



Application Decision

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

an Inspector appointed by the Welsh Ministers

Date: 05/09/2023

Reference: CAS-02149-R1C0R1

Site address: Gwastod Common, Abertillery, Blaenau Gwent

- The application dated 16 August 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 Gwastod Common (CL 16) and the Commons Registration Authority is Blaenau Gwent County Borough Council.
 - The application is made by RWE Renewables UK Ltd.
 - The proposed work is the installation of a temporary anemometry mast.
 - A site visit was made on 2 May 2023.
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Decision

1. The application is allowed, and consent is granted for the installation of a temporary anemometry mast in accordance with the application dated 16 August 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 mast, and all associated fixings and fencing shall be permanently removed no later than five years after the mast is erected. The land shall be reinstated to its previous condition within one month of the mast being removed.

Reason: To ensure the site is reinstated in the interests of those exercising their rights on the common and to ensure the natural habitat is retained.

The Application

2. The application seeks consent to install an anemometry mast to measure and record wind resource data. It would comprise a steel monopole of up to 100 metres high supported by high tensile guy wires in six buried timber ground anchors. The main pole would be of approximately 100 mm diameter. Stock proof fencing would be provided around the six anchors and the mast itself and would be 90cm high.
3. The installation would take approximately 3 days with 12 vehicular movements over that period. Maintenance thereafter would require one vehicular movement every six months. The mast would be in situ for 5 years.
4. In response to the publication of the application three letters of representation were received.

Main Issues

5. 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

6. Gwastod Common extends to some 846 acres. There are rights to use the common for grazing and to cut fern. The applicant advises there are 3 commoners exercising those rights. I noted on my site visit that there was evidence of sheep grazing. No objections have been received from the Commoners Association or the individual rights holders.
7. The works would interfere with the grazing rights due to fencing off the areas around each of the six anchor points and the base of the mast and within the vicinity of the works whilst they are carried out. The area to be fenced would be approximately 63m². However, in the context of the overall common, this is a very small portion of the area available for grazing and other rights.
8. There is a dispute between the applicant and the Open Spaces Society (OSS) as to whether 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 1925 Act). The applicant contends that irrespective of such a right under the 1925 Act, the legal basis of the rights is not altered. This is because the public are afforded rights to walk on the common under the Countryside and Rights of Way Act 2000 (the CROW Act). However, under the CROW Act such rights do not extend to horse riders whilst they would under the provisions of the 1925 Act.
9. Notwithstanding the respective views, given the very small area of land concerned I do not find the works would have an unacceptable impact on those exercising their rights to use the common whether it be for walking or horse riding. The remaining common would be accessible for both without impediment. In reaching that view I have taken into account that horse riders are likely to be impacted upon to a greater extent given that they are unlikely to ride in very close proximity to the mast and its support wires.
10. The works themselves would take place over a very short period of time. The mast would be in situ for a temporary period of five years after which it would be removed and the land reinstated. Whilst some interference with the grazing and access rights would occur, given the very small scale of the area concerned and its temporary nature, I find any interference with the interests of those having rights in relation to the land would be very minor.

The interests of the neighbourhood

11. There is no definition of neighbourhood in the 2006 Act. The Welsh Government's Common Land Consents Guidance, August 2014, (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.

12. This part of the common is located some distance from nearby settlements but nonetheless, is likely to be used by residents from the surroundings and visitors to the area for recreation.
13. As set out above the works would impede access on a very small part of the common. Access to the wider common would remain and I am satisfied that the works would have a very limited effect on the way that people are used to using the common. Whilst the mast would be in situ for 5 years, it would be removed, and the land reinstated after its removal. Given the extent of common and that it is contiguous with another common, I do not find the proposal would interfere with the future use and enjoyment of the land as a whole.
14. I conclude that the proposal would not unacceptably affect the interests of the neighbourhood.

