAMs but only two of these have been identified by the applicants to lie within the immediate sphere of the application

⁷ The right to gather wood for fuel

⁸ This particular monument does not lie within the application site

site itself (Penlle'r Bebyll Cairn (GM202) and an earthwork identified as MG62). These can be seen on Figures 7.1 to 7.2 in Volume 3 of the ES (**CD20**).

20. All three commons affected by these applications are subject to rights of access by the public for air and exercise pursuant to Section 193 of the Law of Property Act 1925. These rights are subject to an Order of Limitations, prepared under the provisions of the same Act, which was made by the Secretary of State for Wales on 14 May 1974 on the application of the WGCA. A copy of the Order can be found at **CD19**.
21. Within the general boundaries of the three commons are some small areas which are excluded from the CLR. These mainly comprise dwellings and associated land, some of which are small agricultural holdings. These small areas are not all identified on the application maps, but can be seen by reference to the CLR maps contained in **CDs 9, 11 and 14**. None of these small areas is directly affected by the proposed development, but some of them benefit from rights of common and most (if not all) of them derive their water supply from the ground water system.

Planning History

22. There are two planning permissions which relate to the applications under the 2006 Act. One of these relates to Application A – the temporary anemometer mast – and one relates to the remainder of the applications in connection with the MyG Wind Farm itself.
23. The temporary anemometer mast (proposed to be located at National Grid Reference SN663092) was first granted permission by the LPA on 10 August 2011. That permission (LPA reference 2011/0201) allowed the temporary erection – for a period of 2 years – of an anemometer mast and was valid for a limited period, expiring two years from the date of the decision notice. By the end of the two year period the mast had to be removed from the site and the land reinstated in accordance with a scheme to be agreed with the LPA. It thus expired in August 2013, no work having been undertaken by that time.
24. Permission for the temporary mast was renewed on 21 October 2013, varying Condition 1 *'to extend the period of time in which to commence works by two years from the date of the installation of the proposed mast'*. I take this to mean that the mast must be removed and the land re-instated within two years of its erection, whenever that may be, subject to the normal life-span of the permission (i.e. that development must comply with the provisions of Section 91 of the 1990 Act). Two further conditions were added which require that before development commences the applicants must submit a CMS for the project as a whole, and a HMP for the enclosed areas around the mast. This permission can be found at **CD107**. The conditions have yet to be discharged.
25. The planning permission in relation to the wind farm development was granted by the Council on 10 March 2014. That permission relates to the *'Installation of 16 wind turbines (maximum height to blade tip of 127 metres with a hub height of 80 metres), with a maximum generating capacity of 48MW, associated tracks and ancillary infrastructure (including permanent and temporary anemometer masts, electrical substation compound, hardstandings, transformers and underground*

cabling) and construction of a new access track from the A48 (Bolgoed Road at Pontarddulais) (approximately 14.54 km in length) incorporating improvements to 3.9 km of existing road across Mynydd Pysgodlyn'. The permission is subject to 38 conditions, and is temporary in that it endures for a period of 25 years from the date of the first generation of electricity. The site must then be decommissioned and reinstated.

26. The permission is also subject to a Section 106 Agreement, dated 7 March 2014, made between the Council, RWE, and the landowners (the Trustees for the Somerset Trust and Dominic and Sophia Caronello). The Agreement covers procedures for the decommissioning and restoration of the site (Schedule 2); matters relating to television reception (Schedule 3); offsite habitat restoration contribution (Schedule 4); the potential to set up a Commons Council (Schedule 5); and a commitment to a scheme of social benefit (Schedule 6). A copy of this permission and the Section 106 Agreement can be found at **RWE4**.
27. As I have already mentioned, three UUs have been made by the landowners and developers dated 6th March 2014, 18 March 2014 and 24 November 2014. The applicants are now seeking to discharge the first two of these, in favour of the third. The LPA have deferred any formal discharge of the two earlier UUs until the new UU has been submitted to the Inspector and Council and accepted as valid and enforceable (**RWE7**). The UU relates to the setting up of a Management Group to oversee the management of the replacement land being offered as part of Applications C and D; to deal with funding applications in respect of the Shepherding Fund; to the question of access to both the replacement land and the release land; and to the rhododendron clearance proposed as mitigation in respect of Application B.
28. The Welsh Ministers will also wish to note that the planning permission for the wind farm itself was subject to a judicial review application made by Mr Jonathan Carter. The hearing was held on 14 and 15 October 2014 and the application was dismissed in a judgement issued on 22 January 2015. I have no information on any subsequent appeal which may be planned.

THE APPLICATIONS

APPLICATION A

Description of Proposed Works

29. It is proposed to erect an 80 metre high temporary anemometer mast at a location on CL 74 (National Grid Reference 266327:209214) to gather wind data about the site of the proposed MyG wind farm. This would enable data to be collected to aid turbine procurement. The mast would be secured by guys anchored at eight points around the mast – the mast and each anchor point being fenced off using 1.2 metre high post and wire fencing to protect both livestock and the mast. The fencing surrounding the mast would enclose a maximum area of 2 metres by 25 metres, and the eight anchoring points will lie within enclosed areas measuring 2 metres by 5.5 metres or 2 metres by 7 metres. The total fenced off area would cover approximately 150 square metres, whilst the sites footprint as a whole would be 8171 square metres. The proposed location of the temporary anemometer mast

is towards the north-eastern edge of CL74⁹ and can be seen on **CD109 and CD110**.

Summary of the Case for the Applicants

30. No concrete is involved in securing the structure, and the enclosed areas will form a miniscule portion of the common which will be available for grazing. Following dismantling, the whole area would become available again and any temporary unavailability would be insignificant. Given the hefting pattern, for many of the graziers the mast would have no impact whatsoever. The mast to be used is an industry-tested design and there is no record whatsoever of such masts presenting a fire hazard.
31. The physical effects of the mast will only impact on a very small portion of the common, and will have no perceivable effect on the public's enjoyment of the common for air and exercise. The construction process will use a vehicle designed to cross wet habitats causing as little disturbance to the surface as possible. It will utilise a route identified to be the least damaging, minimising the footprint of the working area. Following the expiration of the consent, the mast will be removed following a similar method. Concerns raised in relation to the potential damage leading to erosion are misconceived.
32. In terms of the impact on the landscape, the mast would have significantly less impact than the 19 wind turbines proposed for the site in an earlier planning application, and which were considered by the Inspector in that case to be capable of being accommodated without unacceptable harm to the landscape character of the site, or its surroundings. This includes the impact on the ancient monument at Penlle'r Castell.
33. The height of the mast is dictated by the need to measure wind speeds at the hub height of the proposed wind turbines. At 80 metres it is well below the height which would give rise to any concerns for air traffic safety, and the site is not close to any protected surfaces in connection with any airfield. No concerns have been raised by any operator of air services. The proposed location for the mast is representative in relation to the likely location of the proposed wind turbines which range from 245 metres AOD¹⁰ to 332 metres AOD. It is not necessary for the mast to be representative of wind speeds across the whole of the common.
34. The visual impact of the proposed mast has been carefully considered and any temporary adverse effect is considered to be acceptable by the LPA. There will be no lasting visual impact as the structure is intended to be removed after the expiry of 18 months.
35. The objectors give no particulars of the fauna or flora said to be at risk from the proposed mast. There will be no impact on the integrity of the peat habitat, nor any impact of significance in relation to any plant or animal species. No specific

⁹ Its location is to the north of the main application site and is not shown on the overview plan at **CD21**

¹⁰ Above ordnance datum

impacts on the ecology of the area were identified as part of the planning application process.

36. The existence of the mast will not physically restrict, to any significant extent, the ability of persons to use the public rights of way or to exercise the more general right to roam provided by the Countryside and Rights of Way Act 2000. It will not prevent the reasonable enjoyment of the area by the public.
37. There will be no impact on archaeological remains or features of historic interest.
38. The majority of the objections to this proposal appear to be objections to the wider scheme of the potential wind farm, and are not relevant to this application.

Summary of the Written Representations in Objection

39. Concerns have been expressed by the WGCA and several of the graziers who have common rights on CL74 that the fencing would be a danger to stock and would adversely affect agricultural subsidy payments claimed by them. A Single Application is made covering the whole of the common and the alterations needed as a result of the fencing would cause inconvenience and a loss of subsidy to the farmers. The enclosed area would reduce the land available for grazing and thus cause further loss to the farmers. The fencing would also be a potential hazard to the members of the public exercising their rights of access over the common and would increase the premiums of the insurance policies taken out by WGCA on behalf of the graziers. The common is an essential resource for the graziers who do not have access to much good quality grazing land. The use of the common for that purpose keeps it in good condition, when many other commons are being lost due to lack of agricultural use.
40. Many of the objectors have expressed concerns about the visual intrusion into the area which is largely unspoilt. In particular, concern was expressed about the impact on the ancient monument, Penlle'r Castell, which is enjoyed by many ramblers and tourists to the area. It is felt that the proposed mast may present a distraction to drivers due to its proximity to the road, increasing the risk of accidents, and its height would present a hazard to aeroplanes, and air ambulances approaching the nearby Morriston Hospital. The enclosed areas would present a potential fire risk due to the lack of grazing, and also have an adverse effect on the fauna and flora of the area, many of which are said to be rare species.
41. The location of the mast, close to the highest point on the MyG ridge, is considered likely to be unrepresentative of the true wind conditions on the rest of the common, giving a distorted impression of the high wind potential in respect of the proposed wind farm.
42. The OSS objects to the application, considering that it will have an adverse effect on the landscape and people's access to, and enjoyment of, the common.
43. The Council expressed no objection to the application, having previously granted planning permission.

44. Several of the written representations refer to the potential output from the proposed windfarm and its insignificant effect on the reduction of UK carbon emissions.

APPLICATION B

Description of the Proposed Works

45. This application is made under Section 38 of the 2006 Act and relates to the surfacing and improvement of the proposed access route to the MyG Wind Farm across CL68, including associated retaining structures to allow the delivery of turbine components and future maintenance of the wind farm. The works would also include the installation of gates and cattle grids, and temporary safety fencing (Heras-type) during construction. There would be a total of 2,390 metres of upgraded track; 525 metres of new track and 5,390 metres of temporary fencing. An overview of the effect of the application can be seen on the plan at **CD21**, and the detail can be seen on the plans at **CD22-23**.

Summary of the Case for the Applicants

46. The works would involve a temporary land take of approximately 2.45 hectares to include the area of the existing track and the lay-bys. This includes the additional area of surfacing which would extend to approximately 0.77 hectares. The fencing would be erected on a sequential basis for 100 metres at a time, as the construction progresses, and would be removed on completion. The duration of construction is for a maximum of 14 months. The permission for the cattle grids would be sought after the Section 38 consent has been granted.
47. Before construction commences, RWE will submit a draft CMS to the Council which will contain more detailed information on the design and construction of the road. An EMP will also be produced to include details of pollution prevention measures and working practices that will be adopted to minimise the environmental impact, including the effect on the hydrology. Topsoil removed from the site for construction purposes will be appropriately stored and used to reduce the width of the track post construction. The track will not be available for use by public highway users and post-construction of the wind farm it will be left to re-vegetate and will only be used for exceptional maintenance, for example if a new blade had to be delivered to the site.
48. CL68 extends to a total area of 86 hectares and it adjoins CL45¹¹ to the north and CL74 to the north east. The Commons Register shows that grazing rights (for a variety of stock types) are distributed amongst 18 rights holders: five of these have rights solely registered to CL68; four graziers have shared rights over the adjoining registered common CL45; one grazier has shared rights over registered common CL74 and eight graziers have shared rights over CL45 and CL74. There are also non-grazing rights in relation to the harvesting of ferns and bracken for bedding and collecting firewood.

¹¹ CL45 is unaffected by the development

49. The indications are that CL68 is not heavily grazed as much of the area is covered with gorse, bracken and extensive areas of rhododendron. Usage is likely to be mainly recreational. Ten active graziers have been identified who exercise their rights and possibly those of others through the acquisition of land that has rights attached. The records are not up to date and there is no requirement for the CRA to be advised of changes.
50. In order to carry out the works on CL68 it will be necessary to remove areas of rhododendron and scrub. In addition, RWE intend to clear an area totalling approximately 9 hectares which will provide the opportunity to establish grass cover which will increase the potential area of grazing land on the common and improve public access. The area is currently very difficult to traverse. Reseeding will be undertaken using appropriate grass species similar to those already on the common. A schedule of works will include on-going management to ensure re-growth back to the current situation will be avoided.
51. There will be no decrease in the total area of the common because the surface of the 0.77 hectares that will be changed will still remain as part of the common, just as the existing hard covered road is currently part of the overall common land area making up CL68. The 2.45 hectares temporarily affected by the works amounts to only 2.85% of the total common area. The common already accommodates a tarmac road surface and the 0.77 hectares of new road represents less than 1% of the total area. The clearance of the rhododendron and the scrub will result in an overall increase of potential grazing land of 8.80%.

