



Application Decision

by R H Duggan BSc (Hons) DipTP MRTPI

an Inspector appointed by the Welsh Ministers

Decision date: 07/08/2025

Appeal reference: CAS-04068-V2Z2S8

Site address: Trefil Ddu Common, Dukestown

- The application dated 5 February 2025 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 Trefil Ddu Common (CL 14) and the Commons Registration Authority is Powys County Council.
 - The application is made by National Gas Transmission (the applicant).
 - The proposed work is described as “*repair on the existing high pressure gas pipeline. Excavating to expose the pipeline to inspect and repair defect highlighted during inspection*”.
 - A site visit was made on 17 June 2025.
-

Decision

1. The application is allowed, and consent is granted for the repair on the existing high pressure gas pipeline, excavating to expose the pipeline to inspect and repair defect highlighted during inspection on the common in accordance with the application dated 5 February 2025 and the plans submitted with it, subject to the following condition:
 - 1) 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.
 - 2) Within one month of this decision a vegetation restoration scheme, including a timetable for implementation and completion of restoration works, shall be submitted to and approved in writing by the local planning authority. The measures contained in the approved vegetation restoration scheme shall be adhered to and implemented as approved.

Reason: To provide suitable biodiversity mitigation, management and enhancement on the site.

Procedural Matters

2. In determining this application, 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.

3. During my site visit I was unable to access the application site due to the unsafe underfoot conditions which meant accessing the site by foot was impossible. However, I was able to see the general vicinity of the site from the closest highway. I was advised prior to the site visit that work had not commenced on the application site. Therefore, I have made my decision based on the evidence before me and what I was able to see on my site visit.

The Application

4. National Gas Transmission Plc (NGT) states that detailed inspections of the pipeline section has uncovered seven defects which need to be repaired. The pipeline in question is along the Dowlais and Gilwern route, both of which are the offtakes to the Wales & West Utilities distribution system. These offtakes take between 6 and 8 million cubic metres of gas per day in the winter and around 2 and 3 million cubic metres of gas per day in the summer, and this route supplies gas to approximately 420,000 properties (including residential properties, hospitals and commercial premises).
5. NGT advised that in order to carry out the repairs safely, the pressure in the pipeline must be reduced and there is no way of carrying out the reparatory works without a pressure reduction in the pipeline. Therefore, NGT has been given a slim window of opportunity (1st May-23rd July 2025) to capitalise on the temporarily reduced pressure and undertake the works. Failure to carry out the repairs may result in a large-scale loss of gas to South Wales, and it could be multiple years before the opportunity to undertake these works arises again. Given the importance of the planned works NGT has little option but to proceed before receiving a decision on the S38 application having regard to public safety and its statutory duty to maintain a proper supply of gas to consumers.
6. The work involves excavating the 600mm pipeline which is buried at a depth of approximately 1.5m and the contractors excavate to a further 600mm. The excavation is approximately 2.7m depth by 2.6m wide and 5.0m in length. The works are for maintenance purposes (rather than the implementation of new pipeline) to repair the wall of the pipeline which involves the installation of a Flanged Epoxy Repair Sleeve around the existing pipe to contain the suspected defect. Once work is completed the excavation is back filled with the originally removed aggregate. For the duration of the works, a compound area (approximately 40m x 40m) was erected and fenced off using 2m high 'Heras' fencing. The lockable and secure fencing is required to segregate the working area from members of the public for health & safety reasons and provides a controllable area within which the contractors can work safely. The fencing is temporary for the duration of the work and is removed once the repair works are completed and the land reinstated.

Summary of Representations

7. In response to consultation letters sent to relevant parties and the publication of a notice of the proposal, one representation has been received from the Brecon Beacons National Park Authority (BBNPA). The authority acknowledges that the pipelines mean that soils and vegetation were subject to disturbance when the pipelines were originally installed but the soils and vegetation will have recovered and have some ecological and hydrological merit. As such BBNPA recommend that the site owner and commoners are consulted; an ecological clerk of works is employed to oversee these works during the site laydown, site disturbance, pipe exposure and site reinstatement; works must include separating and storing the overlying turf intact (protecting the underlying vegetation) retaining viability for subsequent reinstatement and separating and storing the

topsoil/peat and subsoil/lower peat horizon for subsequent reinstatement, and ensuring that intact turfs and reinstated in the correct order.