The public interest

Nature Conservation

15. The land is located within an area designated as a Site of Importance for Nature Conservation (SINC). The Council's ecologist draws attention to the need to implement appropriate mitigation measures to ensure there are no negative impacts on habitats and species. A Preliminary Ecological Appraisal is therefore recommended prior to works commencing.
16. The area is also a known breeding site for the Silurian moth which is classified as a Section 7 species in the Environment (Wales) Act 2016 (the Environment Act). As such, all reasonable steps must be taken to maintain and enhance this species.
17. The applicant states that a SINC and Species Protection Plan will be provided. This will incorporate various measures to limit damage during installation and to retain ground nesting birds and to ensure the habitat is returned to its natural state after the mast is removed. It is stated these measures would also avoid damage to the Silurian moth breeding areas although the most recent report on this species found their closest location to be some 1.5 km away.
18. Sites registered as SINCs have no statutory protection but are nonetheless sites identified by local authorities as having local nature conservation value. The subject SINC is described as containing stands of oak, beech and alder within grazed acidic grassland and with a species rich quarry area and mire.
19. In my assessment the proposed mast would cause minimal disruption to the ground and the installation would be largely carried out via access from existing tracks. The siting of the mast does not appear to be in the vicinity of the stands of trees or quarry, and I am satisfied that there would only be a very small area of the acidic grassland affected by the installation.
20. Furthermore, whilst the survey in respect of the Silurian moth is of some age, it suggests the nearest location where the species was recorded was some distance away. The installation would have a minimal impact on the available food supply for this species.
21. I am satisfied the proposal would not be harmful to the resilience of ecosystems in the area and in particular the species listed under Section 7 of the Environment Act. Nevertheless, the works would not provide an enhancement in biodiversity terms and would therefore conflict with the requirement in the Environment Act on public authorities to seek to enhance biodiversity.

22. I note the Council has granted planning permission for the mast (Council's ref: C/2021/0262) and which would have presumably considered the impact on ecological interests. I also note the planning permission does not include conditions relating to ecological protection or mitigation.
23. On the evidence before me and taking account of the specific circumstances of this case, in particular its temporary nature and that it would not cause harm to the local biodiversity, I am satisfied that whilst the proposal would not fully satisfy the duty incumbent on public authorities in the Environment Act, it would not have an unacceptable impact on nature conservation interests.

Conservation of the Landscape

24. In respect of the impact on the landscape, the site does not lie within an area designated for its landscape interest. Nevertheless, the common is an attractive open tract of land and the proposed 100 metre high mast would introduce a substantial vertical structure in an open, undeveloped location. No Landscape Visual Impact Assessment has been provided with the application before me, but it would inevitably be highly visible in the surroundings.
25. Notwithstanding, it is very slender in diameter and of a lightweight and open appearance. This would minimise its impact to a certain extent and particularly from longer distance views. Given that it would only be in situ for a temporary period of 5 years its impact would be short term.
26. Taking these matters into account I conclude the proposal would have a minor negative impact on the landscape.

Protection of archaeological remains and features of historic interest

27. Cadw draws attention to a number of scheduled monuments and the Blaenavon Industrial Landscape which are located over 1km away but within 5km of the mast. Cadw considers the mast would have no significant impact on any of the designated historic assets.
28. On the evidence before me I have no reason to disagree with Cadw's assessment and conclude that the proposal would not have any adverse effects on such interests.

Protection of public rights of access

29. As I have found above, whilst the works would impede access over a very small area of the common, this would be very limited in extent. As such I find this impact to be very minor.
30. Taking all matters together I conclude that there would be a minor impact on the landscape and rights of access.

Other Relevant Considerations

31. The anemometer mast is required to record wind data in advance of the submission of an application for a windfarm. Whilst that development would be the subject of a different application, it is in the public interest to record wind data to inform the future location of possible renewable energy schemes.
32. The works would not diminish the stock of commons but would have minor effects on the landscape and public access. It would also not be in full conformity with the duty incumbent on public authorities in Section 6 of the Environment (Wales) Act in that it would not enhance biodiversity.
33. On balance, I consider the benefits arising from recording wind data to inform future renewable energy projects outweighs the minor harm I have identified and the conflict

with the Environment (Wales) Act. I find the proposal would conform with the policy objectives set out in the Guidance.

34. 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. A condition requiring the development to be commenced within five years is reasonable and necessary. Furthermore, a requirement for the removal of the mast, its fixings and temporary fencing within five years of its installation and the reinstatement of the common within one month of its removal is reasonable and necessary. This will ensure the common is returned to its previous state as soon as possible and interference with the commoners’ rights and public access is kept to a minimum.

Conclusion

35. 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.
36. 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