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## Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 09/11/20

gan Paul Selby, BEng (Hons) MSc  
MRTPI

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 1<sup>st</sup> December 2020

## Appeal Decision

Site visit made on 09/11/20

by Paul Selby, BEng (Hons) MSc MRTPI

an Inspector appointed by the Welsh Ministers

Date: 1<sup>st</sup> December 2020

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**Appeal Ref: APP/X6910/A/20/3257588**

**Site address: Wauntysswg Farm, Abertysswg, Rhymney, Tredegar, NP22 5BQ**

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

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
  - The appeal is made by Elgin Energy EsCo Ltd. against the decision of Blaenau Gwent County Borough Council.
  - The application Ref: C/2019/0280 dated 2 October 2019, was refused by notice dated 12 February 2020.
  - The application sought planning permission for 30MW solar park, access and ancillary development without complying with a condition attached to planning permission Ref: DNS/3213639 dated 31 July 2019.
  - The condition in dispute is No. 3 which states: "This planning permission shall endure for a period of 30 years from the date when electricity is first exported from the solar farm to the electricity grid ('First Export Date'). Written notification of the First Export Date shall be provided by the developer to the Local Planning Authority no later than 1 calendar month after that event."
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### Decision

1. The appeal is allowed and planning permission is granted for 30MW solar park, access and ancillary development at Wauntysswg Farm, Abertysswg, Rhymney, Tredegar, NP22 5BQ, in accordance with application Ref: C/2019/0280 dated 2 October 2019, without compliance with condition No. 3 previously imposed on planning permission Ref: DNS/3213639 dated 31 July 2019, but subject to the conditions set out in the schedule to this decision letter.

### Application for costs

2. An application for costs was made by Elgin Energy EsCo Ltd. against Blaenau Gwent County Borough Council. This application is the subject of a separate Decision.

### Background and Main Issue

3. In July 2019 the Minister for Housing and Local Government (the Minister) granted planning permission for a 30MW solar park, access and ancillary development on the site (Ref: DNS/3213639). This appeal seeks permission to carry out the development subject to a variation to condition No. 3, which would extend the life of the permission from 30 to 40 years. No reasons for condition No. 3 are stated in the original decision
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letter but having regard to the submitted documents I consider the 30-year limit to have been imposed in the interests of the area's character and appearance and the preservation of historic assets. Consequently, and having particular regard to the Council's reason for refusal, the main issue in this appeal is the effect that varying condition No 3 would have on the character and appearance of the area and the setting of the Tredegar Cholera Cemetery Scheduled Ancient Monument (SAM).

4. The full site boundary pertaining to the original permission extends into Caerphilly County Borough Council (CCBC). An application to vary condition No. 3 for the part of the development in Caerphilly County Borough was approved by CCBC on 5 December 2019. The appeal before me relates to the part of the development that lies within Blaenau Gwent County Borough, which is the major part of the site area.
5. Following the appeal being made the Planning Inspectorate undertook an Environmental Impact Assessment (EIA) screening assessment on behalf of the Welsh Ministers. A screening direction was consequently issued confirming that the appeal scheme is not 'EIA development' within the meaning of the relevant regulations. I have determined the appeal on this basis.
6. At the time of writing this decision a 'working draft' of the National Development Framework was under scrutiny by the Senedd. Whilst including policies relating to renewable energy, it is a draft document that does not yet form part of the statutory Development Plan for the County Borough. The draft document makes clear that it must not be used as a source of policy and I have consequently not sought the views of the parties on it, nor afforded it any weight in my decision.

