



Penderfyniad ar Gais

Ymweliad â safle a wnaed ar 11/02/2020

gan Joanne Burston BSc MA MRTPI

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 06/03/2020

Application Decision

Site visit made on 11/02/2020

by Joanne Burston BSc MA MRTPI

an Inspector appointed by the Welsh Ministers

Date: 06/03/2020

Application Ref: COM/3239592

Tir Comin, Plwyf Penmachno, Conwy

Register Unit: CL 25 comprising a total area of approximately 895 hectares. The section of Tir Comin, Plwyf Penmachno Common, subject to this application, comprises an enclosed area of approximately 3m² and the laying of 220m of buried pipe.

Commons Registration Authority: Conwy County Council

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

- The application, dated 6 November 2019, is made under section 23 of the National Trust Act 1971 for consent to carry out restricted works on common land in the ownership of the National Trust.
- The application is made by Mr R W Moss.
- The works comprise: water collection boxes and a small weir in the stream; settling tank; and buried pipe and cable.

Decision

1. Consent is granted for the works described in the application dated 6 November 2019 and the plans submitted with it.

Procedural Matters

2. I am satisfied that the applicant has carried out the required consultations and that, through these actions, the advertisements in local newspapers and notices on the application site, all those with an interest in the land have been provided with an opportunity to comment on the application.
 3. I carried out an unaccompanied site inspection on 11 February 2020. My decision has been made on the basis of my observations on this visit, taking account of the application and any representations received in response to the advertisement of the application. Whilst there was some snow on the ground at the time of my visit, I am satisfied that I saw all I needed to see in order to make a decision on this case.
 4. As required by Section 23(2) of the 1971 Act, the application was accompanied by a letter from the Solicitor to the National Trust dated 18 October 2019 confirming that the National Trust has concluded that, having regard to Section 23(1) of that Act, the proposed works are "*desirable for the purpose of improving opportunities for the enjoyment of the property by the public and are in the interest of visitors to the common.*"
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5. I have had regard to the Welsh Government Common Land Consents Guidance, published in August 2014, which sets out the benefits which common land should deliver, and the outcomes that it considers must be ensured by the consents process.
6. In relation to the works proposed by this application, Section 23(2) of the National Trust Act 1971 (the 1971 Act) (as amended by the Commons Act 2006) requires the consent of the Welsh Ministers since access by the public to National Trust property will be impeded. Without first obtaining consent, any such works would be unlawful.
7. In reaching my decision, I have also taken into account the requirements of sections 3 and 5 of the Well Being of Future Generations (Wales) Act 2015. I consider that this decision is in accordance with the Act's sustainable development principle through its contribution towards the Welsh Ministers' well-being objective of combatting climate change, building better environments and resilient communities.

Main Issue

8. In determining this application for consent I must have regard to¹:
 - 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, 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 matters considered to be relevant.

Reasons

Background

9. The application site is located within an area of remote moorland, within the community of Penmachno. The land here is undulating, with rocky outcrops, rough grassland, and, at the time of my visit, a number of small watercourses run through the landscape hereabouts.
10. The application was made following a grant of planning permission² for a "*proposed hydro-electric scheme (9kw) comprising intake weir, buried pipe, turbine building and outflow*".
11. In this case the applicant is seeking common land consent to facilitate the aforementioned planning permission in order to generate electricity and improve the water supply to an off-grid holiday cottage³. The works will install water collection boxes in the stream above the cottage and a buried pipe to carry the water to the cottage. The buried pipe will also extend beyond the cottage to a turbine hut, however these 'works' are outside the common land boundary.

¹ National Trust Act 1971 Section 23(2A) which refers to the Commons Act 2006 Sections 39 and 40.

² Planning permission reference NP4/29/44B refers.

³ The cottage itself is outside the common land boundary.

12. Tir Comin, Plwyf Penmachno Common comprises some 895 hectares, registered as common land (CL 25). Rights to graze sheep and ponies are registered and exercised. The common lies within the Snowdonia National Park and the proposed works would take place on land within the Migneint-Arenig-Dduallt Special Area of Conservation (SAC), as well as the Migneint-Arenig-Dduallt Site of Special Scientific Interest (SSSI).

The interests of those occupying or having rights over the land,

13. Pasturage rights exist and are exercised on the Common. However, the landowner and those with commoners' rights have confirmed that they have no objection to the proposed works. I do not consider that the proposed works will prevent the exercise of common rights, particularly given the small scale of the works proposed.

