

Penderfyniad ar y Cais

gan Isabel Nethell

Benodir gan Weinidogion Cymru

Dyddiad: 25/09/15

Application Decision

by Isabel Nethell

Appointed by the Welsh Ministers

Date: 25/09/15

Application Ref: APP/X6910/X/15/516093

Site Address: Bedwellty Common, New Tredegar, Blaenau Gwent

Determination of this application has been delegated to me by the Welsh Ministers.

- The application, dated 07 May 2015, is made under Section 38 of the Commons Act 2006 ("the 2006 Act") for consent to carry out restricted works on common land.
- The application relates to Bedwellty Common (CL 10) and the Commons Registration Authority is Blaenau Gwent County Borough Council ("the Council").
- The application is made on behalf Mr Robert Davies of Bedlywn Farm, Cefn-Rhychdir Road, Phillipstown, New Tredegar ("the applicant").
- The works proposed is the construction of an Access Track.

Decision

1. Consent is granted for the works in accordance with the application dated 07 May 2015 and the plans submitted with it, subject to the following conditions:
 - (i) The proposed works hereby permitted shall begin no later than 13 March 2020 in line with the conditions set out in the planning permission dated 13 March 2015 (Ref: 14/0704/Full).
 - (ii) The works must be carried out strictly in accordance with the details contained in the application.
2. For the purposes of identification only, the location of the works is shown outlined in red on the attached plan.

Preliminary Matters

3. Bedwellty Common (CL 10) has a total area of some 11975 acres and rights to graze cattle, sheep, and ponies/horses as well as estover rights in respect of cutting and taking bracken and fern, are registered. The common is not subject to an Order of Limitation made under section 193 of the Law and Property Act 1925 or a Scheme of Management made under the Commons Act 1899. The site is not within a Site of Specific Scientific Interest (SSSI) or an Area of Outstanding Natural Beauty (AONB) and will not have an effect on a Scheduled Ancient Monument.

The Application

4. The site is located between the existing road on Bedwellty Common and the existing gate on the boundary to Bedlwyn Farm, Cefn Rhychdir Road, Phillipstown, New Tredegar. The proposal would construct an access track which will be 75 metres in length and 4 metres wide and would replace an old tarmacadam track which has fallen into a state of disrepair. The track will provide access for the maintenance of a single wind turbine and for its removal at the end of the 25 year period.
5. The track will be constructed of an approximately 300mm deep sub-base of locally excavated hardcore, capped with 803 grade stone from a local quarry. The stone will be compacted in 110mm layers using a large single drum road roller. Excavated spoil will be separated into sub soil and top soil and removed from site. Caerphilly County Borough Council granted planning permission for the erection of a single wind turbine together with associated infrastructure, including an access track and electrical housing on 13 March 2015 (Ref: 14/0704/Full).

Application Procedures

6. The application form stated that the relevant Commons Registration Authority is Monmouthshire County Council. It was subsequently discovered, however, that the appropriate authority is Blaenau Gwent County Borough Council. As both Authorities were consulted during the application process, I am satisfied that this error is not detrimental to the application.
7. The procedures for an application of this sort are set out in The Works on Common Land, etc. (Procedure) (Wales) Regulations 2012. The Regulations require that the application be publicised and that an opportunity be provided for representations to be submitted to the determining authority by any person. In accordance with these requirements the applicant posted notices on the site (which were maintained for the required period of time), an advertisement was placed in the Rhymney Valley Express on Thursday 14 May 2015, and copies of the appropriate documentation were made available for public inspection at White Rose Information & Resources Centre, Cross Street, Elliotstown, Caerphilly NP24 6EF.
8. In addition, the applicant confirmed that formal notification was sent to Alun Griffiths of WBCP (Bedwellty) Limited (the landowner), Rhymney and Bedwellty Commoners Association, all known commoners, Blaenau Gwent, Monmouthshire and Caerphilly Councils, Natural Resources Wales (NRW), Cadw, and the Open Spaces Society (OSS).
9. This application has been determined solely on the basis of written evidence.

Objection

10. There was one objection made to the application by the Open Spaces Society dated 10 June 2015 and was based on their uncertainty about the precise route of the new access track. Following their further consultation with the applicant however, the objection was withdrawn on 23 June 2015.

Main Issues

11. The matters to be considered in determining an application for consent are set out in Section 39(1) of the Commons Act 2006:
 - (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;
 - (d) any other matter considered to be relevant.
17. Paragraph 39(2) of the Act further explains that "*the public interest includes the public interest in –*
- (a) nature conservation;
 - (b) the conservation of the landscape;
 - (c) the protection of public rights of access;
 - (d) the protection of archaeological remains and features of historic interest.
18. I have also had regard to the Welsh Government's Common Land Consents Guidance¹ in determining this application under section 38 of the 2006 Act, which has been published for the guidance of both the Planning Inspectorate and applicants. Common land is a finite resource, and the Welsh Government has indicated that it should not be developed unnecessarily, access to it should not be prevented or impeded unnecessarily, and the proper management of it should be encouraged. Taking these principles into account, the main issues in this case are the effects of the proposed works on the interests of persons having rights in relation to the land, on the interests of the neighbourhood, and on the public interest, and the benefits to be gained from carrying out the proposed works.

Reasons for the Decision

19. I am satisfied that the applicant carried out extensive consultations as set out in the 2012 Regulations and that, through these actions, all those with an interest in the land have been provided with an opportunity to comment on the application.
20. In the absence of any representations from Commoners or those using the common, and in view of the nature of the works proposed, I do not consider that there is anything before me to lead me to the conclusion that the works would unacceptably affect the interests of those having rights in the land or occupying it or the interests of the neighbourhood.
21. Based on the information before me, I am satisfied that there will be no adverse or unacceptable effects in relation to nature conservation or the conservation of the landscape, and that public rights of access to the area will not be adversely affected. No issues have been raised relating to the protection of archaeological remains and features of historic interest.
22. I have taken into account all of the matters specified in the legislation and conclude that in the light of the comments above I am satisfied that, having considered the information before me, it is expedient that consent should be granted for the application made.

¹ Welsh Government – Common Land Consents Guidance (August 2014)

Formal Decision

23. For the reasons given above I allow the application and hereby grant consent under Section 38 of the Commons Act 2006 for the works identified in the preamble and sections 14 and 15 of the application form. Consent is therefore granted subject to the conditions specified at paragraph 1.
24. This decision does not convey any approval or consent which may be required under any enactment, by-law, order, regulation or private agreement other than section 38 of the Commons Act 2006.

Isabel Nethell

Isabel Nethell
Head of Service – Operations & Policy (Wales)
Planning Inspectorate

Location plan (not to scale)