Summary of the Case for the Objectors

52. The consequences of this major engineering exercise will have far reaching effects, not only on the common land but also on the neighbouring town of Pontarddulais. According to the report, the track will be 5 metres wide and the need to accommodate the gradient between Bolgoed Road (220 metres above sea level) to the top of Goppa Mountain (300 metres above sea level) will involve the removal of thousands of tonnes of soil, rock and shale. The construction details have not been provided.
53. The vegetation that grows on the common belongs to the rights holders and not to the landowner. The delicate soil does not like disturbance and any soil that has to be removed and stored will not re-vegetate with the indigenous grass. Experience has shown that such re-instated ground produces rushes and not grass.
54. Goppa Mountain is a warren of underground coal mining workings and natural caverns and the existing rain water is not being absorbed. The surfaced road will become a watercourse as it will not absorb the high levels of water coming off the higher ground, and there will be a risk of flooding to the town, which is acknowledged to be in a flood plain. Goppa Mountain is drained by means of numerous watercourses, some on the surface and some through fissures where the boggy ground drains through the soil. All this water drains towards Pontarddulais via the two rivers – Loughor and Dulais. There is no way that excess water can be diverted. It is essential that a hydrological survey is undertaken to establish the movement, distribution and sustainability of the water as the excavations could cause disruption with serious consequences.

55. There is also a substantial water main passing beneath the area over which it is proposed to build the track. There is a serious risk of damage to this structure as it is at a relatively shallow depth.
56. The major engineering works will adversely affect public rights of way in the area. Footpath LC82, which is currently a green path, will become for the most part of its length a wide track. The access road will merge with Bridlepath LC80 and there is no room to divert it. The surfaces of both will be widened and replaced with hard-core thus destroying the character and enjoyment of these ancient thoroughfares. In effect the present walking and riding routes from Bolgoed Road along two existing ancient paths to the common will disappear. Goppa Common will no longer be accessible to the public and there will be an environmentally damaging road running above one of the prettiest valleys in the area – Cwmdulais.
57. The new road will dissect the sheep walks or hefts of some of the graziers which will cause difficulties for farmers. Whilst the fences are in position they can cause great disturbance to the sheep, preventing them from moving to one part of the heft to another, with lambs becoming separated from their mothers. Experience on an adjacent common where works were fenced without thought to the graziers caused serious difficulties.
58. With regard to the rhododendron clearance, the WGCA have had a scheme in place for the past 3 years, in conjunction with various other interested bodies including the Council. This work is underway and being carried out at the moment, but it is difficult or impossible to eradicate rhododendron. Therefore the clearance proposed by RWE is already in hand, and may not, in any case, be successful.
59. The track required for this project will be enormous and will have to remain for the maintenance of the site. It will encourage unauthorised access to the common and associated anti-social behaviour, as has been experienced on the adjacent MyB Wind Farm. To construct a road across beautiful unspoilt countryside where disruption will cause others to suffer in different ways is unacceptable.
60. Several objections were submitted relating to matters such as the adverse effect of the transport route on houses in Bolgoed Road, and the impact of road alterations on the A48 itself.

APPLICATION C

Description of the Proposal

61. This application is made under Section 16 of the 2006 Act and seeks to deregister 26.36 hectares¹² of common land (the 'release land') on CL74 and to offer in exchange an area of adjacent land amounting to 8.46 hectares at BG (the 'replacement land'). The release land takes the form of a strip of land running through CL74 comprising the proposed location of 9 wind turbines, the substation to the west of the common, the proposed construction compound and the access tracks linking them to each other. The revised application, submitted in February 2014 (**CD78**), includes the small amount of additional release land relating to

¹² This figure was corrected at the inquiry by the applicants from 26.24 hectares

trenching for the underground power lines to link the substation to the national grid system. This trench would be backfilled on completion and restored to its previous condition. An overview of the effect of the application can be seen on the plan at **CD21**, and the detail can be seen on the plans at **CD24-29**.

Summary of the Case for the Applicants

62. The release land is open upland common with no significant structures. The total area of the release land has to allow for the following components:

- 100 x 100 metres areas around the turbine centres to allow for a potential micro-siting allowance of up to 30 metres in any direction to allow for ground or environmental constraints. This area includes working areas, crane hardstanding and external transformers at each turbine location;
- 20 metre wide access tracks with a swept path allowance to allow long vehicle access around corners and an allowance for cable trenches which run adjacent to the access tracks from the construction compound into the site;
- 50 x 50 metres for one temporary construction compound;
- 20 x 20 for one meteorological mast.

63. After the exchange, and subject to operational requirements, the release land, excluding the land covered by the turbine bases and the substation/building compound, will be available for access on foot either through re-dedication as common land or through licence granted by the landowners pursuant to obligations set out in the UU. Access rights over the release land for those people with common rights will also be granted pursuant to obligations in the UU. Consequently the area of land which will be permanently removed from the common ('the removed land') will be much less than the 26.36 hectares of release land.

64. The removed land will comprise the following:

- 60 x 25 metres rectangular areas around the turbine centres, including provision for a crane hard-standing;
- 10 metre wide access tracks with a swept path allowance;
- 8 metre wide access tracks with a swept path allowance from the main road to the construction compound;
- 3 x 3 metres for one meteorological mast.

65. The amount of the removed land (i.e. the area that will be removed from the common for the life of the wind farm) will be 10.21 hectares. Thus some 16.15¹³ hectares or about 61% of the release land will return to common land after the construction phase is completed.

¹³ This figure was corrected at the inquiry by the applicants from 16.03 hectares

66. The replacement land consists of semi-improved grazing land, with hedge and ditch boundaries, which forms part of the holding at BG. Apart from the field enclosures there are no significant structures on the replacement land. The land adjoins CL74 but is livestock-fenced from it, and it is divided into 5/6 internal enclosures. The replacement land is the land offered to be given in exchange for, and to replace, the removed land. It consists of 8.20 hectares of improved grassland and 0.26 hectares of farm track and rough grassland upon which there are a number of derelict remains of stone buildings. Whilst the whole area will provide access and grazing, for the purposes of this application only the 8.20 hectares is being offered as grazing replacement land.
67. It is extremely difficult to provide replacement land of similar botanical composition as the existing common due to the unique manner in which common land has been utilised and the grazing cover has developed through centuries of specific use. It is recognized that the replacement land is very different in herbage cover to that on the common which it is replacing. This could present livestock management challenges to the graziers including sheep wandering from their traditional hefts. Careful management of the replacement land will ensure that it does not act as a draw for livestock and become over grazed. Such management will be possible as there is no requirement for the replacement land to be opened up to the existing common to allow unrestricted livestock access. RWE propose a three stage mitigation process:

Stage 1 – leave the land at BG livestock-fenced from the common and simply offer its use to be decided amongst and between the active common land graziers. Provide stiles for the general public to take access. If this is not suitable:

Stage 2 – leave the land at BG livestock-fenced from the common. Encourage the formation of a Commons Council specifically for CL74, the members of which will be the active graziers that have rights over CL74 and will be affected by the proposed development. Provide start-up funding to encourage and assist in the provision of secretarial support to create a structure for the active users of CL74 to best utilise the valuable resource that the good land at BG represents. The Somerset Trust (landowner) is willing to sanction its sub-letting for the lifetime of the wind farm, thus enabling income generated to go to the CL74 Commons Council to benefit the active users of the common. This sits well with the fact that not one of the grazier consultees actually wants to use the land at BG themselves and did not see the loss of grazing from the removed land as an issue in terms of their stock having enough land to graze after the construction of the wind farm. If this is not suitable:

Stage 3 – leave the land at BG fenced from the common. With specialist agronomic advice draw up and embark upon an active programme of quality reversion with a view to changing the quality grass currently on BG to a condition similar to that to be found on the common. This may be by existing sward destruction, ploughing and re-seeding or simply surface seeding with native species and managing the land in an appropriate manner so that over a period of time and with consultation with the active graziers, it would be possible to remove the livestock-fence dividing the replacement land from the existing common. Provide stiles for the general public to take access.

68. The Commons Register shows that there are 34 rights holders with a total of 7246 sheep-equivalent grazing rights, although some are shared over other nearby common land units: CL45, CL68, CL76 and CL77. Some of the rights relate to cattle (five sheep being the equivalent of one cow in general) and in some cases horses or poultry. Non-grazing rights indicate that some graziers have the right to take bedding material and firewood. The Register does not indicate the extent to which the rights are exercised but the indications on the ground suggest that CL74 has been overgrazed in the past and continues to be so (see the Grazing Impact Assessment and Farm Business Survey ADAS 2005 at **CD10**). The 2005 survey identified that 18 farms were actually exercising their rights over CL74 and CL77¹⁴. In the last 18 months, further consultation carried out by RWE identified only 15 active graziers, but it is difficult to get accurate information as there is no requirement to update the CLR, and not all graziers chose to communicate with the applicants.
69. From the information gained from those who did respond, it has been possible to compile a draft hefting plan which provides an indicative picture identifying those graziers who are most likely to be affected during the constructional phase. An ongoing constructive dialogue continues with them.
70. By a combination of the fact that a large part of the release land will be re-dedicated as common land, and the availability of the land at BG, there will be an overall increase in the amount of grazing land available on CL74 (+2.48 hectares). In addition, the common rights associated with BG itself will not be exercised by the landowner. This will be confirmed in the relevant Exchange Orders. These rights consist of 25 sheep equivalent rights on CL45 and 75 sheep equivalent rights on CL74. This will also benefit those graziers with shared rights on CL68.
71. There are currently no rights of public access over the replacement land. Following the exchange there will be rights of access for the public for air and exercise pursuant to Section 193 of the 1925 Act, subject to the 1994 Order of Limitations. Suitable gates and access points will be provided to facilitate access on foot¹⁵. The land at BG is subject to private rights of way and covenants (**CD18**) but these are not considered to affect the suitability of the replacement land as common land.
72. Some temporary fencing will be required along the tracks during the construction period, and will be undertaken in a sequential manner on the approach route. On the main wind farm site, suitably positioned crossing places will be provided to avoid severance of parts of the common in relation to livestock movements and public access, as shown on the application maps. The fencing will be required for a maximum of 18 months. Following completion of the construction, all fencing will be removed.

¹⁴ See Application D in respect of CL77

¹⁵ It was acknowledged by RWE at the inquiry that the 1994 Order of Limitations excludes use of the common by equestrians other than on identified bridle paths

73. The proposal as a whole has been subject to extensive consultation and a full environmental impact assessment. The concerns raised by the graziers regarding the problems caused by potential severance (which could affect all three common land parcels affected by the applications) have been addressed by the provisions in the UU for the establishment of a Shepherding Fund, to compensate active graziers for additional costs encountered due to the proposed works, and a management group to administer applications.
74. During the operational life of the wind farm, only site maintenance personnel vehicles will normally be required to visit the site. A team of 2 or 3 staff will supervise the operation of the wind farm and visit the site to conduct routine maintenance. Cranes will occasionally need to be brought to site for maintenance and this is why the tracks will be left in situ. Experience elsewhere has shown that sheep and cattle will comfortably graze in the vicinity of wind turbines, using the turbine bases as shelter in inclement conditions. The access tracks will also facilitate stock movements by the commoners during the life of the wind farm.
75. The proposed works on the common form part of a larger proposal for 16 wind turbines with a maximum output of 48MW and for which planning permission has been granted. The LPA has recognised that the proposed wind farm would make an important contribution to the generation of electricity using renewable sources, and in doing so has weighed that contribution against the anticipated impacts of the wind farm and its associated works, including the impact on the three affected commons. The proposal is in accordance with the UK and the Welsh Government's stated policy for renewable energy. As a matter of policy, areas of registered common are not excluded from the strategic guidance on the siting of wind farms as set out in the Welsh Government's Technical Advice Note 8: Planning for Renewable Energy (TAN 8) (**CD74**).
76. No specific concerns have been raised to these applications from the relevant statutory consultees in relation to matters such as landscape impact, cultural heritage, ecology and archaeology. These considerations overlap with planning policy and have been fully considered as part of the planning application. The Planning Officers report to the Council's Planning Committee concluded that there were no outstanding issues in respect of these matters that would have necessitated the refusal of the planning application.
77. The permission is temporary, for a period of 25 years, following which the site will be de-commissioned. Site clearance and reinstatement will take approximately six months and it is envisaged will be carried out as follows:
- The turbines will be removed from the site;
 - The foundations will be removed to a depth of 1000mm and re-instated with top-soil;
 - Turbine interconnecting cables will be disconnected and left in place;
 - The sub-station building and compound will be demolished and the area reinstated.