Main Issues

8. 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.

Reasons

The interests of persons having rights in relation to the land

9. Trefil Ddu Common is registered as common land (CL 14) and extends to some 1,403.22 acres. The applicant states that 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.
10. The applicant advises that there are a total of 68 graziers who have common rights over the whole or part of the common land. The rights include the grazing of sheep, ponies, horses, cattle and to cut and haul rushes and fern.
11. The works would clearly result in a reduction in the area of common available for the graziers to exercise their rights during the 12 week period the works take to complete. However, given that the total area of the common is 1,403.22 acres (567.86ha), the works would occupy only a very small portion of the common as a whole (approximately 0.15ha / 0.37ac) with the remainder of the common continuing to be available for grazing. In addition, grazing rights would only be lost for approximately 12 weeks following commencement of the works.
12. Whilst the repair works and associated fencing would result in some interference with the grazing rights, this would be very minor or negligible due to the small area of land being enclosed during the 12 week period the works take to complete. Although the use of the land for grazing would be lost for a limited temporary period, I find this to be insignificant.
13. As such, I do not find there would be any interference with access rights.

The interests of the neighbourhood

14. 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 that they are used to. It also requires consideration to be given to whether the works would interfere with the future use and enjoyment of the land as a whole.
15. The applicant states that the public have a right of access to the common for air and exercise under section 193 of the Law of Property Act 1925. No public rights of way are located close to the works site.

16. The subject common is located in relatively close proximity to a number of towns to the south and is located within the boundary of the BBNP. As such, the common will be used for recreational purposes by both local residents and those visiting the area.
17. The works would impede access on a small part of the common, but in my view this would have a very limited effect on the way that the neighbourhood could use the common for recreational purposes during the works period. Given the very limited extent of common that would be impacted and access to the wider common would remain during the works, I do not find the works would significantly interfere with the use and enjoyment of the common as a whole. Therefore, I conclude that the works would not have an effect on the interests of the neighbourhood.

The public interest

Nature Conservation

18. Section 6 of the Environment (Wales) Act 2016 places a duty on public authorities to maintain and enhance biodiversity. The application site is located within the Mynyddoedd Llangynidr a Llangatwg, Cefn Yr Ystrad a Comyn Merthyr Site of Special Scientific Interest (SSSI) which was designated in January 2025. As such, the applicant has been in detailed discussions with Natural Resources Wales (NRW) regarding the works. Potential impacts on ecology have been based on discussions with NRW as well as data searches from South East Wales Biodiversity Records Centre and NRW Priority Habitat Mapping. In April 2025 NRW granted Assent under Section 28H of the Wildlife and Countryside Act to carry out the operations subject to a number of conditions, including mitigation measures, which the applicant has to comply with during the repair works.
19. Mitigation measures to be employed by the applicant as part of the repair works minimise the impacts on the SSSI habitats by using existing tracks as far as is practicable. As part of the conditions attached to the Assent granted by NRW the applicant has undertaken a full breeding and nesting bird survey within 400m of each excavated site and 50m of tracking route which has informed the access routes to the works site, thus avoiding nesting birds during the repair. If nests are found the working areas are re-aligned if possible or the repair rescheduled later in the works programme when chicks have fledged. Access routes have also avoided wet areas or areas supporting sensitive vegetation as much as possible. In addition, the known areas of sensitive habitat and locations of species included within the SSSI citation have been avoided or crossed by the shortest possible route.
20. In order to minimise impacts on the common lizard and adder, which are likely to be the most common species of reptiles on the common, the works have been scheduled to be undertaken during the active period when they can relocate away from the working area. Boulder and other areas of potential refugia are avoided by the access routes and any boulders within the working areas would be dismantled by hand under the supervision of the ecological clerk of works who would be present for set-up and reinstatement.
21. To reduce the number of vehicle movements a medium lift helicopter would be used to deliver the material to the works site which removes the need for multiple trips in a dumper or using an excavator. The helicopter transports all equipment to the site and hovers over the site to detach the load at the required location. A low ground pressure 14 ton excavator would then be used for each dig which is kept on site for the duration of the works to avoid multiple trips, thus reducing the impact on vegetation.
22. Topsoil within the working areas is to be removed as turves, where practicable, and stored on plastic trackway matting no more than two turves high and only one turf high to prevent damage and compaction for the duration of the works. Turfs from the impacted