14. I am satisfied that the proposed works will not harm the interests of those occupying or having rights over the land.

The interests of the neighbourhood and the protection of public rights of access

15. Given the small-scale nature of the works and that access will be maintained in the longer term I do not consider that the proposed works will interfere with the way the Common as a whole is used by local people or visitors to the area. Moreover, the proposed scheme already benefits from planning permission⁴. The permission includes a number of conditions which the applicant must comply with. These conditions will ensure that a construction management scheme and restoration method statement are employed to facilitate access post construction.

16. I conclude that the proposed works will not impact adversely on the interests of the neighbourhood and the protection of public rights of access.

Nature conservation, archaeological remains and features of historic interest and conservation of the landscape

Nature Conservation

17. Migneint-Arenig-Dduallt SAC and SSSI is an upland site that is situated between Ysbyty Ifan and Penmachno in the north down to Rhydymain in the south, and from Trawsfynydd in the west to just east of Llyn Celyn. The primary reasons for the selection of the Migneint-Arenig-Dduallt as a SAC / SSSI include: European dry heath; and blanket bogs.

18. The key management aim for SAC is the 'favourable conservation status' of habitats and species for which the SAC is designated. Achieving this objective requires appropriate management and the control of factors that may cause deterioration of habitats or significant disturbance to species. The Migneint-Arenig-Dduallt SAC Management Plan sets out the vision for the SAC. It sets out what needs to be achieved on the site, the results of monitoring and advice on the action required.

19. The wetland habitats and features of this SAC are significantly influenced by alterations to the natural drainage regime of the site. Also, if the drying peat surface becomes exposed it can cause changes to the atmosphere, changes to the sensitive vegetation, as well as increased peat erosion. The construction operations could also

⁴ Planning permission reference NP4/29/44B refers.

affect the dry heath, where the management plan for the area states that the current extent of the dry heath shall be at least maintained as present.

20. I have no evidence that the proposed works will benefit nature conservation, but for the reasons set out in the annex⁵ to this decision, neither will there be a detrimental impact. Accordingly, based on the evidence before me, I conclude that the proposed works do not impact adversely on nature conservation interests.

Conservation of the landscape

21. The primary aims for Snowdonia National Park are to conserve and enhance the natural beauty, wildlife and cultural heritage of the area; promote opportunities to understand and enjoy its special qualities; and to foster the economic and social wellbeing of its communities. One of the special qualities of the National Park is the diversity of its landscape, including rolling uplands and rugged mountains and pressure from development could damage this.
22. The application site sits on a hillside, surrounded by moorland. These areas add to the attractive natural beauty of the National Park. The proposed hydroelectric scheme would be small scale, with the majority of the pipeline situated underground or within the watercourse. The turbine hut is located outside the Common Land boundary.
23. I did not see any similar schemes to that being proposed in the local area. Nevertheless, to my mind the proposed structures would be hidden from view, particularly given the wide-open vista of the landscape hereabouts. However, even in close up views the structures would not appear as visually intrusive features on the Common. All construction and restoration operations would be controlled by the planning conditions imposed as set out above. Accordingly, the proposed development would not reduce the visual quality of the Common hereabouts.
24. Overall, I am satisfied that the applicant's proposals have taken into account the sensitivities of the site such that the impact of the scheme will not be visually intrusive to the extent it would significantly damage the quality of this important landscape.

Archaeological remains and features of historic interest

25. There are no such sites or features within the area that would be affected in any way. Cadw responded to the consultation by saying that it did not object. Accordingly, I am satisfied that the proposed works do not harm any archaeological remains or features of historic interest.

Conclusions

26. I consider that the proposed works will not materially harm any of the interests set out in paragraph 8 above. I conclude that consent should be granted as set out in the formal decision above.

Joanne Burston

INSPECTOR

⁵ Impacts of the scheme on the Migneint-Arenig-Dduallt Special Area of Conservation (SAC)

ANNEX

Impacts of the scheme on the Migneint-Arenig-Dduallt Special Area of Conservation (SAC).