Summary of the Case for the Objectors – see below from paragraph 92

APPLICATION D

Description of Proposal

78. This application is made under Section 16 of the 2006 Act and seeks to deregister 8.19 hectares of common land (the 'release land') on CL77 and to offer in exchange an area of adjacent land amounting to 10.98 hectares (the 'replacement land') at ByrO. CL77 is contiguous with CL74 and the proposed development will affect part of both commons. As with Application C, the release land takes the form of a strip of land running through CL77 comprising the proposed location of 7 wind turbines, and the access tracks linking them to each other. An overview of the effect of the application can be seen on the plan at **CD21**, and the detail can be seen on the plans at **CD30-31**.

Summary of the Case for the Applicants

79. In common with Application C, the release land is open upland common with no significant structures. The total area of the release land has been calculated to allow for a potential micro-siting allowance of 30 metres in any direction, and for 20 metre wide access tracks.
80. After the exchange, and subject to the same qualifications as Application C, the release land will be available for access on foot either through re-dedication as common land or through licence granted by the landowners pursuant to obligations set out in the UU. Access rights over the release land for those people with common rights will also be granted pursuant to obligations in the UU. Consequently the area of land which will be permanently removed from the common (i.e. the 'removed land') will be much less than the 8.19 hectares of release land.
81. The removed land will comprise the following:
- 60 x 25 metres rectangular areas around the turbine centres, including provision for a 25 x 45 metres crane hard-standing;
 - 10 metre wide access tracks with a swept path allowance.
82. The amount of the removed land will be 4.95 hectares resulting in some 3.42 hectares or about 40% of the release land returning to common land after the construction phase is completed.
83. The replacement land consists of rough grazing land, with hedge and ditch boundaries and woodland and stream-side glades, and forms part of the holding at ByrO. Apart from the field enclosures there are no significant structures on the replacement land. The land adjoins CL77 but is livestock-fenced from it, and it is divided into 5/6 internal enclosures. The replacement land is the land offered to be given in exchange for, and to replace, the removed land in terms of both grazing and public access. It consists of 6.16 hectares of rough grassland, which is similar herbage to that found on the common and which will support similar stocking

levels, and 4.82 hectares of non-grazing land. The more productive parts of the holding are not being offered.

84. The non-grazing land consists of 0.75 hectares of conifer plantation and 4.07 hectares which is a ravine carrying scrub and bracken cover. These areas are not considered suitable as replacement grazing land as they will make checking the livestock difficult and, whilst offering shelter, could also cause some animal disease risk issues that are not as problematic on the open common. The woodland and scrub areas offer bio-diversity that is not present on the release land and are very different areas and habitats for the general public to enjoy. This is a recreational and ecological benefit and, although little exercised at present, may also offer benefits for the non-grazing right of estovers. The plan at **CD33** shows the split between the grazing and non-grazing replacement land.
85. There are no rights of public access over the replacement land at present, but the land at ByrO does benefit from a right to construct, lay and afterwards maintain, inspect, renew, replace or remove a water pipe together with ancillary apparatus by way of a Deed of Grant dated 19 July 2004¹⁶. This is not considered to affect the suitability of the land as replacement common land.
86. It is proposed prior to the Orders of Exchange being made that the replacement land will be opened up to the common by the removal of stock-proof fencing on the eastern boundary where it abuts the existing common land. New stock-proof fences will be erected where required to define the boundaries of the replacement land and to deny livestock access to the remaining part of the ByrO holding. The woodland and ravine scrub will also be fenced off and provided with stiles to permit public access but to exclude livestock.
87. The graziers whose hefting areas will be most affected during the constructional phase of the development on CL77 have indicated that they are not really interested in the provision of replacement land as they do not see it as essential to their continued use of the common. Thus there will be no requirement for livestock to be driven to the replacement land; it will be utilised by stock that currently utilise the land immediately adjacent to the replacement land but which is currently fenced off from it.
88. The CLR shows that there are 44 rights holders with a total of 8975 sheep-equivalent grazing rights, although some are shared over other nearby common land units: CL74 and CL76. As with Application C, some of the rights relate to cattle and in some cases horses or poultry, and similar non-grazing rights exist. The Grazing Impact Assessment and Farm Business Survey ADAS 2005 at **CD10** indicates that, like CL74, the common has been overgrazed in the past.
89. Similar difficulties have been experienced in engaging with the common rights holders, but on-going discussions continue with those who have been identified as being affected by the proposals.

¹⁶ No copy submitted

90. By a combination of the fact that a large part of the release land will be re-dedicated as common land and the availability of the land at ByrO there will be an overall increase in the amount of grazing land available on CL77 (+3.50 hectares). In addition, some the common rights associated with ByrO itself will not be exercised by the landowner. This will be confirmed in the relevant Exchange Orders. These rights have been calculated at 68 sheep equivalent rights on CL77.
91. ([Inspector comment] *The information in paragraphs 72 to 77 above applies equally to this application and is therefore not repeated here.*)

Summary of the Case for the Objectors – Applications C and D¹⁷

92. WGCA was established in 1962 to look after the well-being of the common land to the north of Swansea under their jurisdiction and to look after the graziers. The WGCA has some 120 members who democratically run the organisation. The members are all farmers who have legally registered rights to graze the commons. They rely on the common for their successful agricultural businesses, most of the farms supporting families. These rights add value to the individual farms; they are a financial asset as without them the viability of these traditional hill farms would be gravely affected.
93. The WGCA is of the opinion that the application land is not suitable for the type of development proposed and considers that there are many outstanding questions which remain to be answered. The interests of its members have not been taken into consideration.
94. The WGCA holds regular meetings, generally every eight weeks, and it is run by an executive committee. It is a very respected organisation which has been praised by many figures in authority over the years. The WGCA has five executive members for each common, and sought group meetings of those members with the applicant so that the issues could be debated collectively. This would have been the mechanism to discuss the graziers concerns, but RWE rejected this in favour of speaking to individual commoners.
95. The WGCA is, in effect, a Commons Council. It is disrespectful and unnecessary to consider setting up an additional body to perform this function. The proposal to set up a Commons Council to help manage the replacement land is completely unnecessary, especially given that no details have been forthcoming with regard to the request for such a body to be set up. The only body to have expressed support for a Commons Council appears to be CCW (now NRW).
96. The stock that grazes these commons are hefted flocks (i.e. attached to a particular sheep walk or stint, or 'arosfa' in Welsh) and their origins go back centuries. The installation will frighten the stock and cause them to be pushed off their designated patch onto neighbouring stints. This is likely to cause animosity between neighbours and result in some animals grazing at the perimeter of the common being pushed against fences and onto roads. This may cause animal welfare issues. This type of displacement happened in the mid 1980s when drilling

¹⁷ Dealt with together as the arguments advanced apply to both applications

rigs were present on the common; there were no animals around the rigs in question. Currently, there are no sheep in sight on the operational wind farm on the adjacent common land at MyB. The low frequency sound of the turbines may also affect dogs.

97. The roads, both existing and proposed, will carry an incredible volume of traffic resulting in the interference and interruption of grazing and our members going about their everyday duties. The disruption caused by the recent installation of a gas pipeline across the common is an example of what can happen.
98. During the construction phase, the disruption to animal movements caused by the works and the fencing will be significant. Animals will be prevented from moving from one part of their heft to another and it will be necessary for graziers to devote a substantial amount of time to additional shepherding. The number of large-vehicle movements each day (39 HGV lorries per day) will cause immense disruption, resulting in animals moving away and decreasing the capacity of the immediate grazing area. There is a danger that the animals will be cut off from their usual water sources. Although the applicant asserts that there will be regular crossing points in the fencing, and that the gates will be opened and shut against the track by the lorry drivers each time they pass, in practice this is unlikely to occur due to the time constraints on the drivers. Similar problems arose in connection with the National Grid gas pipeline some years ago.
99. There is also a danger that the existence of the tracks will encourage stock to roam from their usual lying up places, leading to unconventional stock movements. It takes many years to learn how the common works and one or two visits from an agricultural specialist does not begin to scratch the surface of the complexity of the common. The WGCA questions the validity of the 2005 ADAS Farm Survey.
100. The proposed Shepherding Fund has increased over the duration of the inquiry from £50,000 in the original evidence, to a figure of £300,000 in the latest version of the UU. Even by employing people on a minimum wage in order to release the grazier to carry out extra shepherding, the original sum would not have stretched very far. The arrangements made for the Management Group to administer the fund appear complex, burdensome on the graziers and weighted towards the applicant. It is difficult to understand how the proposed arrangements are going to work, particularly as it seems that it will be possible for meetings of the Management Group to take place without a grazier present. Conversely, graziers who are sitting on the committee will not be able to claim from the fund. It begs the question of who will sit on the committee and whose interests will they be representing? There are no details of what will happen if all the allocated sums are distributed before all the graziers needs have been met and there is no mechanism for a claimant's professional fees reasonably incurred to be recompensed.
101. The provisions of the UU do not appear to cater for the change in ownership of the affected holdings, requiring claimants to demonstrate past use of the common in order to qualify for payment. This will not be possible for new purchasers and so they will not qualify for help. Furthermore, not all registered commoners exercise their rights at the moment, but some may wish to in the future. They too will be excluded from any recompense. In addition the UU refers to a 'shepherding fund'

but not all graziers have sheep. Some have herds of suckler cows which will be equally adversely affected.

102. The vegetation on the moor belongs to the rights holders and not to the landowner. Where the proposal is to remove and store the topsoil, the vegetation is unlikely to retain its nutritive value so that the replacement of soil which is planned will result in the degradation of the vegetation. This has been proved recently with the gas pipeline restoration works where the re-growth consists only of rushes. The re-instatement on the adjacent MyB site demonstrates similar problems, showing bare peat and stone, with nothing but rushes growing. The assertion that 61% of the release land would return to common land after construction cannot be substantiated in terms of its vegetation and condition.
103. The problems related to animal movements will be exacerbated if the legal status of the land is not clear. For example if land is re-vegetated to resemble common land, but is not actually registered as common land, this will throw into doubt the legal requirements connected with control of animal movements in relation to disease control etc. It may also cause difficulties in connection with payments under the Rural Payments Schemes. The consequences of the reform of the Common Agricultural Policy are not yet clear.
104. The presence of the access roads and tracks will encourage anti-social behaviour such as trespass by motor vehicles, particularly motorcycles, which is already a problem. Fly-tipping is likely to increase and drug abuse will be facilitated. All of these are issues which the WGCA is currently working closely on with the police. Requests for a speed limit on the adjacent road to Ammanford, known as the Golden Mile, have been rejected by the Council. WGCA members have to suffer all of these problems because of the proximity of the common to the urban areas and the difficulties of managing them are likely to get worse due to cost-cutting by the Council.
105. The proposals for the replacement land at BG are completely unworkable. Problems will arise with the letting of the land which, if put out to tender, may cause animosity between neighbours. The potential for mixing flocks and herds by successive graziers has the makings of a logistical nightmare carrying with it the risk of spreading infectious and endemic disease. This is unacceptable from an animal health and welfare perspective. Administrative problems will be caused in relation to the licensing of the holding for agricultural purposes, and no consideration has been given to the legal complications in connection with the operation of animal movements and records, or applications such as the Rural Payments Scheme. At present BG is in full agricultural production, it has been fertilized, produces a good forage crop and has supported cattle and sheep.
106. The graziers are not permitted to graze each others hefts, nor to move stock across them, except where it is necessary to collect straying stock from adjoining commons (vicinage rights). It would not be possible therefore to move stock directly to BG from their hefts as that would involve crossing other graziers' areas. Although the land at BG abuts the common it is over four miles from some graziers' hefts. Transport would have to be by road.