## **Reasons**

7. The appeal site is situated within a topographical depression, on land which slopes in a south/south westerly direction. The site is used for agriculture and predominantly composed of open grassland, dispersed trees and scrub, with enclosures separated by fences and bisected by drainage channels and minor watercourses which flow to the Nant Tyswg at the site's western boundary. The southeast part of the site accommodates a conifer plantation.
8. The site falls within the Mynydd Bedwellty, Rhymney Hill and Sirhowy Sides Special Landscape Area (SLA) as designated by policy ENV2 of the Blaenau Gwent Local Development Plan (LDP). I saw that this is a remote agricultural landscape of uplands punctuated by valleys, with infrequent isolated farms and dwellings. Whilst some energy and communications infrastructure and settlement edges are discernible from within Cwm Tysswg, the principal human influence on the landscape is formed by the rural highways which encircle part of the site on elevated land; from which the appeal site is readily visible. The site also forms part of the rural setting of the Tredegar Cholera Cemetery, a SAM which lies on elevated ground to the south.
9. In the decision letter for permission Ref: DNS/3213639 the Minister found no reason to disagree with her appointed Inspector's evaluation that the proposal would, from some viewpoints, result in harmful landscape and visual effects within Blaenau Gwent and/or Caerphilly County Boroughs, and that there would be an adverse impact on the setting of the SAM. Nonetheless, the Minister concluded that as these impacts would be temporary and fully reversible, the benefits of the proposal in generating an anticipated 30MW of electricity annually from a renewable source, for a period of 30 years, would outweigh the identified harm.
10. The appellant seeks to amend the time limit for operating the development due to advances in solar panel technology. There is, however, little to suggest that the extant

permission would not be implemented were this appeal to fail. The question at hand is therefore whether the benefits of extending the life of the development for a further 10 years outweigh any harm.

11. A relatively limited period has elapsed since the original planning permission was granted and there is little to indicate that the landscape has altered materially since then. Nor has there been any material change in relevant adopted national or local planning policy in the intervening period. I therefore attach substantial weight to the Minister's decision letter for planning permission Ref: DNS/3213639.
12. Based on the submitted documents and my own site observations, I have no reason to come to a different conclusion to the Minister about the nature and magnitude of the adverse impacts of the solar farm. Varying condition No. 3 would result in these impacts enduring for 40 years, rather than 30. Whilst the extended period of operation would not be of a wholly different order of magnitude to the fallback position, the time period during which the proposal's harmful impacts on the landscape, visual receptors and the setting of the SAM would be experienced would increase by one-third.
13. There is little dispute between the parties about the nature of the proposal's benefits. The appellant estimates that the additional 10-year period of operation would result in a saving equivalent to 160,000 tonnes of CO<sub>2</sub>, one-third greater than the extant permission. Whilst government climate change and renewable energy targets typically run up to 2050, the additional 10 years of operation would contribute to a sustained offsetting of carbon emissions from electricity generated within the County Borough. The variation to condition No. 3 would also contribute to energy security during the extended 10-year period. I attach significant weight to these energy and climate change benefits. Whilst the appellant also proposes to increase contributions to a community benefit fund, that is not a planning obligation nor directly related to the development and I afford it no weight as a benefit.
14. PPW para 5.9.17 indicates that where protected landscape and historical designations are considered in the decision-making process, only the direct irreversible impacts on statutorily protected sites and their settings should be considered. It stands to reason that this principle should also apply to the designated landscapes of local significance in the vicinity of the appeal site. Whilst the proposed variation to condition No. 3 would increase the length of time over which the identified adverse effects would be experienced, the impacts would remain time-limited and fully reversible.
15. I accept that the adverse landscape, visual and heritage impacts of the appeal scheme would result in conflict, in whole or part, with LDP policies SP10, SP11, DM1 criterion 1b and ENV2. Nonetheless, in the planning balance I conclude that the benefits of the proposal in generating 30MW of renewable electricity per annum over an additional 10-year period would accord with the objectives of PPW, significantly outweighing the conflict with the LDP.

### **Other Matters and Conclusion**

16. I have had regard to the other matters raised. As the arrangement of solar panels would not alter from that already permitted, I do not consider that the extended operating period would result in unacceptable glint or glare impacts. Nor would the variation to condition No 3 increase the amount of material to be disposed of. Having regard to the fallback position, I do not consider that allowing the development to operate for an additional 10 years would materially affect the viability of existing local businesses. I afford these matters limited weight.

17. For the stated reasons, and having regard to all other matters raised, I conclude that the appeal should be allowed. I shall vary the planning permission by deleting condition No. 3 and substituting it with an amended condition, as set out and for the reason given in the formal decision.
18. As I have no information before me about the status of the other conditions imposed on the original decision, as advised by the Development Management Manual I shall impose all those which I consider remain relevant. In the event that some have been discharged, that is a matter which can be addressed by the parties.
19. In reaching my decision, I have taken account of 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 sustainable development principle through its contribution towards the objective of driving sustainable growth and combatting climate change.

