

201[X] No. []
INFRASTRUCTURE PLANNING
The Mynydd y Gwynt Wind Farm Order 201[X]

Made 201[X]
Coming into force 201[X]

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SCHEDULE 1

PART 1 — AUTHORISED DEVELOPMENT

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An application has been made to the Secretary of State in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009**(a)** for an Order under sections 37, 114, 115 and 120 of the Planning Act 2008**(b)** (“the 2008 Act”).

The application was examined by a [single appointed person] appointed by the Secretary of State pursuant to Chapter 3 of Part 6 of the 2008 Act**(c)** and carried out in accordance with Chapter 4 of Part 6 of the 2008 Act, and the Infrastructure Planning (Examination Procedure) Rules 2010**(d)**.

The single appointed person, having examined the application with the documents that accompanied the application, and the representations made and not withdrawn, has, in accordance with section 83(1) of the 2008 Act, made a report and recommendation to the Secretary of State.

The Secretary of State, having considered the report and recommendation of the single appointed person, and decided the application, has determined to make an Order giving effect to the proposals comprised in the application [with modifications which in the opinion of the Secretary of State do not make any substantial change to the proposals].

The Secretary of State, in exercise of the powers conferred by sections 114, 115 and 120 of the 2008 Act, makes the following Order:

Citation and Commencement

1. This Order may be cited as the Mynydd y Gwynt Wind Farm Order 201[X] and shall come into force on [●] 201[X].

Interpretation

2. —(1) Except for Part 2 of Schedule 1 (requirements), which is subject to the additional definitions provided in that Schedule, in this Order—

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- (a)** S. I. 2009/2264, amended by S.I. 2010/602, 2012/635, 2012/2732.
 - (b)** 2008 c.29. The relevant provisions of the 2008 Act are amended by Part 6 of Chapter 6 of, and Schedule 13 to, the Localism Act 2011 (c.20).
 - (c)** Following the abolition of the Infrastructure Planning Commission on 1st April 2012 the single person appointed under section 61(2) of the 2008 Act is treated as if appointed by the Secretary of State by virtue of a direction given by the Secretary of State under section 129 of the Localism Act 2011.
 - (d)** S. I. 2010/103, amended by SI 2012/635.

“the 1961 Act” means the Land Compensation Act 1961**(a)**;

“the 1980 Act” means the Highways Act 1980**(b)**;

“the 1990 Act” means the Town and Country Planning Act 1990**(c)**;

“the 2008 Act” means the Planning Act 2008;

“the authorised development” means the development described in Part 1 of Schedule 1 (authorised development), which is development within the meaning of section 32 of the 2008 Act;

“building” includes any structure or erection or any part of a building, structure or erection;

“carriageway” has the same meaning as in the 1980 Act;

“the environmental statement” means the document certified as the environmental statement by the Secretary of State for the purposes of the Order and submitted with the application;

“highway” and “highway authority” have the same meanings as in the 1980 Act;

“the land plan” means the land plan submitted with the application (ref MYG-AD-LANDPLAN) and certified as the land plan by the Secretary of State for the purposes of this Order;

“the limits of deviation” means the limits of deviation referred to in article 6;

“maintain” includes inspect, repair, adjust, remove, reconstruct and replace but not so as to vary from the description of the authorised development in Schedule 1 and only to the extent assessed in the environmental statement, and “maintenance” shall be construed accordingly;

“Natural Resources Wales” means Natural Resources Wales or any successor to its functions for the area in which the authorised development is located;

“the Order limits” means the order limits shown on the works plan as the limits within which the authorised development may be carried out;

