

55 Vastern Road  
Reading  
RG1 8BU

The Planning Inspectorate  
Temple Quay House  
Temple Quay  
Bristol  
BS1 6PN

Phone:  
Fax: 0118 953 4244  
E-mail:

29 June 2012

Nant y Moch Windfarm

Many thanks for your time earlier this week.

As discussed, please find below a summary of the two issues upon which your advice would be gratefully appreciated:-

1. *Public Right's of Way*

*s136 Planning Act [Public Rights of Way]* specifies that subject to certain criteria being met, an order granting development consent may extinguish a public right of way over land. This provision is applicable in instances where the development consent order makes provision for compulsory acquisition as well in instances where consent is obtained by private agreement.

In the given instance, it is our intention to temporarily close one footpath forming part of the primary access route to the windfarm for the duration of construction (approximately 30 months) following which it will be fully reinstated and re-opened for public use. We are unable to provide alternative ways for use during this period. All interested parties have/will be consulted with as part of our s42 and s47 consultations and it is our intention to obtain all requisite consents (should any be required) by private treaty.

As you will note, s136 makes provision for the extinguishment of public rights of way, from which it may be implied that consent may only be sought in respect of permanent closures and not those of a temporary nature.

I would in turn refer you to *s120 [What may be included in order granting development consent]* which at subsection 3 provides that an order granting development consent may make provisions relating to or matters ancillary to the development for which consent is granted". In turn *Paragraph 17 Part 1 to Schedule 5* provides the Planning Inspectorate with an ability to determine applications relation to the stopping up or diversion of highways however again does not expressly provide whether such applications may relate to temporary closure.

In contrast, the wording of *Paragraph 11 [Schedule 1 to the Infrastructure Planning (Model Provisions) Order [temporary stopping up of Streets]* does however provide for streets which are to be temporarily stopped up, thus dispensing with the need to comply with the provisions of the Highway Act 1980. Could you please confirm that this is also the understanding of the Planning Inspectorate and hence an application for temporary closure may be included as part of our intended application for Development Consent.

2. *Common Land*

In the given instance it is my client company's intention to use a parcel of land designated as Common Land for the purposes of the primary access route to the site. In doing it is intended to provide a substitute parcel, the location of which will be determined following in depth consultation with all interested parties. As discussed, *sections 131 and 132 Planning Act [Commons, Open Spaces etc...]* would appear to be the only provisions within the Planning Act which expressly make reference Common Land however their application is limited to instances where the applicant intends to compulsorily acquire such land which is not the case in this instance.

Could you please confirm whether it is the understanding of the Planning Inspectorate that an order granting development consent may permit the extinguishment of common land status and designation of a substitute parcel, under and pursuant to the provisions of paragraph 2 Part 1 Schedule 5 Planning Act i.e. the "creation, suspension or extinguishment of, or interference with, interests in or rights over land (including rights of navigation over water, compulsorily or by agreement".

I look forward to hearing from you further

Yours sincerely

Nicky Virdee  
Solicitor