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## Penderfyniad ar Gais

Ymweliad â safle a wnaed ar 7/9/22

gan Vicki Hirst BA(Hons) PG Dip TP MA  
MRTPI

Dyddiad: 13/09/2022

## Application Decision

Site visit made on 7/9/22

by Vicki Hirst BA (Hons) PG Dip TP MA  
MRTPI

Date: 13/09/2022

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Application Ref: CAS-01862-F7T4W9

Site Address: Mynydd Lllyd Common, Brecon, Powys

**The Welsh Ministers have transferred the authority to decide this application to me as the appointed Inspector.**

- The application dated 5 April 2022 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 Mynydd Lllyd Common (BCL006) and the Commons Registration Authority is Powys County Council.
  - The application is made by Mainline Pipelines.
  - The proposed work is the repair of an existing oil pipeline.
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### Decision

1. The application is allowed, and consent is granted for the repair of an existing pipeline in accordance with the application dated 5 April 2022 and the plans submitted with it and subject to the following conditions:
  - i) The works shall begin no later than five years from the date of this decision.  
*Reason: To ensure the works are commenced within a reasonable timeframe.*
  - ii) The welfare cabin and all fencing shall be removed and the land reinstated to its condition prior to the works within two weeks of the completion of the works.  
*Reason: To ensure the site is reinstated in a timely manner in the interests of those exercising their rights on the common and the natural beauty of the National Park.*

### Procedural Matters

1. The Open Spaces Society (the OSS) has queried, amongst other things, the need for consent as it would expect there to be rights of maintenance agreed in respect of the pipeline by means of a Compulsory Rights Order under the Acquisition of Land Act 1981. The OSS believes that a lease under the Pipelines Act 1962 enables an exception to be made to the requirement for consent under section 38 of the 2006 Act.
2. In response, the applicant states that whilst there are rights to complete works to maintain the apparatus located within the common under a lease granted under the Pipelines Act 1962, it is believed that as the works will be restricting access to the common consent is

required under Section 38 of the 2006 Act. The applicant states that this stance has been taken on other projects.

3. It is not for me to determine whether the proposed works require consent under an application made under Section 38 of the 2006 Act. In any event I have not been provided with the full terms of the lease granted under the Pipelines Act 1962 or any details in respect of a Compulsory Rights Order. As such, and taking into account the applicant's position that consent is required for the proposed works, I have proceeded to determine the application.
4. I carried out an unaccompanied site visit on 7 September 2022.
5. In determining this application under Section 38 of the 2006 Act, I have had regard to the Welsh Government's Common Land Consents Guidance, August 2014, (the Guidance) which has been published for the guidance of both the former Planning Inspectorate (now PEDW) and applicants.

### **Preliminary Matters**

6. Mynydd Lllyd Common is registered as common land (BCL006) and extends to some 616 acres. 50 graziers have common rights over the whole or part of the common. These rights relate to grazing and for taking heather, gorse and fern. The applicant states that over half of the graziers exercise the grazing rights.
7. The public have a right of access to the common for air and exercise under Section 193 of the Law of Property Act 1925. The common is not subject to an Order of Limitation made under Section 193 or a Scheme of Management made under the Commons Act 1899.

### **The Application**

8. The application seeks consent for the repair of a section of an existing pipeline which runs through the common. A medium sized excavator will be used to expose a 6 metre by 6 metre area around the damaged section of pipe. On completion of the repair the area will be backfilled and top soil reinstated.
9. A welfare cabin will be placed on the common outside the working area for the duration of the works with the works area fenced off with 2 metre high heras fencing and the excavation area enclosed with 1 metre high utility barriers. It is anticipated the works will take two weeks.
10. In support of the application, it is stated that the repair is vital to maintain the pipeline which carries fuel from the refinery in Waterston, Milord Haven to Seisdon in the Midlands.

### **Application Procedures**

11. The procedures to be followed for this application 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 (PEDW acting on behalf of the Welsh Ministers) by any person.
12. In accordance with these requirements, a notice of the proposal was published in the Brecon and Radnor Express on 13 April 2022. In addition, site notices were displayed at the main points of entry to the common and at the Brecon Beacons National Park Authority's (the NPA) office in Brecon. Letters were sent to the owner of the land (the NPA), the Commoners Association, all active commoners, Powys County Council as

Commons Registration Authority, the Local Authority Archaeological Service, Cadw, Natural Resources Wales (NRW) and the Open Spaces Society (OSS).

## Summary of Representations

13. In response to the publication of the application one representation has been received from the OSS. It states that in principle the OSS has no objection to the works subject to a requirement for full reinstatement. It queries the need for further ecological and archaeological surveys as suggested by the NPA prior to the application being submitted and seeks assurance that consultation has been carried out with the active commoners.

## Main Issues

14. In determining this application for consent, I am required by Section 39 of the 2006 Act to have regard to:
- a) The interests of persons having rights in relation to, or occupying, the land (and in particular persons exercising their rights of common over it);
  - b) The interests of the neighbourhood;
  - c) The public interest (including nature conservation, the conservation of the landscape, the protection of public rights of access and the protection of archaeological remains and features of historic interest); and
  - d) Any other matter considered to be relevant.
15. 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.