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- (a)** 1961 c.33. Section 2(2) was amended by section 193 of, and paragraph 5 of Schedule 33 to, the Local Government, Planning and Land Act 1980 (c. 65). There are other amendments to the 1961 Act which are not relevant to this Order.
- (b)** 1980 c.66. Section 1(1) was amended by section 21(2) of the New Roads and Street Works Act 1991 (c.22); sections 1(2), 1(3) and 1(4) were amended by section 8 of, and paragraph (1) of Schedule 4 to, the Local Government Act 1985 (c.51); section 1(2A) was inserted, and section 1(3) was amended, by section 259 (1), (2) and (3) of the Greater London Authority Act 1999 (c.29); sections 1(3A) and 1(5) were inserted by section 22(1) of, and paragraph 1 of Schedule 7 to, the Local Government (Wales) Act 1994 (c.19). Section 36(2) was amended by section 4(1) of, and paragraphs 47(a) and (b) of Schedule 2 to, the Housing (Consequential Provisions) Act 1985 (c.71), by S.I 2006/1177, by section 4 of, and paragraph 45(3) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c.11), by section 64(1) (2) and (3) of the Transport and Works Act (c.42) and by section 57 of, and paragraph 5 of Part 1 of Schedule 6 to, the Countryside and Rights of Way Act 2000 (c.37); section 36 (3A) was inserted by section 64(4) of the Transport and Works Act 1992(c.42) and was amended by S.I. 2006/1177; section 36(6) was amended by section 8 of, and paragraph 7 of Schedule 4 to, the Local Government Act 1985 (c.51); and section 36(7) was inserted by section 22(1) of, and paragraph 4 of Schedule 7 to, the Local Government (Wales) Act 1994 (c.19). Section 329 was amended by section 112(4) of, and Schedule 18 to, the Electricity Act 1989 (c.29) and by section 190(3) of, and Part 1 of Schedule 27 to, the Water Act 1989 (c.15). There are other amendments to the 1980 Act which are not relevant to this Order.
- (c)** 1990 c.8. Section 206 was amended by section 192(8) of, and paragraphs 7 and 11 of Schedule 8 to, the 2008 Act (date in force to be appointed see section 241(3), (4)(a), (c) of the 2008 Act). There are other amendments to the 1990 Act which are not relevant to this Order.

“owner”, in relation to land, has the same meaning as in section 7 of the Acquisition of Land Act 1981(a);

“the Requirements” means the requirements set out in Part 2 of Schedule 1 (requirements);

“the relevant planning authority” means Powys County Council or any successors to its statutory functions as local planning authority the local planning authority for the area in which the land to which the provisions of this Order apply is situated;

“relevant highway authority” has the same meaning as in section 1 of the 1980 Act;

“watercourse” includes all rivers, streams, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain; and

“the works plan” means the plan submitted with the application (ref MYG-AD-WORKSPLAN) certified as the works plan by the Secretary of State for the purposes of this Order;

“undertaker” means, subject to article 8(3) of this Order, Mynydd y Gwynt Ltd (company number 4366209).

(2) References in this Order to numbered Requirements are to the Requirements with those numbers in Part 2 of Schedule 1 (requirements).

(3) References in this Order to Works are to the Works set out in Part 1 of Schedule 1 (authorised development) and shown on the works plan.

(4) All distances, directions and lengths referred to in this Order are approximate.

Development consent etc. granted by the Order

3.—(1) Subject to the other terms of this Order, including the Requirements, the undertaker is granted development consent for the authorised development to be carried out within the Order limits.

(2) Subject to article 6 (power to deviate) the authorised development must be constructed in the lines or situations shown on the works plan.

Procedure in relation to approvals etc under requirements

4.—(1) Where an application is made to the relevant planning authority for any consent, agreement or approval required by a Requirement, the following provisions apply in respect of that application as they would apply if the consent, agreement or approval so required was required by a condition imposed on a grant of planning permission—

(a) 1981 c.67. Section 7 was amended by section 70 of, and paragraph 9 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34). There are other amendments to the 1981 Act which are not relevant to this Order.

(a) sections 78 and 79 of the 1990 Act (right of appeal in relation to planning decisions);

(b) any orders, rules or regulations which make provision in relation to a consent, agreement or approval of a local planning authority required by a condition imposed on the grant of planning permission.

(2) For the purposes of the application of section 262 of the 1990 Act (meaning of “statutory undertaker”) to appeals pursuant to this article, the undertaker is deemed to be a holder of a licence under section 6 of the Electricity Act 1989.

Maintenance of authorised development

5. The undertaker may at any time, and from time to time, maintain the authorised development, except to the extent that this Order or an agreement made under this Order, provides otherwise.