107. The three options given by the applicant for the management of BG land amount in reality only to two: either let the land out by one means or other, or carry out a sward reversal scheme. The agricultural expert who gave evidence for RWE acknowledged under cross-examination that the typical time span for the reversion of vegetation to that of a type found on the common would be between at least 5-10 years. It was also acknowledged at the inquiry that the 'careful management' options had not been costed by the applicant despite a verbal assurance that they would be funded by RWE.
108. At ByrO, the problem is the reverse. The replacement land at ByrO would only serve the flocks to the south of the development site that are less affected than those grazing the middle of the proposed site. It is very poor quality land which is extremely boggy, supporting only rush growth. At the present time it would be a serious health risk to sheep, cattle and horses that graze the common. Liver fluke is an increasing hazard and this is precisely the type of land which veterinary practices are recommending should be avoided by graziers. In the last five years or so the effect of climate change has been to increase significantly the risk of infections. Liver fluke causes long term production losses and death in affected animals. The removal of the fences would allow the grazing stock to spread an increased parasitic burden to the rest of the common. The unattractiveness of the area for grazing will result in the land becoming overgrown with no value for grazing at all. This has happened on other land exchange schemes in the area, notably at Gorslan Farm near the M4.
109. The principal of land exchange is that it should be 'like for like' at the time of the exchange. This is clearly not the case for either of the parcels of land offered as replacement land in this case. The objectors question why more attention was not given to the question of purchasing Lygos Farm, which was known to be for sale at the time of the inquiry into the previous applications and which would have been more suitable as replacement land¹⁸.
110. Furthermore it is customary law, backed up by case law, for land which is not registered common to be fenced from the common. The applicant considers this is not necessary in the case of the release land, but this may set a precedent with regard to other adjacent in-bye land which would cause problems for the graziers.
111. The applicant has admitted that their concept of consultation is limited to fact-finding (i.e. it does not encompass meaningful discussions or negotiations with those directly affected by the proposals) but even their fact finding is suspect. Much of the work proposed is un-costed (e.g. careful management of the operational site) and neither has the impact of decommissioning the site been given consideration.
112. Several of the graziers and other local residents have diversified into providing tourist accommodation to subsidise their income. The properties on the common rely on ground water and springs for their water, not only for themselves and their guests but also for their animals when on the in-bye land. Many of these water supplies have never dried up, even in times of drought, but the applicant has

¹⁸ Now owned by Mr and Mrs Jonathan Carter

acknowledged that some properties would experience problems as a direct result of the development. As the local water board has concluded that, in most cases, there is no other source of potable water (it is too far to bring water to many of the properties via water mains) there are concerns not only for the families and livestock concerned but also for their tourist businesses.

113. Many people cannot be entirely sure of the source of their water and although a hydrology report has been prepared by the applicants, RWE has shown complete disregard for it. They have not consulted properly with the people whose lives and businesses depend on this basic need, but merely carried out desk-top surveys. A local water diviner points out that any disruption can easily cause the loss of a water source. The owner of one of the closest holdings to the development (Mr Jonathan Carter) has not had any meaningful consultation on these proposals, despite his property being shown as part of the common on some maps. Another property, owned by the Kohll family, has been mis-identified and confused with another property of the same name in a nearby village. The existence of the Lliw Reservoir makes it clear that water is undoubtedly one of the most important issues on MyG.
114. MyG is popular for walking and has a long-distance promoted route (St Illtyd's Way) passing across the northern edge of the common, in addition to several other public rights of way. The common as a whole benefits from open access on foot. Since the turbines were erected on the neighbouring MyB common it had become less attractive to people seeking recreation and exercise. Some people have stopped visiting it altogether. This would apply equally to MyG. Horse-riders, whose access is limited to public bridleways, would suffer for the whole 25-year life of the wind farm as their access would be interfered with by traffic for the whole of that period.
115. The UU contains provisions in relation to public access to areas of the release land and to the replacement land. The public is not a party to the UU and therefore has no means of enforcing the provisions, other than by pressing the Council to act, or going to court. This is unsatisfactory, and the use of the courts should always be a last resort. Furthermore, if the applicant or the landowner disposes of their interest in the site, the UU indicates that their liabilities will be at an end. Provision must be made for the protection of the terms of the agreement so that successors in title are bound by it.
116. There is a suggestion in the applicant's case that the replacement land may not initially be, and perhaps never will be, open access land. If this were so, the public would be being short-changed and this would be a significant loss of amenity. The replacement land has to have the same rights attached to it as the release land. In this case it means that the land at ByrO and the land at BG must become open access land at the point at which the replacement land is accepted in lieu of the release land.
117. Reference was made by Mr Alan Richards to the new Garnswllt Activity Centre, funded by the Mawr Development Trust. It is located within half a mile of MyG and its aim is to promote the area as a tourist destination. There is a great desire on

the part of local walkers and countryside lovers to see this initiative succeed but the development of the wind farm will severely hinder its appeal.

118. The proposal will result in the heart of the common becoming an industrial landscape and it will lose its open character. Free and unimpeded movement across the common on foot will be impossible. There will be a mosaic of registered common and unregistered land with no clear differentiation and the access rights will not be clear. No signage has been planned to advise the public of their rights of access. The grant of rights to pass and repass over the access tracks and crane hard standings is permissive and could be withdrawn at any time. This offer should be backed up by a covenant in escrow.
119. It has long been established in, and understood from, case law that land in private ownership adjoining a common must be fenced against the common, and that it is the responsibility of the private owner to do so and to maintain it. *Egerton v Harding* in the Court of Appeal in 1974 is frequently cited in legal text books. If the release land is fenced off from the common, it will no longer be possible to walk from one side of the common to the other – the heart of the common will be unavailable. The applicants have stated that the fencing of the release land is not the subject of a separate commons consent application, since that would be unnecessary as the land would not be common land following the issuing of any Section 16 Order, and has given no undertaking about how long such fencing might be in place. This will severely impact on public access and also on graziers, even with the provision of temporary gates. The quality of access enjoyed by the public will be inferior to the accepted use of commons for air, exercise and recreation. It would not be adequately compensated for by the replacement land, particularly if the agricultural management of that land is incompatible with public open access.
120. The replacement land at ByrO will not offer the public any advantages in terms of access. There is woodland, a significant amount of dense gorse, the land is quite steep and it is very wet in many places. Basically the only land being offered for access is a strip of land adjacent to the common alongside the stream. This lies outside the existing fencing surrounding the holding, and is, in essence, available to the public (and, in fact, graziers) already.
121. The negative aspects of the proposals on the landscape, seen both from surrounding areas such as the Brecon Beacons National Park and also from within the site itself, have not been addressed by the applicant. No consideration has been given to the impact on dark-skies tourism, and the issue of the lighting of the turbines does not appear to be clear from the planning permission. The permission indicates that the turbines are not to be lit except for movement-sensor lighting for maintenance purposes, but the MOD has requested lighting of the turbines for aviation safety. Such infra-red lighting can pose a problem for astronomy and wildlife photography. Both activities take place on MyG.
122. The issue of noise has not been adequately addressed. Wind turbines produce a low frequency noise which can travel long distances. This can be intrusive particularly as the bearings age and all the more evident in an area of outstanding tranquillity.

123. The landscape has an integral value of its own, reflecting its historic and cultural context and it should be protected in the public interest. The construction of the turbines will have a significantly detrimental effect on the beauty and wilderness of the common. Recent commons policy advice issued by the Welsh Government stresses its objectives to ensure that the special qualities of common land, including its open and unenclosed nature, are properly protected. As the heart of the common would be enclosed if the applications are successful, this objective would not be met.
124. The timing of the application, during a period when the relevant statutory body for nature conservation in Wales was undergoing great change, is of concern to the objectors, who feel that CCW (now NRW) was unable to give timely consideration to the proposals. This includes the fact that NRW have stated that the proposed extension to the Gower AONB to include Upland Gower cannot be given the necessary attention in the foreseeable future. This extension would encompass the area affected by the proposed wind farm, and has received support from the Council.
125. The disruption to the wildlife of the area includes the jeopardising of an experiment to re-introduce the British Black Bee on land at Tyr Darren Farm which lies to the north of the Lliw Reservoir and is surrounded by CL74. The objectors' ecological specialist witness has serious concerns about the applicant's approach to surveying the area and the quality of the resulting ecological assessment, noting that the peat habitat remains a major concern, even with the removal of 3 turbines when compared to the previous application. The species list is not complete and without base line data it is impossible to accurately assess the ecological value of the site or to monitor it meaningfully. Experience has shown that it is extremely difficult to monitor bird mortality on wind farms and there is a lack of publicly available information on this aspect.
126. It should also be noted that the entire area of the wind farm proposal falls within the recently designated SINC of Banc Darren Fawr. This must add weight to the value to be given to the nature conservation status of the site and support the non-confirmation of these applications.
127. The cumulative impacts on the landscape and the natural history will be considerable now that the adjoining MyB windfarm is operational, and need to be taken into account. The Inspector who heard the inquiry into the MyB proposals stated that only one of the projects should go ahead.
128. Councillor Richard addressed the issue of the Carbon Reduction and pointed out that the wind farm scheme as planned is for a 48MW capacity but the true average effectiveness of all wind turbine complexes was only about 25% at the maximum. This would mean a fluctuating average output of about 12MW for the MyG wind farm. Wales' average consumption is 2000MW, all of which can be supplied by one gas-fired power station at Milford Haven. The entire UK consumption is 60,000MW. He asserted that the MyG scheme was of no national or regional strategic importance and this should consequently not be given any weight in determining the applications.

129. This project will have a negative financial impact on the graziers of MyG and there is a lack of clarity about what is actually proposed. The inquiry has demonstrated that errors have been made in the fact-finding processes undertaken by RWE including the failure to consult properly with those affected, and by mistakes in property identification. This is particularly important in evaluating the adverse effects which may result from the construction. A project of this size will have consequences for the lives of so many people who use MyG, for work or for pleasure, and the results will be devastating. On public interest grounds these applications should be refused.

Comments from the City and County of Swansea

130. The Council issued planning permission for the proposals on 10 March 2010 and entered into a Section 106 Agreement with the applicants. The revised UU is a mechanism which the Council would support and would seek to enforce if necessary.

APPLICATION E

Description of the Proposed Works

131. This application is for consent under Section 38 of the 2006 Act for consent to construct works on CL74. The works consist of temporary protective fencing for SAM GM202¹⁹ (Penlle'r Bebyll Cairn) during the period of construction of the access track to the associated wind farm which will pass in close proximity. The monument lies within 10 metres of the proposed road²⁰. The location of the monument in the wider area is shown on Plan 7.1(b) in Volume 3 of the ES (**CD20**) and more specifically at **CD40**. The design of the fencing enclosure is shown at **CD41**.

Summary of the Case for the Applicants

132. The fencing will be 120 metres in length and will enclose an area of 900 square metres for a period of 12 months. It will be of post and wire construction at a maximum of 1.2 metres in height and is required to protect the SAM from accidental damage. The fence will be removed once the construction works are completed.
133. Public access will only be prevented during the short period of approximately 12 months necessary to undertake these works, but will not prevent stock from grazing the area. The visual impact will be minor and temporary.

Summary of the Case for the Objectors - see below at paragraph 137

¹⁹ Cadw Records for Scheduled Monuments

²⁰ The works to the road at this location are part of Application C

APPLICATION F

Description of the Proposed Works

134. This application is for consent under Section 38 of the 2006 Act for consent to construct works on CL77. The works consist of temporary protective fencing for SAM MG62²¹ (a circular mound or cairn) during the period of construction of Turbine 15. The position of that turbine has been adjusted so that it will be at least 60 metres from MG62 to ensure a minimum distance of 30 metres between the cairn and the construction works. The location of the cairn in the wider area is shown on Plan 7.1(a) in Volume 3 of the ES (**CD20**) and more specifically at **CD40**. The design of the fencing enclosure is shown at **CD42**.

Summary of the Case for the Applicants

135. The fencing will be 48 metres in length and will enclose an area of 144 square metres for a period of 12 months. It will be of post and wire construction at a maximum of 1.2 metres in height and is required to protect the site from accidental damage. The fence will be removed once the construction works are completed.
136. Public access will only be prevented during the short period of approximately 12 months necessary to undertake these works, but will not prevent stock from grazing the area. The visual impact will be minor and temporary.

Summary of the Case for the Objectors - Applications E and F

137. It is agreed that if consents are granted under Section 16 for the deregistration and exchange of common land under Applications C and D, the fencing of the heritage sites GM202 and MG62 would be a requirement to safeguard them.

²¹ GGAT record number

CONCLUSIONS

STATUTORY REQUIREMENTS

Section 38 of the Commons Act 2006 (Applications A, B, E and F)

138. Section 38 of the 2006 Act provides that a person may apply for consent to carry out restricted works on land registered as common land. Restricted works are any that prevent or impede access to, or over, the land. They include fencing, buildings, other structures, ditches, trenches and embankments. They also include, in every case, new solid surfaces such as a new access road. In considering the applications I am required by Section 39 of the 2006 Act to have regard to the following:

- a) the interests of persons having rights in relation to, or occupying, the land (and in particular persons exercising rights of common over it);
- b) the interests of the neighbourhood;
- c) the public interest, which includes the interest in nature conservation, conservation of the landscape, protection of public rights of access and the protection of archaeological remains and features of historic interest;
- d) any other matter considered to be relevant.

Sections 16 and 17 of the Commons Act 2006 (Applications C and D)

139. Section 16(1) of the 2006 Act provides, among other things, that the owner of any land registered as common land may apply for land ("the release land") to cease to be so registered. Sub-section (2) requires that if the area of the release land is greater than 200m² a proposal must be made to replace it with other land to be registered as common land ("the replacement land").

140. Where a proposal includes replacement land, that land must be—

- (a) land to which Part 1 of the 2006 Act applies;
- (b) land not already registered as common land; and
- (c) land owned by the applicant, or by a landowner joined in the application.