area is cut at a depth of 0.5 m to avoid damage to the root system and to ensure an adequate amount of substrate is included and is watered during periods of dry weather. The turves are then stored separately from the topsoil with appropriate fencing and signage to enable their reinstatement in their original positions. If the vegetation is too fragile for turving, the area would be reinstated with as much vegetation as possible, lightly compacted and covered with a layer of 'geojute' to stabilise the topsoil and prevent erosion whilst also providing a suitable microclimate for regeneration of the seeds present in the soil. To bolster regeneration heather brash cut from the adjacent moorland will be spread over the 'geojute' during the autumn of 2025.

23. Where peat is encountered it would be separated (acrotelm and catotelm), prevented from drying out and replaced in the reverse order. If turfed, turf locations are recorded, numbered and reinstated.
24. NRW has been consulted as part of this application and has confirmed that it granted Assent under Section 28H of the Wildlife and Countryside Act to carry out the operations subject to a number of conditions to significantly reduce disturbance of nationally important populations of breeding birds. NRW has recommended that a condition should be attached to any consents to secure the restoration of vegetation to be agreed in writing before 15 September 2025 with the initial restoration completed before 30 November 2025.
25. I am satisfied that the works satisfy the duty incumbent on public authorities in the Environment Act, and they would not have an unacceptable impact on nature conservation interests. I am satisfied that the works would not harm the public interest in nature conservation terms. However, I agree with NRW that a condition should be attached to require a scheme of restoration to be undertaken to ensure that the land and vegetation at the site is restored once the works have been completed.

Conservation of the Landscape

26. The site is located within the Brecon Beacons National Park, as such I have had regard to the statutory duty to protect its special qualities.
27. As stated above, the site excavation would be approximately 2.7m in depth by 2.6m wide and 5.0m in length, and once the work is completed the excavation would be back filled with the originally removed aggregate and turf. For the duration of the works, a compound area (approximately 40m x 40m) would be fenced off using 2m high 'Heras' fencing.
28. Only a very small area of the common would be impacted by the works, with the only visible elements being the 2m high fencing, the surface bog mats and the machinery used for undertaking the excavation works. Whilst there would be some views of the works site from surrounding land, the main impact on the landscape would be within close proximity to the site. Therefore, in my view there would be no fundamental changes to the underlying key characteristics of the local landscape, and changes to the visual context of the area would only occur relatively close to the site and only over a short period of time.
29. Therefore, I am satisfied that the works would not have a harmful impact on the wider landscape character of the common or on the special qualities of the National Park.

Protection of archaeological remains and features of historic interest

30. No evidence has been provided regarding any impact on archaeological remains and features of historic interest and Cadw has not submitted any comments in response to

the application. Therefore, from the evidence before me I conclude that the works would not have any adverse effects on such interests.

Protection of public rights of access

31. I have concluded above that the area of common subject to the proposed works is very small in comparison to the remainder of the common which would continue to be freely available for access by the public during the 12 week period of the works. Therefore, the works would not have an impact on public rights of access.

Conclusion on effects on the public interest

32. Overall therefore, I conclude that the works would not unacceptably affect the public interest.

Other Relevant Considerations

33. I note the advice in the Guidance that in deciding whether to grant consent it is necessary to establish whether the works are consistent with the use of the land as a common. I am satisfied that the works are consistent with the use of the land as common for grazing and public access.

34. The works would also maintain and enhance biodiversity in line with the duty incumbent on public authorities under Section 6 of the Environment (Wales) Act 2016.

35. 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 on this application. I agree with NRW that a condition should be attached to require a scheme of restoration to be undertaken to ensure that the land and vegetation at the site is restored.

Overall Conclusions

36. I have taken into account all matters raised and I find no matters that lead me to conclude other than the works subject to this application would be 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 works.

37. 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.

R Duggan

INSPECTOR