Power to deviate

6. In constructing or maintaining the authorised development, the undertaker may deviate laterally from the lines or situations shown on the works plan to the extent of the limits of deviation shown on the works plan except-

(a) Any such deviation must not result in turbines 1,4, 7, 8, 13 and 14 being located closer to any footpath, bridleway or higher public right of way than their position currently shown on the works plan; and

(b) All other turbines, save those located in open access land, must be located more than 125m from any footpath or 200m from any path of a higher status (bridleways, restricted byways and byways open to all traffic).

Operation of generating station

7.—(1) The undertaker is authorised to operate the generating station comprised in the authorised development.

(2) This article does not relieve the undertaker of any obligation to obtain any permit or licence or any other obligation under any other legislation that may be required to authorise the operation of a generating station.

Benefit of Order

8.—(1)The undertaker may, with the written consent of the Secretary of State—

(a) transfer to another person (“the transferee”) any or all of the benefit of the provisions of this Order and such related statutory rights as may be agreed between the undertaker and the transferee; or

(b) grant to another person (“the lessee”) for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order and such related statutory rights as may be so agreed.

(2) Where a transfer or agreement has been made in accordance with paragraph (1) references in this Order to the undertaker, except in paragraph (3), must include references to the transferee or the lessee.

(3) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) is to be subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

Defence to proceedings in respect of statutory nuisance

9.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990**(a)** (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance) no order is to be made, and no fine may be imposed, under section 82(2) of that Act if the condition set out in paragraph (2) has been satisfied.

(2) The condition to be satisfied for the purposes of paragraph (1) is that the defendant shows that the nuisance relates to premises used by the undertaker for the purposes of or in connection with the construction of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction site) or 65 (noise exceeding registered level), of the Control of Pollution Act 1974**(b)**.

(3) Section 61(9) of the Control of Pollution Act 1974 (consent for work on construction site to include a statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) and section 65(8) of that Act (corresponding provision in relation to consent for registered noise level to be exceeded), shall not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development.

(a) 1990 c.43. There are amendments to this Act which are not relevant to this Order.

(b) 1974 c.40. Sections 61(9) and 65(8) were amended by section 162 of paragraph 15 of Schedule 3 to, the Environmental Protection Act 1990 (c.25). There are other amendments to this Act which are not relevant to this Order.

(4) Nothing in this Order or section 158 of the 2008 Act (nuisance: statutory authority) or any rule of law having similar effect confers on the undertaker any defence in respect of any nuisance arising from noise attributable to the operation of the authorised development.

Application of landlord and tenant law

10.—(1) This article applies to—

- (a) any agreement for leasing to any person the whole or any part of the authorised development or the right to operate the same; and
- (b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised development, or any part of it, so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person's use.

(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants shall prejudice the operation of any agreement to which this article applies.

(3) Accordingly, no such enactment or rule of law shall apply in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—

- (a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;
- (b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or
- (c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

Operational land for purposes of the 1990 Act

11. Development consent granted by this Order is to be treated as specific planning permission for the purposes of section 264(3)(a) of the 1990 Act (cases in which land is to be treated as operational land for the purposes of that Act).

Felling or lopping of trees etc

12.—(1) The undertaker may fell or lop any tree or shrub within the Order limits, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub—

- (a) from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development; or
 - (b) from constituting a danger to persons using the authorised development.
- (2) In carrying out any activity authorised by paragraph (1), the undertaker must not cause unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity.
- (3) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, is to be determined under Part 1 of the 1961 Act.
- (4) The exercise of any power under paragraph (1) must be exercised with the consent of the owner of the land concerned.