141. I am required by section 16(6) of the 2006 Act to have regard to the same factors which I have set out in paragraph 138 above in relation to applications under Section 38.

142. Section 17 of the 2006 Act requires that where an application is granted under Section 16, the appropriate national authority must make an order requiring the commons registration authority to remove the release land from its register of common land. Where the application includes a proposal to register replacement land, the order shall also require the commons registration authority—

- (a) to register the replacement land as common land in place of the release land; and

- (b) to register as exercisable over the replacement land any rights of common which, immediately before the relevant date, are registered as exercisable over the release land.

143. Where immediately before the relevant date²² any rights of common are registered as exercisable over the release land, those rights are on that date extinguished in relation to that land.

144. Where immediately before the relevant date the release land was registered as common land and any relevant provision applied in relation to it—

- (a) the provision shall on that date cease to apply to the release land; and
- (b) where any replacement land is registered in its place, the provision shall on that date apply to the replacement land instead.

145. An order under this section may contain—

- (a) provision disapplying the effect of other provisions which may have applied to the release land in relation to any replacement land;
- (b) supplementary provision as to the effect in relation to any replacement land of any relevant provision;
- (c) supplementary provision as to the effect in relation to the release land or any replacement land of any local or personal Act.

146. A relevant provision includes a provision contained in, or made under section 193 of the Law of Property Act 1925 (c. 20).

Policy

147. Recent policy guidance has been issued by the Welsh Government in connection with Common Land Consents²³ and must be taken into account in determining these applications, in conjunction with the guidance notes published by the Planning Inspectorate in Wales.

REASONING

GENERAL CONSIDERATIONS

148. The Welsh Government seeks to protect commons as part of its strategic objectives in relation to biodiversity and to the sustainable use of natural resources to improve the benefits to local communities, the economy and the environment. The 2006 Act provides for the safeguarding of commons for current and future generations, helping the Welsh Government to ensure that the stock of common land is not diminished. Approximately 8% of the land area of Wales is registered as common land.

²² the date on which the commons registration authority amends its register

²³ August 2014

149. Applications for the de-registration of common land (i.e. under Section 16 of the 2006 Act) will be expected to provide, on balance, for the registration of other land of equal benefit²⁴.
150. Applications for works on common land (i.e. under Section 38 of the 2006 Act) will be approved only where they maintain or improve the condition of the common or, in exceptional cases, where they confer some wider public benefit and are either temporary in duration or have no lasting impact and that any use of the common is consistent with its status as such²⁵.
151. References in square brackets are references to paragraph numbers in this report.

APPLICATION A

The interests of persons having rights in relation to, or occupying, the land (and in particular persons exercising rights of common over it)

152. With respect to the hefted nature of the stock on the common, no individual grazier has been identified to me as being more affected than any other. In the context of the overall grazing area of the common (837 hectares) the reduction of 150 square metres in grazing is insignificant and the period of time during which this limitation will occur is short (two summers at most).
153. The vegetation which is inaccessible to stock will clearly grow unchecked during the period but no examples have been provided by the objectors of incidents where this has caused fires. I accept that in a hot, dry spell the risk of fire may be an issue, but the area is generally wet and boggy, and the risk of it drying out sufficiently to sustain a fire is likely to be very small. Any consequential risk to the graziers of loss of grazing is likely to be equally small.
154. The use of standard stock fencing should not result in danger being caused to either stock or the public, and should therefore not add to the potential liabilities of the graziers in either case. The fencing will belong to the applicant and any liability will rest with them.
155. With regard to the potential damage to the site, and thus to the graziers' interests, the LPA have demanded that a CMS and a HMP be produced as conditions of the planning permission. I have not had sight of either of these documents and thus it is impossible to provide an informed view on the issues of damage caused by accessing the site to construct the mast. The applicants advise that no concrete is to be used in the construction of the temporary mast and thus disturbance to the vegetation should be minimal in this respect. They also indicate that access to the site will be by vehicles sensitive to the delicate nature of the soil, but no further details are available.
156. Given the nature of the application, it is regrettable that neither the CMS nor the HMP has been made available to me. However, the issues of damage to the soil and vegetation, and the management of any fire risk caused by overgrown

²⁴ Paragraph 3.4 of Welsh Government – Common Land Consents Policy Guidance

²⁵ Ibid.

vegetation are ones which ought to be addressed by these documents, when produced.

157. With respect to the effect on agricultural subsidy payments, the objectors were unable to give me precise details of the way in which applications are to be made in future as recent changes to the relevant schemes had not yet been put into practice. However it seems to me that such applications must be capable of taking into account situations such as temporary loss of grazing, since the fencing of areas of commons (with the appropriate consents) is not an uncommon practice. I accept, however, that it may mean that the applications are slightly more complicated to make.

The interests of the neighbourhood

158. The intended works do not add something that will positively benefit the immediate neighbourhood, although they may contribute towards a project which will produce renewable energy, going some way to fulfilling the Welsh Government's objectives in relation to sustainable energy. The works will be of short and temporary duration and thus any adverse effect on the neighbourhood will be mitigated.

The public interest

Nature Conservation

159. No specific details of protected species at risk in the location of the proposed work have been submitted by the objectors but I note that since the planning permission was granted, and since my inquiry opened, the area as a whole has been designated as a SINC (**Appendix I of RWE20**). I would therefore expect to see the HMP acknowledge this status and provide clear and comprehensive details of how the area affected by the construction and related activity is to be protected.

Conservation of the landscape

160. The supporting structure of such masts is slight in appearance and although there will be some impact on the open landscape of introducing a structure of this height, the impact will be mitigated by the nature of the mast. It should not overly interfere with the wider general views, and is of a temporary nature. In terms of longer views from the Brecon Beacons National Park I would expect it to be inconsequential.

Protection of public rights of access

161. The proposed mast will not directly interfere with any public rights of way. It will marginally reduce the area available to the public in terms of access to the common for air and exercise, but this reduction will be temporary.

Protection of archaeological remains or features of historical interest

162. There are no identified remains or features affected at the actual location of the proposed mast. It will be visible from the SAM known as Penlle'r Castell but there will be no significantly adverse effect, and no lasting impact, on the setting of the monument.

Any other matter considered to be relevant

163. Concern has been expressed about the proposed mast being a distraction to drivers using the adjacent unclassified road. Whilst this may be a possibility, no details of any examples of incidents elsewhere have been submitted, and there is therefore no evidence to support a conclusion that accidents will be caused as a consequence.
164. Some objectors question the relevance of the height and the positioning of the proposed mast in relation to the information required for the proposed wind farm. Since the development of the wind farm itself has now been given permission I did seek clarification from the applicants as to whether the application for the temporary mast was being pursued. RWE asked me to continue to deal with the application and to make a recommendation, but did not offer any further evidence. Nevertheless, I have been given no evidence to show that an alternative location would produce more viable results in terms of data.

Non-relevant issues

165. The objectors' comments on the reduction of UK carbon emissions are irrelevant to the considerations in respect of this application.

Conclusion

166. Whilst there will be some minimal impacts on the grazing and access rights, and a minor impact in landscape terms, there will be no lasting adverse impacts which would prevent the granting of this application, provided that the CMS and the HMP are produced to the satisfaction of the LPA.

APPLICATION B

The interests of persons having rights in relation to, or occupying, the land (and in particular persons exercising rights of common over it)

167. The principal impact of this proposal on the graziers is likely to be during the construction period. The applicants stated that it was their intention to construct or improve the track in a sequential manner for stretches of 100 metres at a time. During this period the sections under active construction would be fenced off, which might affect the ability of stock to move freely over their grazing areas and may in certain circumstances isolate their water supplies. However, without a detailed CMS it is difficult to know precisely what the affects would be on individual graziers in this context.
168. The impact would be likely to be greatest on those graziers whose stock graze the common where the central section of the proposed road is planned, between Hoel y Barna and Bryn Bach Road²⁶ although at this point the works would constitute improvements to an existing road. Elsewhere the proposed track or road would follow the edge of CL68 and would therefore be less likely to cause separation of grazing areas. It might, however, cause difficulties of access to the grazing land on

²⁶ The area named on OS maps as Bryn-bach-Common

the common from the in-bye land immediately adjacent. Some graziers who occupy holdings which immediately abut the common allow their stock to wander freely between the two and fencing would make that difficult, if not impossible.

169. Once the construction of the road was finished, the use of the access to transport other construction materials to the wind farm site itself, including the transport of the turbines and blades, would continue to cause disruption to graziers and their stock. The period of the construction work as a whole was stated by the applicants to be approximately 18 months, following which the track would only be used in exceptional circumstances (e.g. for the delivery of a replacement blade).
170. The applicants acknowledged that during the construction period it would be necessary for graziers to undertake more shepherding work than they would normally expect to have to do [73], and the proposals in the UU for a shepherding fund were put forward partly to address this issue, as part of the overall mitigation for the project. The objectors were sceptical about how the management of the fund would operate, and how effective it would be at meeting their additional costs. During the inquiry process the applicants significantly increased the amount of money which they proposed to place in the fund [100] which implies that insufficient thought had been given to this matter at the outset by RWE.
171. I consider that there would be significant adverse impacts on the graziers during the construction period due to the interference caused to operation of their grazing rights. These adverse effects could be partially offset by the availability of funding to compensate for additional costs incurred, but the disruption might nevertheless be considerable.
172. With regard to the impact on the amount and quality of grazing land available, the effect of the hard surfacing would be more significant on the south western section of CL68 where the line of the proposed track is currently unsurfaced for a distance of approximately 300 metres. The slope of the land in this vicinity would also result in more substantial works being required to support the road surface. The applicants envisage that stored topsoil would be used to soften the verges and that the track and the verges will be left to re-vegetate after completion of the wind farm [47]. However, in the light of the experience of the graziers with other construction projects in the area, I agree with the objectors that the vegetation which re-establishes would be likely to be poor quality rushes rather than grazing quality grass [53].
173. The clearance of the rhododendron which the applicant proposes would continue or accelerate the work already being overseen by the WGCA. Rhododendron clearance is problematic as the species is very persistent, as has been experienced to date by the WGCA [58]. I agree with the objectors that the clearance would be unlikely to be totally successful, and that re-vegetation of the area with grass would be a long-term and on-going project, providing no benefit in the short term. Experience would suggest that the opportunities for re-vegetation as a whole are limited, and therefore I do not consider that significant weight should be attached to this aspect as mitigation for the adverse impacts on the graziers. There would consequently be a lasting but less significant adverse impact on the amount and quality of grazing land available.

The interests of the neighbourhood

174. There is a serious risk of the construction operations disrupting the hydrology of the area of the common, with consequential effects on the wider neighbourhood. This may include, but is not limited to, flooding to local communities due to alterations in water run-off patterns, or interruptions to several domestic water supplies which rely exclusively on ground water sources. Condition 7 of the planning permission recognises this and requires a CMS to be submitted and agreed by the LPA prior to the commencement of any development. The CMS must address how the effects of the works on the neighbourhood in general can be minimised, including water management and pollution control. It must also include mitigation measures to protect public and private water supplies. There is no guarantee, even if a CMS is produced to meet the requirements of the LPA, that the measures proposed would be successful, and there is therefore a risk that adverse effects would arise.
175. The intended works would not add something that will positively benefit the immediate neighbourhood, and neither would they maintain or significantly improve the condition of the common itself. Although they might contribute towards a project which would help to achieve the Welsh Government's objectives in relation to sustainable energy, and although the planning permission itself is time-limited (for 25 years) [25], the proposed works on CL68 are not, in themselves, temporary in nature. They would have a lasting impact in that there would be a greater area of hard surfacing which, even if vegetation re-establishes itself, would not be of the same type or quality as the grazing land.
176. There is also a risk that the track itself would provide an easier way for unauthorised vehicles to access the common. This is already a problem for the graziers [59; 104]. Although the access to the track from the A48 road would be gated, access would be possible at other locations. Although such access would be unlawful, it is not an easy problem to control either for the graziers themselves or the police. This would not be a benefit to the neighbourhood.

The public interest

Nature Conservation

177. As with Application A, the site now forms part of a designated SINC. The planning permission requires the submission of a HRP and a SMP to be submitted and agreed before any development takes place. It also requires a method statement for the removal and long-term management of invasive species²⁷. Other conditions have been imposed in the interests of environmental protection and to minimise the ecological effects of the construction activities²⁸.
178. No specific species of fauna or flora have been identified as being at risk in connection with this particular application. Provided that the required documentation is submitted in accordance with the conditions of the planning

²⁷ Conditions 15, 16 and 17

²⁸ Conditions 29, 30, 31, and 32

permission I am satisfied that the nature conservation aspects can be adequately protected.