## Reasons

### *The interests of persons having rights in relation to the land*

16. The applicant states that there are a number of commoners who exercise their grazing rights. At the time of my site visit it was evident that there were sheep grazing the common and which may belong to those rights holders. Nevertheless, no objection has been received from the Commoners Association or the individual rights holders.
17. The works would clearly interfere with the grazing rights due to the removal of an area of grass to gain access to the pipeline and the restriction of grazing within the fenced off area and in the vicinity of the welfare cabin for the duration of the works. However, in the context of the overall size of the common, the works would be undertaken on a very small portion of the area available for grazing and other rights. The land would be reinstated to its former condition on completion of the works.
18. The works would have the potential for some short-term disturbance to the commoners' rights of access to the common and the rights of the public to use the common for air and exercise. However, given the location of the pipeline on the common close to the surfaced highway and the ability to access the surrounding common without impediment I do not find such a short-term disturbance to be unacceptable.
19. I find the works would result in some very short-term interference to the grazing and access rights on a small area of the common. However, given the very small scale of the area concerned and the short time frame I find such an interference would have a negligible negative impact and would not unacceptably interfere with the interests of those occupying or having rights over the land.

### ***The interests of the neighbourhood***

20. There is no definition of neighbourhood in the 2006 Act. The Guidance requires consideration to be given to whether the works mean that local people will be prevented from using the common in the way they are used to. Furthermore, the Guidance requires consideration to be given to whether the works would interfere with the future use and enjoyment of the land as a whole.
21. The common is accessible to the public under Section 193 of the Law of Property Act 1925 and the Countryside and Rights of Way Act 2000 (the CROW Act). I noted on my site visit that the wider common contains a number of Public Rights of Way (PROW). The common is located within the Brecon Beacons National Park (the National Park) and is likely to be used for recreational users from the local surroundings and by those visiting the area.
22. As set out above, the works would limit access over a very small part of the common for a very short time. Access to the wider common would remain. I am satisfied the works would have a very minor impact on the way that people are used to using the common and would not interfere with the future use and enjoyment of the land as a whole.
23. I conclude that the proposal would not unacceptably affect the interests of the neighbourhood.

### ***The public interest***

#### **Nature Conservation**

24. The land is not located within an area designated for its nature conservation interests and I have no evidence before me that the proposal would impact on such interests. Whilst I note the correspondence from the NPA stating that an ecological survey may be required, I have no further evidence to suggest that this would be necessary. I am satisfied that the proposed minor works would not harm the public interest in nature conservation terms.

#### **Conservation of the Landscape**

25. In respect of the impact on the landscape, the site lies within an area designated as a National Park. As such, I have had regard to the statutory purposes of National Parks to conserve and enhance the natural beauty, wildlife and cultural heritage of the area and to promote opportunities for the understanding and enjoyment of the special qualities of the area by the public (Section 61, Environment Act, 1995).
26. I noted on my site visit that the area comprises a wide tract of common situated within the wider upland area of the Brecon Beacons. The fence would be of a typical heras and utility barrier design and would be out of context with the typical stock fencing found in the area and the surrounding open landscape character. Furthermore, the welfare cabin would be an alien feature in the undeveloped and natural landscape. Nevertheless, the impact would be limited to a very localised part of the common and would be in situ for a very short timeframe. I am satisfied that the works would have a minimal impact on the landscape or natural beauty of the National Park.

#### **Protection of archaeological remains and features of historic interest**

27. Cadw has made no representation on the proposal in respect of its impact on archaeological remains and features of historic interest. Whilst I note the NPA referred to a possible need for an archaeological survey in its pre-application advice, on the evidence before me I have no reason to believe that such a survey would be necessary, or the proposal would have any adverse effects on such interests.

Protection of public rights of access

28. As set out above, the proposal would retain public access into the area, albeit slightly restricting open access across this small part of the common. Given the very small area concerned and the very temporary nature of the works, I find this impact to be very minor.
29. I conclude the works would not unacceptably affect the public interest.

**Other Relevant Considerations**

30. The Guidance recognises that some proposed works do not benefit the common but nevertheless there is a potential underlying benefit. In this instance, the works are essential to repair an important pipeline that carries fuel from South Wales to the Midlands. Without the repair there is a risk of the pipe leaking fuel and causing significantly greater harm to the common than the proposed works. I find the need to repair the pipe to be in the public interest and to far outweigh the very minor and temporary harm that I have identified.
31. I have considered the advice in the Welsh Government Circular 016/2014 “The Use of Conditions for Development Management” in considering the need for conditions. I find conditions requiring the development to be commenced within five years and for the reinstatement of the common and removal of the fencing and welfare cabin within two weeks of the completion of the works to be reasonable and necessary for the reasons I have given in my decision.

**Conclusion**

32. I have taken into account all other matters raised. I find no matters that lead me to conclude other than the proposal is acceptable. The works would be in conformity with the policy objectives set out in the Guidance. For the reasons given above, I allow the application and grant consent for the proposed works subject to the conditions specified in paragraph 1 of this decision.
33. In reaching my decision, I have taken into account the requirements of sections 3 and 5 of the Well Being of Future Generations (Wales) Act 2015. I consider this decision is in accordance with the Act’s sustainable development principle through its contribution towards one or more of the Welsh Minister’s well-being objectives as required by section 8 of that Act.

*VK Hirst*

INSPECTOR