Removal of human remains

- 13.**—(1) In this article “the specified land” means the land within the limits of deviation.
- (2) Before the undertaker carries out any development or works which will or may disturb any human remains in the specified land it must remove those human remains from the specified land, or cause them to be removed, in accordance with the following provisions of this article.
- (3) Before any such remains are removed from the specified land the undertaker must give notice of the intended removal, describing the specified land and stating the general effect of the following provisions of this article, by—
- (a) publishing a notice once in each of two successive weeks in a newspaper circulating in the area of the authorised development; and
 - (b) displaying a notice in a conspicuous place on or near to the specified land.
- (4) As soon as reasonably practicable after the first publication of a notice under paragraph (3) the undertaker must send a copy of the notice to the relevant planning authority.
- (5) At any time within 56 days after the first publication of a notice under paragraph (3) any person who is a personal representative or relative of any deceased person whose remains are interred in the specified land may give notice in writing to the undertaker of that person's intention to undertake the removal of the remains.
- (6) Where a person has given notice under paragraph (5), and the remains in question can be identified, that person may cause such remains to be—
- (a) removed and re-interred in any burial ground or cemetery in which burials may legally take place; or

(b) removed to, and cremated in, any crematorium,

and that person must, as soon as reasonably practicable after such re-interment or cremation, provide to the undertaker a certificate for the purpose of enabling compliance with paragraph (11).

(7) If the undertaker is not satisfied that any person giving notice under paragraph (5) is the personal representative or relative as that person claims to be, or that the remains in question can be identified, the question must be determined on the application of either party in a summary manner by the county court, and the court may make an order specifying who is to remove the remains and as to the payment of the costs of the application.

(8) The undertaker must pay the reasonable expenses of removing and re-interring or cremating the remains of any deceased person under this article.

(9) If—

(a) within the period of 56 days referred to in paragraph (5) no notice under that paragraph has been given to the undertaker in respect of any remains in the specified land; or

(b) such notice is given and no application is made under paragraph (7) within 56 days after the giving of the notice but the person who gave the notice fails to remove the remains within a further period of 56 days; or

(c) within 56 days after any order is made by the county court under paragraph (7) any person, other than the undertaker, specified in the order fails to remove the remains; or

(d) it is determined that the remains to which any such notice relates cannot be identified,

subject to paragraph (10) the undertaker must remove the remains and cause them to be re-interred in such burial ground or cemetery in which burials may legally take place as the undertaker thinks suitable for the purpose; and, so far as possible, remains from individual graves are to be re-interred in individual containers which are to be identifiable by a record prepared with reference to the original position of burial of the remains that they contain.

(10) If the undertaker is satisfied that any person giving notice under paragraph (5) is the personal representative or relative as that person claims to be and that the remains in question can be identified, but that person does not remove the remains, the undertaker must comply with any reasonable request that person may make in relation to the removal and re-interment or cremation of the remains.

(11) On the re-interment or cremation of any remains under this article—

(a) a certificate of re-interment or cremation must be sent by the undertaker to the Registrar General by the undertaker giving the date of re-interment or cremation and

identifying the place from which the remains were removed and the place in which they were re-interred or cremated; and

(b) a copy of the certificate of re-interment or cremation and the record mentioned in paragraph (9) must be sent by the undertaker to the relevant planning authority.

(12) The removal of the remains of any deceased person under this article must be carried out in accordance with any directions which may be given by the Secretary of State.

(13) Any jurisdiction or function conferred on the county court by this article may be exercised by the district judge of the court.

(14) Section 25 of the Burial Act 1857^(a) (bodies not to be removed from burial grounds, save under faculty, without licence of Secretary of State) shall not apply to a removal carried out in accordance with this article.

Certification of plans etc

14.—(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of—

- (a) the land plan;
- (b) the works plan; and
- (c) the environmental statement,

for certification that they are true copies of the documents referred to in this Order.

(2) A plan or document so certified is to be admissible in any proceedings as evidence of the contents of the document of which it is a copy.

Arbitration

15. Any difference under any provision of this Order, unless otherwise provided for, is to be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the Secretary of State.

Signed by authority of the Secretary of State for Energy and Climate Change

[dated]

Head of National Infrastructure Consents

(a) 1857 c.81; section 25 was amended by Criminal Law Act 1977 (c.45), section 31(6), and the Criminal Justice Act 1982 (c.48), sections 37 and 46.