Conservation of the landscape

179. Given the topography of the site, particularly at the south-western extremity of CL68, the impact on the landscape would be likely to be considerable as the works would extend across a substantial proportion of the width of CL68 at this point (i.e. the first 300 - 400 metres or so from the point at which the proposed track enters common land). To the east of that, where the improved route would pass along the high ground above the valley of Cwmdullais, the route would be highly visible; even more so if the rhododendron clearance was successful. The construction of the track across the sloping ground would entail the construction of retaining structures beside several parts of the western section of the route, which would also be intrusive in the landscape.
180. Where the proposed works involve the improvement to the existing highway, the impact on the landscape would be less marked. Nevertheless, and regardless of the potential for re-vegetation, the proposal would result in a permanent feature which would be more intrusive in visual terms than is currently the case.

Protection of public rights of access

181. The proposal would, if implemented, have a significant effect on public access to CL68, particularly from Pontarddulais. Public Footpath LC/82/1 and Public Bridleway LC/80/6 would need to be stopped up or diverted for the duration of the construction works, and their character would be permanently altered, whether they were re-instated along their current definitive routes or whether they were permanently diverted. No firm proposals have been put forward as to the future of these paths, and thus I must conclude that the proposed works would be likely to have an adverse effect on public access to CL68, which may be permanent in nature.

Protection of archaeological remains or features of historical interest

182. No specific matters were brought to my attention in this regard in relation to this particular application.

Non-relevant issues

183. Several objections that were submitted related to matters which are outside the scope of this report [60]. The effect on houses in Bolgoed Road, and the impact of road alterations on the A48 in general are not relevant to this application as they would affect land outside the application area.

Conclusions

184. The Common Land Consents Guidance recently issued by the Welsh Government indicates that applications for infrastructure projects in relation to wind farms are more likely to be successful under Section 16 of the 2006 Act. An application for consent under Section 38 will rarely be granted unless there are convincing reasons

why an application under Section 16 cannot be pursued²⁹. Exceptionally, consent may be granted under Section 38 where the works are of temporary duration or where they are underground³⁰.

185. The proposed works are not consistent with the use of the land as common land and their potential impact will be considerable; some effects being more permanent than others. Although the associated planning permission is time-limited, and the applicant has approached the Section 38 application on the basis that the works are temporary, there is no plan to actively return the land to its current condition at the end of the 25-year period. The proposal relies on re-vegetation of the affected areas, with or without intervention in the form of seeding, which is unlikely to produce vegetative growth typical of the surrounding common. Even if the construction works themselves are considered to be of temporary duration, the permanent effect of them will be visible for longer than the intended 25-year life-span of the wind farm they will serve.
186. The site of the proposed wind farm is bordered by a county road to Ammanford (known locally at this point as the Golden Mile [103]). No convincing explanation was offered to me as to why that existing highway could not be used, thus avoiding the need to construct or improve a track nearly three kilometres in length and five metres or more in width, across CL68.
187. Guided by the recent policy advice, I consider that the disadvantages of the proposal, when considered against the criteria set out in Section 39 of the 2006 Act, outweigh the potential benefit to the public in this case and consent should not be granted.

APPLICATIONS C and D

General

188. Applications C and D are both made under Section 16 of the 2006 Act and relate to the main wind farm site. They are contiguous and, although the exchange land in each case is offered separately in relation to each application, it is more sensible to deal with the two applications together as much of the evidence relates to both applications. Where it is necessary to distinguish between the two applications for some reason I have made that clear in my reasoning.
189. Although the grant of planning permission is a material consideration and ought to carry significant weight, it must be noted that in this case the planning application has not been the subject of a public local inquiry. It is therefore distinguishable to some degree from the example put to me of the decision in the Wardle Common case (**CD91**) which is the decision of an Inspector following two public local inquiries: one in respect of the planning application and a separate one in respect of the commons consent applications. I have nevertheless found it a useful document, as with the other examples submitted.

²⁹ Paragraph 4.13 of the 2014 policy guidance

³⁰ Paragraph 4.14 *ibid*

190. That is not to say that the LPAs decision is flawed in any way, but merely to highlight the fact that there were some aspects of the applicant's evidence, particularly the environmental aspects, for which no oral evidence was offered by the applicant at my inquiry, on the basis that the planning considerations adequately addressed the issues before me. This left the objectors at a disadvantage as they did not have the opportunity to cross examine the applicant's evidence, notwithstanding the fact that the objectors put forward environmental witnesses of their own, who did face cross-examination. This is reflected in my report.

The interests of persons having rights in relation to, or occupying, the land (and in particular persons exercising rights of common over it)

191. The principal objections to the proposal from the graziers fall into two main categories: the affect on them particularly during construction, and the quality and use of the proposed replacement land.
192. During construction, the disruption to the grazing areas would be considerable, and in many cases would mean that stock could not move freely over the areas on which they are hefted. This would result in increased shepherding time by the graziers which they pointed out must be done by themselves. It is not practical or possible to 'hire' in someone to shepherd stock with which they are unfamiliar.
193. The applicants have proposed the setting up of a fund to compensate graziers for their extra costs in this respect, to be managed in accordance with the procedures set out in the UU dated 24 November 2014 [73]. This undertaking was subject to discussion on the last day of the inquiry, it being the third attempt by RWE to produce a proposal that was workable and acceptable to all concerned. It should be noted that the graziers are not signatories to this document, and remain sceptical about how effective the scheme will be, both in terms of managing applications for reimbursement and in adequately compensating for the additional costs incurred [100].
194. The graziers are also concerned that the displacement of animals that would occur during the construction period might make them more vulnerable to becoming road casualties. The road alongside the wind farm site runs straight for more than a mile and is subject to the national speed limit. The graziers have been unsuccessful to date in persuading the highway authority (the Council) to reduce the speed limit to try to prevent the existing problems [104]. The ability to resolve this issue is not within either the applicants' or the graziers' control.
195. Even if the funding available under the scheme were to be sufficient to cover the additional costs incurred by the graziers, applications to the fund would require additional work on their behalf since they would need to be accompanied by documentation to justify their claims. Furthermore, the representation on the management committee would demand time from those graziers who sit on it. If implemented it will require considerable trust and cooperation from all concerned to make the scheme work; a factor recognised by the parties at the inquiry.
196. In respect of the period of construction, therefore, it was acknowledged that there would be disruption to the graziers. Whilst measures to alleviate, or compensate

for, the disruption have been put forward by the applicants, the effectiveness of them remains to be tested and the operation of the scheme would, in itself, cause additional work for the graziers' and their representatives.

197. With respect to the replacement land, there is considerable concern on the part of the graziers that, far from assisting them with their management of the stock and the common, it would introduce problems and complications which would be to the serious detriment of their use of the common [105].
198. In terms of area, the land proposed to be deregistered in the combined applications is 34.55 hectares, and the combined amount of replacement land being offered is 19.44 hectares. The replacement land offered is therefore considerably less than the land actually being taken out of the common – a situation which is clearly not desirable.
199. The applicants claimed in mitigation that the land not required for the operation of the wind farm following completion of construction would be re-dedicated as common land, resulting in the amount of permanently removed land from the two commons reducing to 15.16 hectares. This would result in more land being offered as replacement land than was being de-registered overall. However during the passage of the inquiry the applicants changed their view and concluded in closing that re-dedication was neither possible yet (as the relevant provisions have not yet been brought into force in Wales³¹) and nor was it desirable as it would complicate the management of the land during the operational phase of the wind farm. Nevertheless, the applicants agreed to grant access rights to the graziers over much of the deregistered land during the life of the wind farm via the mechanism of the UU.
200. The graziers concerns were that the land which was disturbed during construction and then re-instated would not provide grazing of the quality or quantity of the common land prior to works commencing. This was based on experience on the adjoining common of MyB where the wind farm has been completed and is now operational. The re-vegetation of non-operational areas on that site has been slow or non-existent and the replacement soil is generally stony and non-productive. Where there has been re-growth it has been poor quality vegetation not suitable for stock to graze.
201. I was able to see this during my site visits and I conclude that any re-vegetation would take many years to develop and would be likely to be of poor quality for many more years. Furthermore, although procedures exist under Section 16 of the Countryside and Rights of Way Act 2000 for the dedication of Access Land I accept that the mechanism for the creation of common land is not yet in force. Nevertheless there has been no binding undertaking on the part of the landowners or the applicant that the non-operational land would be re-dedicated as common land, even when it becomes legally possible to do so. In fact they have retreated from their original position because of the potential inconvenience to themselves. I do not consider much weight should be placed on the availability of the non-operational land for grazing, or the potential re-dedication of that land, in assessing

³¹ Section 6 of the 2006 Act

these applications. Thus there would be a significant loss of registered common land if these applications were successful.

202. Turning to the replacement land that is being formally offered as part of the application, the two areas offer quite different challenges for the graziers who consider that both of them are totally unsuitable as alternative grazing. The difficulty of incorporating both areas into the common has been recognised by the applicants and a proposal is included in the UU for managing this process [67]. However, the proposals have not met with the support of the graziers.
203. In addition, due to the hefting patterns adopted by the stock, the location of both parcels of land on the margins of the existing common would have the potential to disrupt the normal behaviour of the stock by causing them to migrate to unfamiliar areas. This has implications for animal health and welfare by mixing flocks and complicating the legal requirements in respect of animal movement records.
204. There was some discussion of a legal case which has been considered in the past to have relevance on this issue³². The case concerned the exchange of land in a case under Section 23 of the Acquisition of Land Act 1981. It related to the compulsory purchase of land and it was decided (amongst other things) that, put simply, the land being offered must be of equal value at the time of exchange. The applicants argued that this case was of no relevance as it related to different provisions entirely. Nevertheless, it is the stated policy of the Welsh Government that the land being offered in exchange should be, on balance, of 'equal benefit' [149].
205. The land at BG is currently improved pasture, and presents the problems associated with the enticement of stock onto better grazing land and the difficulties that ensue of overgrazing and stock control. The proposals for BG which have been put forward by the applicant rely either on the holding being let out for grazing as a separate unit, the income going to the benefit of the commoners, or for works to be undertaken to degrade the quality of the grazing land [67].
206. I do not consider that either of these proposals is acceptable in terms of the management of common land. Keeping the holding separate from the common and letting out the grazing would result in part of the common land being fenced off, and may require consent under Section 38 of the 2006 Act. There may also be complications in connection with the temporary severance of common rights to enable the sub-letting of the holding³³. Furthermore, it is not clear how any benefit derived from letting the land would be distributed. Not all the commoners who are entitled to graze either CL74 or CL77 and who would be affected by the applications are members of the WGCA and there is currently no Commons Council which manages the common. This function has been carried out by WGCA for many years and no objection to this arrangement has been brought to my attention.
207. The arrangements put forward by RWE are ill-thought out and the implications have not been fully evaluated. Whilst it might be possible to find a way of using

³² London Borough of Greenwich and others v Secretary of State for Environment and Secretary of State [1993] Env. L.R. 344

³³ See Section 9 of the 2006 Act and Paragraph 2 of Schedule 1

the land profitably, it is unlikely to be use consistent with its status as a common; or in relation to those exercising common rights, who will consequently be disadvantaged.

208. With regard to the land at ByrO, the considerations are different but may still involve fencing. The land is generally of poor quality and the vegetation boggy in many parts. Veterinary advice is that there is a higher than normal risk of liver fluke infection on land such as that at ByrO and their recommendation is to avoid grazing it [108]. The applicants consider that not all the land would be suitable for grazing, and propose fencing off parts of it, apparently making a distinction between land offered in exchange for grazing and land offered in exchange for public access [83; 84].
209. The applicants consider that the vegetation of the replacement land at ByrO is similar to that on the common, and it may be true to say that it is similar to some of the existing common land. However, it is not of the same grazing quality as the majority of the land on CL74 and CL77 and the graziers indicated that they would be unlikely to make use of it [108]. Furthermore, some of the replacement land being offered is already being grazed as part of the common, because the fence line for the holding is set back from the stream and stock therefore have free access to it [120].
210. The applicants also stated it was the intention of the owner of the land at ByrO and BG not to exercise the common grazing rights attached to his property. The reduction in the numbers of stock would, in their view, render the replacement land unnecessary. However although provisions for the surrender of common rights are contained in the 2006 Act, the mechanism by which this surrender would be ensured was not explained to me by the applicants. It is not contained within the UU and appears to be a verbal assurance rather than a legal commitment.
211. Taking all these matters into consideration I conclude that the replacement land would not be of equal benefit to the graziers, either at the time of exchange or thereafter, without a considerable amount of work. This is not consistent with the policy of the Welsh Government, although it is possible to take into account other benefits in the balancing exercise, should they exist. I look at this matter later in the report when considering the public interest. However, I consider that little or no weight should be placed on the replacement land in terms of benefit to those persons exercising grazing rights on the two commons concerned.