1. The Habitats Regulations Assessment (HRA) process was introduced by the EU Nature Directives: EU Directive 92/43/EEC (the Habitats Directive) and EU Directive 2009/147/EC (the Birds Directive) and was transposed into domestic law primarily by the Conservation of Habitats and Species Regulations 2017 (the Habitat Regulations) and the Conservation of Offshore Marine Habitats and Species Regulations 2017.
2. Whilst the Habitat Regulations provide strict protection, they are not a prohibition on new development or activities. Instead they involve a case-by-case examination of the implications for each European protected site, its qualifying features and its conservation objectives. There is no statutory method for undertaking an HRA and the approach can vary on a case-by-case basis. Nonetheless, guidance issued from the European Commission¹ sets out a four-stage assessment process involving a number of steps and tests that need to be applied in sequential order. It is important that each step in the process is documented and recorded carefully for full traceability and transparency of the decision made.
3. This Annex follows the four-stage process, namely:
 - i. Screening;
 - ii. Appropriate Assessment;
 - iii. Assessment of Alternative Solutions; and
 - iv. Imperative Reasons of Overriding Public Interest (IROPI)
4. Conscious of the requirements of Regulation 63(3) regard has been had to the comments of Natural Resources Wales (NRW) in carrying out this assessment.

Background

The Site and Surroundings

5. The proposed development site is located on part of Tir Comin, Plwyf Penmachno Common. The general area in the vicinity of the site is undeveloped and used for grazing and recreation.
6. The common lies within the Snowdonia National Park and the proposed works would take place on land within the Migneint-Arenig-Dduallt Special Area of Conservation (SAC), as well as the Migneint-Arenig-Dduallt Site of Special Scientific Interest (SSSI).

The Proposal

7. The applicant is seeking consent under Section 23 of the National Trust Act 1971 for works to common land. The works will provide an improved domestic water supply and feed a micro-hydro system to generate electricity for a domestic property known as Hafod y Rhedwydd. The scheme will consist of water collection boxes and a small weir within an existing stream, with a settling tank, and a 220-metre buried pipe.

¹ Assessment of plans and projects significantly affecting Natura 2000 sites' (2001)

Screening

8. The application site lies within a 2km radius of the Migneint-Arenig-Dduallt SAC and SSSI. It is an upland site that is situated between Ysbyty Ifan and Penmachno in the north down to Rhydymain in the south, and from Trawsfynydd in the west to just east of Llyn Celyn. The primary reasons for the selection of the Migneint-Arenig-Dduallt as a SAC / SSSI include: European dry heath; and blanket bogs. Annex I habitats present as a qualifying feature, but not a primary reason for selection of this site include: Oligotrophic to mesotrophic standing waters with vegetation of the Littorelletea uniflorae and/or of the Isoëto-Nanojuncetea; Natural dystrophic lakes and ponds; and Northern Atlantic wet heaths with Erica tetralix; and Old sessile oak woods with Ilex and Blechnum in the British Isles.
9. The key management aim for SAC is the 'favourable conservation status' of habitats and species for which the SAC is designated. Achieving this objective requires appropriate management and the control of factors that may cause deterioration of habitats or significant disturbance to species.
10. The wetland habitats and features of this SAC are significantly influenced by alterations to the natural drainage regime of the site. Also, if the drying peat surface becomes exposed it can cause changes to the atmosphere, changes to the sensitive vegetation, as well as increased peat erosion.
11. The dry heath is very vulnerable to grazing and burning. However, construction work for developments can degrade the heathland habitat through erosion, trampling and disturbance. Furthermore, restoration of the disturbed ground could also lead to improvement of the soils and encroachment of non-native species.
12. In accordance with the Habitats Regulations, as the competent authority, it falls on the Welsh Ministers to undertake an Appropriate Assessment (AA). Snowdonia National Park Authority (NPA) screened the original planning application² for the purposes of the Habitats Regulations and determined that, in the absence of mitigation there would be an adverse (for the 'temporary' loss of dry heath habitat if it does not restore).
13. Subsequently, the NPA sets out that if certain conditions are applied, which would be crucial mitigation there would be no significant long-term adverse impact on the integrity of the SAC. Measures include:
 - The project is carried out in accordance with the documents submitted as part of the planning application and in Roger Moss' (the applicant's) subsequent emails and Construction Method Statement (version 2d) of 5th November 2019.
 - A suitably qualified and competent independent Ecological Clerk of Works (ECoW) approved of in writing by the NPA is on site supervising all activities relating to digging, storing and reinstating NVC H12 turves within the Migneint-Arenig-Dduallt SAC to ensure relevant compliance with all project documentation and consent. A summary list of the ECoW's responsibilities should be agreed in writing with the NPA before work commences, with weekly reports on progress sent to NPA and NRW.
 - Detailed Construction Method Statement is agreed in writing with the NPA before work commences (once the contractor has been appointed).