*Paul Selby*

INSPECTOR

## SCHEDULE OF CONDITIONS

- 1) The development to which this permission relates must begin not later than the expiration of 5 years beginning with the date on which the permission is granted.  
**Reason:** To comply with the requirements of Section 91 of the Town and Country Planning Act 1990.
- 2) The development shall be carried out in accordance with the details of the following approved plans and documents, except where amended by conditions attached to this planning permission:
  - i. Drawing reference: JPW0888-DNS-005 DNS Site Application Plan;
  - ii. Drawing reference: JPW0622-WAU-002 Rev I Site Layout Plan;
  - iii. Drawing reference: 17/611/01 Tree Location and Constraints Plan;
  - iv. Drawing reference: 17/611/02 Rev A Tree Protection Plan; and
  - v. Drawing reference: JNY8819-01 Junction Layout and Visibility Splays.**Reason:** For the avoidance of doubt and to ensure compliance with the approved plans.
- 3) This planning permission shall endure for a period of 40 years from the date when electricity is first exported from the solar farm to the electricity grid ('First Export Date'). Written notification of the First Export Date shall be provided by the developer to the Local Planning Authority no later than 1 calendar month after that event.  
**Reason:** To ensure that the development is temporary with a maximum duration of 40 years, in the interests of the area's character and appearance and the preservation of historic assets (LDP policies SP10, SP11, DM1 and ENV2).
- 4) If the solar park hereby permitted ceases to export electricity to the grid for a continuous period of 12 months the developer shall notify the Local Planning Authority in writing. A scheme shall be submitted to the Local Planning Authority for written approval within 3 months of the end of the 12-month period, for the repair or removal of all infrastructure. The scheme shall include, as relevant, a programme of remedial works where repairs to infrastructure is required. Where removal is necessary the scheme shall include a programme for removal of all infrastructure approved under this permission, including details of site restoration measures following the removal of infrastructure. The scheme shall thereafter be implemented in accordance with the approved details and timetable.  
**Reason:** In the interests of visual amenity and to ensure that the environmental effects of the decommissioning process are minimised and controlled.
- 5) Not later than 12 months prior to the end of this permission, a Decommissioning Management Plan shall be submitted for the written approval of the Local Planning Authority. The scheme shall make provision for, inter alia, the removal of all infrastructure approved under this permission and the restoration of the site. The approved scheme shall be fully implemented within 6 months of the expiry of this planning permission.

**Reason:** In the interests of visual amenity and to ensure that the environmental effects of the decommissioning process are minimised and controlled.

- 6) Prior to the commencement of any works associated with this development full details of the precise siting, layout and design of the solar arrays, including cross-sections and details of nonreflective finishing materials, shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented in accordance with the approved details.

**Reason:** In the interests of visual amenity.

- 7) Notwithstanding the details shown on the plans hereby approved, prior to the commencement of development full details of the proposed invertors, district network operator substation and client substation shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented in accordance with the approved details.

**Reason:** In the interests of visual amenity.

- 8) Notwithstanding the details shown on the plans hereby approved, prior to the commencement of development full details of the proposed lattice telecoms tower shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented in accordance with the approved details.

**Reason:** In the interests of visual amenity.

- 9) Notwithstanding the details shown on the plans hereby approved, prior to the commencement of development full details of the mounted CCTV cameras and associated poles, including the precise siting thereof, shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented in accordance with the approved details.

**Reason:** In the interests of visual amenity.

- 10) All electrical cabling between the solar park and the grid connection shall be installed underground. Prior to the commencement of any works associated with this part of the development, details of the routes of underground cabling shall be submitted to and approved in writing by the Local Planning Authority.

**Reason:** In the interests of visual amenity.

- 11) No development shall take place until a written scheme of historic environment mitigation has been submitted to and approved in writing by the Local Planning Authority. Thereafter, the programme of work will be carried out in accordance with the requirements and standards of the written scheme.

**Reason:** To ensure that features of archaeological interest are protected and recorded where they cannot be physically preserved in situ.