The interests of the neighbourhood

212. Similar concerns were expressed in relation to the effect on the hydrology of the area to those expressed in relation to Application B [54]. In considering the applications under Section 16 of the 2006 Act it is relevant to take into account the planned use of the release land, especially where that use will have an effect on any of the issues which must be taken into consideration. There can be no doubt that the construction of a wind farm would have an impact on the neighbourhood.
213. I consider that there is a risk that the process of the construction of the wind farm will affect the hydrology, and that water supplies may also be affected. If there were no risk there would be no need to undertake surveys to assess and monitor

the situation. This matter has been addressed by conditions attached to the planning permission, but there is no guarantee that the measures proposed in the CMS will be successful, and at present this document has yet to be produced. Therefore there remains an unquantifiable risk that adverse effects may arise to the neighbourhood as a result of the planned use of the release land which must be taken into account.

214. With respect to the issue of noise, there will undoubtedly be some noise impact from the proposed development which will affect the neighbourhood. As with other potential impacts of the turbines (shadow flicker, television interference etc) conditions have been imposed to mitigate adverse effects as far as possible. Sensitivity to noise varies from person to person but the aural impact is unlikely to be sufficient to cause serious disturbance to stock or local residents.

The public interest

Nature Conservation

215. As with Applications A and B, the site now forms part of a designated SINC. The planning permission requires the submission of a HRP and a SMP to be submitted and agreed before any development takes place. Concern was expressed on behalf of the objectors that insufficient monitoring of operational wind farms had taken place such that the effect on fauna and flora, and in particular birds, had not been fully evaluated [125]. I accept that this may be a valid point of view, but the LPA has placed a variety of conditions on the planning permission in an attempt to address the question of the impact on nature conservation issues, including specific requirements in the SMP relating to birds and bats³⁴.
216. The present application for 16 wind turbines was prepared to try to address the concerns with the earlier application (for 19 turbines) in relation to the damage to peat deposits. Whilst it cannot be guaranteed that the present application will succeed in avoiding all risks to the peat deposits, the permission does contain a condition aimed at minimising the impact on peat-land habitat³⁵. By implication, if the development has been designed with the intention to avoid peat habitat, by and large the areas of release land should not include areas of peat, meaning that those areas should therefore remain part of the common (i.e. they will not be part of the release land). There may be some areas where the development will affect peat deposits but this is acknowledged by the requirements of the LPA in terms of the CMS. Mitigation measures will be required and the CMS should address these.

³⁴ Condition 16

³⁵ Condition 30

217. Provided that the required documentation is submitted in accordance with the conditions of the planning permission and to the satisfaction of the LPA, I am satisfied that the nature conservation aspects have been appropriately addressed as far as the planning process is concerned. However, it is regrettable that the applicants failed to produce a witness to speak to their evidence in this respect since there were issues which were challenged by the objectors and which have consequently not been fully explored. It remains the case that there is the possibility of damage since the mitigation measures proposed might not be successful.

Conservation of the landscape

218. The proposed development has been given planning permission through a process which included evaluating the impact of the development on the landscape. It was suggested by the applicants that I did not therefore need to address this issue, but merely rely on the planning permission. However, since the conservation of the landscape is a specific issue identified in the 2006 Act I do not consider it appropriate to take such a simplistic approach. I must be able to recommend that the issue has been satisfactorily assessed in terms of the de-registration and exchange of common land.
219. The implications of the de-registration of the land were the subject of dispute at the inquiry in terms of the requirement to fence non-common land against the common [110;119]. The OSS seems to have assumed that the 'heart' of the common would be fenced off, and SOCME argued that since it was customary law that land should be fenced against the common, not doing so might create a precedent, notwithstanding the fact that the graziers would prefer, for practical reasons, that the de-registered land was not fenced. The applicants, on the other hand, argued that there was no legal reason why non-common land should be fenced off from the common.
220. There did not seem to me to be a consistent understanding by the applicants on the question of fencing [67;71;72], whether in the context of the construction period or during the operational life of the wind farm. This confusion is exacerbated by the requirements of Condition 33 attached to the planning permission which requires details of fencing of what it calls the 'exchange land' but which actually refers to the replacement land.
221. The situation with regard to fencing of land against the common is complicated and addressed at some length in one of the most respected text books available³⁶. I consider that the customary fencing issue is a separate issue to the fencing of land which is de-registered as part of a legal process. The fencing of de-registered land would be a matter for each particular case on its own merits. Nevertheless, I consider that any permanent fencing of the release land against the commons would have a seriously detrimental effect on the landscape. I also consider that any permanent fencing of the replacement land, for the purposes of controlling access by stock or the public, would be unacceptable in landscape terms. Neither

³⁶ Gadsden on Commons and Greens by Edward F Cousins and Richard Honey 2012

would it be consistent with the open character of the commons. If these applications are granted the requirements of Condition 33 will need to be varied; alternatively it will be necessary for applications to be made under Section 38 of the 2006 Act for consent for temporary or permanent fencing works on the replacement land which will have become common land as a consequence of granting the Section 16 applications. This would add a further complication, and the applications might not be successful, in which case alternative ways of managing the land would need to be explored, presenting yet more difficulties.

222. With regard to the landscape impact of the wind turbines and the associated development itself, I accept that the planning process has examined in depth the impact on the wider landscape. There would nevertheless be a detrimental impact in terms of the landscape of the common, resulting in what is currently a wide open vegetated aspect into one which contains a significant number of large structures and a considerable length of metalled road. This would be compounded by the fact that the adjacent MyB wind farm is now complete and operational. The two sites will effectively become one large wind farm in visual terms, with a correspondingly bigger impact.
223. I also acknowledge the historical value of the landscape and the detriment which would be caused by the effective dissection of the common by strips of unregistered land. I do not think that the legislation envisaged that commons would be affected in this way but it would be the regrettable consequence of applications such as these if they were successful. The question of potential AONB status for MyG appears to be a low priority for NRW, and I therefore cannot give it any weight.
224. There is some confusion about the need for lighting the turbines since Condition 20 leaves open the question of lighting for aviation safety purposes. In the absence of such lighting the only light permitted would be PIR-operated access lights. I acknowledge the possible impact on the opportunity for observation of the night sky, but the limited lighting proposed would, in my view, not prevent visual study, although it may impact on photographic study. Any form of lighting would have a detrimental affect on the dark landscape of the common, but its impact would be limited.

Protection of public rights of access

225. There are no recorded public rights of way within the actual wind farm development site but both CL77 and CL74 as a whole do have both public footpaths and public bridleways across them. There are also two promoted routes in the vicinity, one of which (St Illtyd's Walk) passes through the northern area of the proposed wind farm. Both commons affected by Applications C and D are subject to general public access. Owing to the grant made in the UU [63] the public would continue to have access to much of the release land following completion of construction of the wind farm. During construction access would be impeded and it might be that it would be impossible in some places to pass from one part of the common to another due to the existence of the temporary fencing around areas under active construction. These restrictions to public access would persist for 18 months to two years, but after that (and until de-commissioning) it would still be

possible to use much of the existing common land in addition to the areas of replacement land. The claim by the OSS that the heart of the common would be fenced off would only apply (if at all) to the construction period, provided that the release land was not fenced (see paragraph 221 above).

226. Nevertheless, the introduction into the area of the wind turbines and associated infrastructure would be likely to result in the landscape becoming less attractive to walkers, as expressed by some witnesses who said they no longer walk on MyB for this reason[114]. The noise created by the turbines may also detract from the enjoyment of access to some people.
227. The replacement land is generally different in character from the existing common land, although that at ByrO is more similar to it than that at BG. The replacement land at ByrO offers the potential addition of woodland habitat, but the slope on which it is situated means that, in practice, very few members of the public would be likely to attempt to walk through it. Much of the land at ByrO is also rather boggy, and may not therefore offer much for general recreational walkers. Some of the land offered as replacement land (alongside the Afon Llan) is already unfenced against the common and available to *de facto* public access in theory, but there is no evidence as to whether or not it is actually used in practice. Its location would suggest that it might not receive much use even if it became part of the registered common.
228. The land at BG is quite different in character from the surrounding common land and, owing to the suggested management regime for this area of replacement land, might be fenced off from it. It might therefore not be freely accessible, access having to be provided by stiles at, as yet, undetermined locations. This may not be attractive to someone wishing to walk on the common and would be a negative aspect not only for public access but also in terms of the common itself.
229. The replacement land does not offer the public any particular advantage in terms of access, but that is not a requirement of the legislation. It is however necessary for the replacement land to offer land of equal benefit to that being released and in this context the replacement land falls significantly short, both in terms of character and in the shortfall of the area of registered common.
230. Consequently when considering the protection of public rights of access and particularly in relation to 'land of equal benefit' the replacement land does not, in my view, fulfil the requirements.

Protection of archaeological remains or features of historical interest

231. There are two sites directly affected by these two applications and they are themselves the subject of Applications E and F under Section 38 of the 2006 Act. I deal with these below.
232. Condition 27 of the planning permission places the obligation on the developer to implement a programme of archaeological work to identify and record any features of archaeological interest discovered during the works. No other sites have been specifically identified at this stage although the ES does identify a number of other recorded archaeological sites.

233. I am satisfied that the archaeological and historical interest of the site has been adequately safeguarded by the measures imposed in the planning conditions, and Applications E and F.

Any other matter considered to be relevant

234. The area of the proposed wind farm has been identified as an important area in Wales for the potential development of sustainable energy (see TAN 8 at **CD74**). It is therefore necessary to weigh the public benefit in terms of national energy policy against the drawbacks that I have identified. This is made difficult if not impossible by the lack of detail currently available. Until the planning conditions have been discharged and the mitigation measures agreed, it is not possible to effectively carry out this exercise.
235. The claims of the objectors that wind farms are, at most, only 25% efficient [128] were not challenged by the applicants and I therefore consider that the grant of planning permission should not be taken to imply that the benefits in terms of public policy on sustainable energy should automatically outweigh the disadvantages in terms of the protection of common land.

Conclusions

236. Taking the applications together, there would be significant disadvantages to those persons with rights over the common in terms of grazing and disturbance during construction, and inappropriate replacement land for grazing. The mitigation measures proposed by the applicant are insufficiently well developed to provide confidence in their efficacy.
237. There is a risk of adverse effects due to the possible fencing requirements in relation to both the release land and the replacement land which would be incompatible with the landscape, with public access, and with the use of the land as common land.
238. Public access would also be adversely affected in the short term due to temporary closures to public rights of way; an effect which might persist in the longer term. In the longer term the public would be disadvantaged by the change in the character of the common as a result of the development, and the unattractiveness of the replacement land. Public policy interest would not be served by the overall loss of registered common land.
239. Overall, the applications suffer from a lack of detail due to the amount of information yet to be provided to the LPA to discharge the conditions to the planning permission. This lack of clarity prevents certainty in assessing the effects of the applications and militates against making orders because the disadvantages cannot be effectively weighed against the public benefit in terms of sustainable energy. I consider it would be premature to make the orders applied for.
240. The applicants did suggest that the orders could contain conditions in order to allow them to be made prior to the submission to the LPA of the required documentation and the anticipated discharge of the planning conditions.

241. I do not consider that this is a course of action open to the Welsh Ministers. Orders made under the 2006 Act are instructions to the CRA to make administrative changes to the CLR. I am not aware of any provisions for attaching conditions to such an order and, even if there were, it would be inappropriate to attach conditions over which the CRA had no control (i.e. the discharge of the planning conditions). Furthermore, it may be impossible for the applicants to provide the necessary safeguards required by the LPA. The discharge of the planning conditions ought not to be considered a foregone conclusion.

APPLICATIONS E and F

General

242. There was general agreement at the inquiry that, should the applications for the wind farm itself be granted (Applications C and D) the fencing of the monuments would be essential to prevent possible damage. No dissenting views have been expressed. (Application B in relation to the access track on CL68 does not affect either of the archaeological features concerned.)

Conclusions

243. In the absence of any consent for Applications C and D, no consent would be required for these two applications. However, I am satisfied that the temporary fencing of the two archaeological features will have no adverse impacts on rights holders, the neighbourhood, the public interest or any other aspect and that, should consent for related applications be granted, these two applications should also succeed.

RECOMMENDATIONS

APPLICATION A

244. No consent should be granted until a Construction Method Statement and a Habitats Management Plan have been submitted to, and approved by, the Local Planning Authority. If and when the LPA is satisfied that the conditions have been successfully discharged, I recommend that the Section 38 consent be granted.

APPLICATION B

245. I recommend that consent be not granted.

APPLICATIONS C and D

246. I recommend that no orders be made.

247. If the Welsh Ministers disagree and are minded to allow the deregistration and exchange to go ahead, the orders should be delayed until such time as any conditions attached to the planning permission which require the approval of details before development is commenced are discharged, and a binding agreement has been made by the landowners to re-dedicate all the release land as common land on the de-commissioning of the wind farm.