² Planning Application Reference NP4/29/44B

- Baseline and post-restoration vegetation monitoring programme is agreed in writing with the NPA to identify whether the predicted restoration is achieved.
14. Natural Resources Wales (NRW), in its consultation response to the planning application, sets out that the proposal is not likely to have a significant effect on a SAC, subject to the mitigation measures identified by the NPA. In response to the Common Land application³ NRW states that "*there are no issues that we are aware of.*"
15. From the evidence before me, I consider that there is the potential for significant impacts on the European Site during the construction phase of the development. This is due to the undergrounding of the penstock through the dry heath habitat. Such actions could damage the habitat in the long term.
16. As such, I conclude that there would be likely significant effects arising from this development during its operation and therefore an appropriate assessment is necessary.

Appropriate Assessment (AA)

17. The competent authority should consider whether any possible adverse effects on the integrity of any site could be avoided by changes to the plan or project, having regard to the manner in which it is proposed to be carried out or to any conditions or restrictions subject to which they propose that the consent, permission or other authorisation should be given.
18. The use of planning conditions to control construction and restoration of the dry heath would ensure that the adverse effect on air quality can be sufficiently avoided or reduced at source such that the integrity of the European site would not be adversely affected from this development. The relevant conditions imposed on planning permission NP4/29/44B include:
- Development in accordance with the approved plans.
 - No development shall take place in pursuant to this permission until such time as the applicant/developer has received written approved through formal application to the Local Planning Authority for a detailed Construction Method Statement. The scheme shall subsequently be carried out in strict accordance with the agreed construction method statement.
 - No development shall take place in pursuant to this permission until such time as the applicant/developer has received written approved through formal application to the Local Planning Authority for a method statement for the restoration of the land post construction.
 - No development shall take place in pursuant to this permission until such time as the applicant/developer has received written approval through formal application to the Local Planning Authority for a suitably qualified and competent Ecological Clerk of Works (ECoW).

³ Email dated 22 November 2019.

- The applicant/developer shall ensure that the Reasonable Avoidance Measures (RAM'S) outlined in the Ecology Report (R. Gritten, 02/07/2018) are implemented in full and to the entire satisfaction of the Local Planning Authority.
 - This permission inures for a period of 60 years from the date hereof, or until the turbine ceases to operate for a continuous period of not less than 12 months, whichever is sooner. Within 3 months from that time, the weirs, turbine house and all other structures on or above the ground shall be dismantled, the materials removed from the site and the site restored to the satisfaction of the Local Planning Authority unless the Local Planning Authority gives consent for any variation.
 - No construction plant or machinery shall operate outside the following hours: Monday to Friday 08:00 – 18:00; Saturday 08:00 – 13:00; At no time on Sunday, Bank or Public Holidays (except for works of an emergency nature).
 - The turbine building hereby permitted shall be so constructed as to provide sound attenuation against internally generated noise to a standard that causes no reasonable loss of amenity to the residents of nearby properties.
 - The abstraction and impounding of water is to be made in complete accordance with any 'License to Abstract' and 'License to Impound' as may be issued by Natural Resources Wales.
19. These mitigation measures have been secured by planning conditions and would be implemented in full by the applicant. From the evidence before me, there is every confidence in their likely success, and they can be implemented as soon as the relevant conditions have been complied with. The planning conditions would be monitored by the applicant, NRW and the Council and any failure of the mitigation would be rectified by the applicant in consultation with the Council and NRW.
20. In such circumstances there would be no adverse effect on the integrity of the European site and features as a result of the proposed development, alone or in combination with other plans and projects.
21. Accordingly, the application for consent to construct works on common land may be granted. In reaching this finding I do not need to consider steps 3 and 4 namely the 'Assessment of Alternative Solutions' and Imperative Reasons of Overriding Public Interest (IROPI).

Conclusion

22. A review of the conservation objectives and potential threats to site integrity for the Migneint-Arenig-Dduallt SAC was undertaken to identify whether it would be impacted by the development. I have taken into account all the available evidence and have adopted the precautionary principle in carrying out this HRA.
23. I conclude that it is beyond reasonable scientific doubt that the scheme, either alone or in combination with other projects, would not have an adverse effect on the integrity of a European Site, namely the Migneint-Arenig-Dduallt SAC. This conclusion is predicated on securing the identified mitigation measures through the imposition of the recommended planning conditions.

24. This conclusion is based on the circumstances of the case, namely: on the site's unique context and situation; and on the basis of securing those elements of the identified mitigation and avoidance measures that I have found to be reasonable and necessary.

Joanne Burston

INSPECTOR