- 12) No development or site clearance shall commence until the Local Planning Authority has been informed in writing of the name of a professionally qualified archaeologist who is to be present during the undertaking of any excavations in the development area so that a watching brief can be conducted. No work shall commence until the Local Planning Authority has confirmed in writing that the proposed archaeologist is suitable. A copy of the watching brief report shall be submitted to the Local Planning Authority within two months of the archaeological fieldwork being completed.

**Reason:** To identify and record any features of archaeological interest discovered during site works and to mitigate the impact of the works on the archaeological resource.

- 13) No development shall take place until an assessment of the stability of the land (and the surrounding area) has been carried out in accordance with a methodology which must first be submitted to and approved in writing by the Local Planning Authority. The results of such an assessment including any intrusive site investigation works identified as being necessary shall be submitted to the Local Planning Authority before works commence on site. If any land instability issues are found during the site investigation, a further report specifying the measures to be taken to remediate the site to render it suitable for the development hereby approved shall also be submitted to and approved in writing by the Local Planning Authority before works commence on site. The development shall not be brought into use until all the measures identified as necessary in any reports that are approved by the Local Planning Authority are implemented and the Local Planning Authority is provided with a validation report, signed by a suitably qualified person that confirms that such measures and/or works have been fully implemented.

**Reason:** To ensure that the development is implemented in a manner that gives due regard to ground stability issues.

- 14) No development shall take place until there has been submitted to and approved in writing by the Local Planning Authority a scheme of landscaping. The submitted scheme shall include:
- i. Indications of all existing trees (including spread and species) and hedgerows on the land clearly identifying those to be lost or retained;
  - ii. Measures for the protection of retained trees or hedges throughout the course of development;
  - iii. Details of ground preparation, planting plans, number and details of species;
  - iv. Maintenance details for a minimum period of 5 years; and
  - v. A phased timescale of implementation.

The landscaping scheme shall be carried out as approved.

**Reason:** To ensure submission of an appropriate landscaping scheme and to secure a development that makes a positive contribution to the landscape and visual amenities of the area.

- 15) All planting or seeding comprised in the approved details of landscaping shall be carried out in the first planting and seeding season following the completion of the development or any alternative timescale that may be approved in writing by the Local Planning Authority before works commence on site. Any trees, shrubs or plants which within a period of 5 years from implementation of the planting scheme die, are removed or become seriously damaged or diseased, shall be replaced by one of the same species and size in the next available planting season.

**Reason:** To ensure timely implementation of an appropriate landscaping scheme.

- 16) No development shall take place (including ground works or vegetation clearance) until a Construction Environmental Management Plan (CEMP) has been submitted to and approved in writing by the Local Planning Authority. The CEMP shall include details of the following:
- i. A risk assessment of any potentially damaging construction activities;
  - ii. Identification of "biodiversity protection zones";
  - iii. Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction;
  - iv. The location and timing of sensitive works to avoid harm to biodiversity features;
  - v. The times during construction when specialist ecologists need to be present on site to oversee works;
  - vi. Responsible persons and lines of communication;
  - vii. The role and responsibilities on site of an Ecological Clerk of Works or similarly competent person; and
  - viii. The use of protective fences, exclusion barriers and warning signs.

The CEMP shall be strictly implemented and adhered to throughout the construction period in full accordance with the approved details.

**Reason:** To protect biodiversity interests and ensure that suitable measures are taken to mitigate any adverse impacts on biodiversity.

- 17) Prior to its construction, details of the bridge crossing the Nant Tysswg shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the agreed scheme.

**Reason:** To protect biodiversity interests and ensure that suitable measures are taken to mitigate any adverse impacts on biodiversity.

- 18) Notwithstanding any details indicated within the Ecological Mitigation Plan, no development shall be carried out until a final plan for a Curlew Habitat Enhancement Area has been submitted to and approved in writing by the local planning authority. The plan must include details of future monitoring and management. The Curlew Habitat Enhancement Area will be implemented in accordance with the approved details.

**Reason:** To protect biodiversity interests and ensure that a suitable curlew habitat enhancement area is provided.

- 19) Prior to the commencement of development, details of any temporary lighting for the construction period shall be submitted to and approved in writing by the Local Planning Authority. The temporary lighting shall be installed in accordance with the approved details for the duration of the construction period only. With the exception of the temporary lighting, no floodlights or any other form of external lighting shall be installed at the site.

**Reason:** To protect residential and visual amenity.