APPLICATIONS E AND F

248. In the absence of any order in relation to Applications C and D, I recommend that no consent be granted.

249. If consent is granted in respect of Applications C and D, I recommend consent is granted.

Helen Slade

INSPECTOR

APPEARANCES

FOR THE APPLICANT:

Marcus Trinick QC	Partner, Eversheds LLP, 1 Callaghan Square, Cardiff, CF10 5BT
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He called

Karl Cradick BA (Hons) MSc, MRTPI	Savills (Planning considerations)
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Christopher Hadley BSc(Hons) Agric, MBAIC	Smiths Gore (Agricultural Land Quality)
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FOR THE OBJECTORS:

Glyn Morgan	Chair, SOCME
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He called

Brigette Rowlands	Secretary WGCA
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Glyn Morgan	Local Grazier (Common Land and Hefting)
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Gareth Mulligan MRCVS	Veterinary Aspect
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Owen Cellan Jones	Local Grazier (CL68)
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Gwyn Davies	Local Grazier (CL74)
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Frank Jones	Local Grazier and Guest House Owner
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Malcolm Ridge MBE	Chairman, The Gower Society
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Clare Moseley	Local Resident and Open Spaces Society
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Dr Simon Meecham Jones MA (Cantab) MA (Oxon) Ph.D (Wales)	Cultural Aspects
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Paul Northcote	Local Resident and Local Wildlife Conservationist
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Barry Stewart	Local Ecologist
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John Miles	Local Councillor for Pontarddulais
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Ian David Hinton	On Behalf of the Bunker/Hinton Family, Local Residents
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Alan Richards	Member of Ponterddulais Walking Club, and also on behalf of Pontdardawe Strollers Society and Swansea Ramblers Association
Ian Glendenning BSc Mphil	Astronomer and Astrophysicist
Ioan M Richard	County Councillor and Local Resident
David Francis	Local Resident
Jonathan Carter	Local Resident
Myfanwy Kohll	Local Resident

INQUIRY DOCUMENTS

CORE DOCUMENTS SUBMITTED BY APPLICANT

Document Number (CD)	Document Name
Consideration of Application	
1	Committee Report of Swansea Council 7 February 2013
2	UNUSED
Application Documents	
3	Section 16 CL74 Application Form
4	Section 16 CL77 Application Form
5	Section 38 CL68 Application Form
6	Section 38 CL74 Application Form
7	Section 38 CL77 Application Form
8	Application Continuation Sheets for 3 – 7 Above
9	Commons Register CL68 and Register Map of CL45
10	Grazing Impact Assessment and Farm Business Survey
11	Commons Register CL74
12	Planning Inspector's Report for Mynydd y Gwair 19 turbine application (2010)
13	Pre-Application Consultation Report
14	Commons Register CL77
15	Public Notices
16	Draft Unilateral Agreement
17	Summary of Registered Rights on CL68, CL74 and CL77
18	Private rights of way and covenants affecting Blaen Gerdinen
19	Order of Limitations
20	Environmental Statement 2012
21	Overview Map all CL areas and wind farm
22	CL68 - Sheet 1 of 2
23	CL68 - Sheet 2 of 2
24	CL74 - Sheet 1 of 6
25	CL74 - Sheet 2 of 6
26	CL74 - Sheet 3 of 6
27	CL74 Sheet 4 of 6
28	CL74 Sheet 5 of 6
29	CL74 Sheet 6 of 6
30	CL77 Sheet 1 of 2
31	CL77 Sheet 2 of 2
32	Blaen yr Olchfa Replacement Land
33	Blaen yr Olchfa Replacement Land - Grazing and Non Grazing Areas
34	Blaen Gerdinen Replacement Land
35	Blaen Gerdinen Replacement Land - Grazing and Non Grazing Areas

36	Drawing showing a typical wind turbine
37	Drawing showing the turbine foundations
38	Drawing showing a typical cross section for the access tracks
39	Drawing showing a typical layout for the turbines and crane hard standings
40	SAM location plan
41	SAM fencing plan - GM202
42	SAM fencing plan - MG62
43	Drawing showing typical cable trench
44	Photo of proposed met mast
45	Map showing area for rhododendron clearance
46	Map showing our understanding of hefted areas
47	SAM - Fence Elevation Plan
48	Cable Route Plan
International Obligations	
49	1992 United Nations Framework Convention on Climate Change
50	The 1997 Kyoto Protocol on Climate Change
51	The 2009 Copenhagen Accord
52	The United Nations Climate Change Conference, Durban, 2011
53	The United Nations Climate Change Conference, Doha, 2012
European Obligations	
54	EU Emissions Trading Scheme – Fact Sheet
55	Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009
56	Decision No. 406/2009/EC of the European Parliament and of the Council of 23 April 2009
UK Law and Policy	
57	Climate Change Act 2008
58	UK Renewable Energy Strategy (2009)
59	UK Low Carbon Transition Plan (2009)
60	National Renewable Action Plan for the United Kingdom (2010)
61a	The Promotion of the Use of Energy from Renewable Sources Regulations (2011)
61b	The Carbon Plan: delivering our low carbon future - December 2011
62	Planning Act 2008
63	National Policy Statement EN1: Overarching National Policy Statement for Energy (2011)
64	National Policy Statement EN3: National Policy Statement for Renewable Energy Infrastructure (2011)
65	UK Renewable Energy Roadmap Update 2013
Welsh Policy	
66	The Government of Wales Act 2006
67	One Wales: One Planet - the sustainable development scheme of the Welsh Government
68	The Renewable Energy Route Map for Wales, February 2008
69	A Low Carbon Revolution: the Welsh Assembly Government Energy Policy Statement, March 2010

70	Economic Revival: A new direction - July 2010
71	Climate Change Strategy for Wales - Welsh Government, October 2010
72	People, Places, Futures - the Wales Spatial Plan 2008 Update
73	Planning Policy Wales: edition 5- November 2012
74	Planning Policy Wales Technical Advice Note 8: Planning for Renewable Energy (July 2005)
Agricultural	
75	Evaluation of the Suitability of Proposed Exchange Lands as Common Land
76	UNUSED
Common Land Policy	
77	Defra Common Land Consents Policy Guidance, July 2009
Miscellaneous	
78	Letter and Notice of Amendment to Application – 5 February 2014
79	Email of 23 December 2013 to Planning Inspectorate regarding corrections to application forms
80	UNUSED
Reports and Decisions on Common Land Orders for Other Wind Farms	
81	Todmorden Moor and Lower Moor Common – 13 July 2011
82	Scout Moor – 25 May 2005
83	Scout Moor – 5 May 2006
84	Mynydd y Gwair – 27 October 2010
85	Mynydd y Betwys – 10 June 2009
Further Added Documents	
86	City and Council of Swansea Unitary Development Plan, November 2008
87	Swansea Local Development Plan Preferred Strategy, July 2013
88	s16 & s38 Commons Act 2006
89	Energy Wales: a low carbon transition
Further Reports and Decisions on Common Land Orders	
90	Ramsden and White Slack Common, Shore Moor, Wardle Common and Whitworth & Trough Common, Todmorden, Whitworth, Wardle and Littleborough (dealing with common land applications COM 283, 284 and 285)
91	Shore Moor, Wardle Common, Littleborough, (dealing with common land applications COM 131, 133, 135)
92	Buckley Common, Flintshire (APP/A6835/X/14/515960)
93	Tywyn Aberffraw Common, Community of Aberffraw, Anglesey (APP/L6805/X/2013/515810)
94	Garreglwyd Water Treatment Works, Graig Coch, (APP/Q6810/X/13/515821)
Met Mast Application	
95	Draft Consultee Letter – English/Welsh
96	Letter to Ammanford Library
97	Letter to the Open Spaces Society – English/Welsh
98	Letter to Pontarddulais Library
99	Letter to the Planning Inspectorate
100	Letter to the Somerset Trust – English/Welsh

101	Letter to City and County of Swansea Council – English/Welsh
102	Letter to West Glamorgan Commoners’ Association – English/Welsh
103	Letter to the Countryside Council for Wales – English/Welsh
104	Notice Advertising Proposal – English/Welsh
105	Application
106	Letter from City and County of Swansea Granting Planning Permission - 2011
107	Letter from City and County of Swansea Granting Planning Permission - 2013
108	Public Notice
109	Plan of Met Mast Location 1:10,000
110	Plan of Met Mast Location 1:5,000
111	Email of no objection from Somerset Trust
112	City and County of Swansea Council CL74 Plan 1
2014 Welsh Government Guidance	
113	Common Land Consents Guidance, August 2014

OTHER DOCUMENTS SUBMITTED BY THE APPLICANT

Document Number (RWE)	Document Name
1(a)	Proof of Evidence for Karl Cradick BA(Hons) Msc MRTPI
1(b)	Proof of Evidence for Christopher Hadley Bsc(Hons) Agric MBIAC
2	Opening Statement on behalf of RWE
3	List of graziers and maps of rights extent
4	Copy of Planning Permission (10 March 2014) Reference 2012/1221 and Section 106 Agreement (dated 7 March 2014)
5	Unilateral Undertaking dated 6 March 2014
6	Unilateral Undertaking dated 18 March 2014
7	Proposed Deed of Discharge and comments from the Council of the City and County of Swansea
8	Undated copy of Revised Unilateral Undertaking (November 2014)
9	Revised Unilateral Undertaking signed and dated 24 November 2014
10	Letter dated 12 September 2014 with draft revised planning obligation and explanatory memorandum
11	Letter of 10 October 2014 in response to queries raised by Inspector
12	Letter of 31 October 2014 in response to queries raised by Inspector and to comments made in responses by objectors to the consultation in respect of the draft planning obligation
13	Closing Submissions on behalf of RWE

DOCUMENTS SUBMITTED BY THE OBJECTORS**EVIDENCE FROM SOCME**

Document Number (SOCME)	Document Name
1	Introduction – Glyn Morgan
2	Proof of Evidence of Brigitte Rowlands (WGCA)
3	Proof of Evidence of Glyn Morgan, Local Grazier (Hefting and Common Land)
4	Proof of Evidence of Gareth Mulligan MRCVS (Veterinary Aspects)
5	Proof of Evidence of Cellan Jones (Local Grazier CL68)
6	Proof of Evidence of Gwyn Davies (Local Grazier CL74)
7	Proof of Evidence of Frank Jones (Local Grazier and Guest House owner)
8	Proof of Evidence of Malcolm Ridge (Gower Society)
9	Proof of Evidence of Clare Moseley MA Oxon (Local Resident and Open Spaces Society)
10	Proof of Evidence of Simon Meecham Jones MA (Cantab) MA (Oxon) Ph.D (Wales) (Cultural Aspects)
11	Proof of Evidence of Paul Northcote (Impacts on Local Wildlife)
12	Proof of Evidence of Barry Stewart BSc (Hons) (Consultant Ecologist)
13	Proof of Evidence of John Miles (Pontarddulais Community Council)
14	Proof of Evidence of the Bunker-Hinton family (Local Residents)
15	Proof of Evidence of Alan Richards (Pontarddulais Walking Club; Pontardawe Strollers Society and Swansea Ramblers Association)
16	Proof of Evidence of Ian Glendenning BSc Astronomy and Astrophysics, MPhil
17	Letters from Glyn Morgan (Chair of SOCME) dated 6 October 2014 and 12 November 2014 in response to revised Unilateral Undertaking
18	Closing Submissions on behalf of SOCME

OTHER REPRESENTATIONS IN OBJECTION

Document Number (OBJ)	Document Name
1	Letter from David J Francis dated 13 March 2014
2	Proof of Evidence and supplementary statement of Jonathan and Emma Carter
3	Proof of Evidence of Councillor Ioan Richard
4	Bundle of representations (October 2014) in response to revised Unilateral Undertaking
5	Objections from and on behalf of Jeff and Myfanwy Kohl

6	Letter dated 10 November 2014 from Malcolm Ridge on behalf of the Gower Society in further response to revised Unilateral Undertaking
7	Letter dated 14 November 2014 from Kate Ashbrook on behalf of the Open Spaces Society in further response to revised Unilateral Undertaking
8	Information provided by Clare Moseley dated 15 September 2014 in respect of the Judicial Review application made by Jonathan Carter in respect of the planning permission (Ref: CO/1793/2014)

OTHER INQUIRY DOCUMENTS

Document Number (TAM)	Document Name
1	Temporary Anemometer Mast re-advertisement (20 May 2013), notice and consultation letters
2	Temporary Anemometer Mast objections and representations
3	Temporary Anemometer Mast Applicant Response to objections

Document Number (BW)	Document Name
1	Blue wallet containing objections to Application B
2	Blue wallet containing objections to Application C
3	Blue wallet containing objections to Application D
4	Blue wallet containing objections to Application E
5	Blue wallet containing objections to Application F