SCHEDULE 1

PART 1

AUTHORISED DEVELOPMENT

In the County of Powys

A nationally significant infrastructure project as defined in sections 14 and 15 of the 2008 Act at the Sweet Lamb Rally Complex, Y Foel, Llangurig, Powys being an onshore wind turbine generating station with a gross electrical output capacity of no less than 50 MW and no more than 89.1MW comprising the following Works:

- Work No. 1 - up to 27 wind turbines each sited on concrete foundations incorporating hardstanding for cranes and fitted with rotating blades having a height to blade tip of up to 125 metres and rotor diameter up to 105 metres and including external transformers located at the base of the turbine and situated within the limits shown on the works plan at the locations set out in the following table:

Wind Turbine Grid References (at turbine centres)					
Turbine number	Easting	Northing	Turbine number	Easting	Northing
1	282822	286380	15	283520	284799
2	283261	286411	16	283714	284609
3	283675	286567	17	283937	284453
4	282917	286091	18	284154	284283
5	283065	285815	19	284579	284406
6	283342	285737	20	283742	284010
7	283588	285612	21	283968	283851
8	283974	285954	22	284417	283978
9	283827	285436	23	284779	284223
10	284217	285616	24	284995	284009

11	284480	285522	25	284240	283600
12	284765	285449	26	284592	283485
13	283387	285055	27	284799	283297
14	283912	285049			

Work No. 2 – temporary blade storage areas comprising designated areas located adjacent to each of the wind turbines as required;

Work No. 3 - Improvements to the site access road at its junction with the A44 at Ordnance Survey National Grid Reference Point SN 84240 82650;

Work No. 4 - An on-site electricity substation (the “Substation”) comprising an enclosed area of hardstanding of up to approximately 4000 square metres located at Ordnance Survey National Grid Reference Point SN 83088 85005 and including a control building to house switch gear, control equipment and welfare facilities;

Work No. 5 – A temporary construction compound (the “Construction Compound”) comprising an enclosed area of hardstanding located adjacent to the on-site electricity substation and including a temporary office and staff welfare building together with an area for the storage of materials for use in the construction of the authorised development;

Work No.6 - A series of access tracks between the site entrance, the Construction Compound, the Substation and the wind turbines including improving any track already in existence along the line of the work, as shown on the works plan;

Work No 7. - A network of cables laid underground between the wind turbines, the meteorological mast and the substation for the transmission of electricity and electronic communications between these different structures, including one or more cable crossings, as shown on the works plan;

Work No. 8 - A meteorological mast for the purpose of monitoring and recording wind speed and direction as well as air temperature, having a height of approximately 80 metres and located at Ordnance Survey National Grid Reference Point SN 83865 84153;

Work No. 9 - A settlement pond located at Ordnance Survey Grid Reference SN 84820 83315;

all such Works to be located in the approximate positions shown on the works plan and within the Order limits.

PART 2

REQUIREMENTS

Definitions

1. – In this Part of this Schedule:

“abnormal indivisible load” has the same meaning as in the Road Vehicles (Authorisation of Special Types) (General) Order 2003**(a)**;

“commencement”, in relation to the authorised development, means the date on which the authorised development begins by the carrying out of a material operation as defined in section 155 of the 2008 Act and “commence” and “commenced” shall be construed accordingly;

“European protected species” means a species listed in Schedules 2 or 5 of the Conservation of Habitats and Species Regulations 2010**(b)**;

“felling” means any felling or lopping undertaken pursuant to article 12 of this Order;

“first export date” means the date the authorised development first exports electricity on a commercial basis;

“Guidance Notes” means the noise guidance notes in Part 3 of this Schedule;

“site” means land within the Order limits;

and

“wind turbines” means the wind turbine generators forming part of the Works and “wind turbine” shall be construed accordingly.

Submission and approval of details

2. Where under any Requirement details or a scheme or plan are to be submitted for the approval of the relevant planning authority then unless the Requirement provides otherwise-

- (a) those details or scheme or plan and that approval must be in writing;
- (b) the details, scheme or plan must be implemented as approved;
- (c) the approved details, scheme or plan is to be taken to include any amendments that may subsequently be approved in writing by the relevant planning authority, provided that no amendments may be approved by the relevant planning authority where such amendments may give rise to any materially different environmental effects to those assessed in the environmental statement.

Time limits

(a) S.I. 2003/1998.

(b) S.I. 2010/490, to which there are amendments not relevant to this Order

3. The authorised development must be commenced within 8 years of the date this Order comes into force.

Expiry of development consent

4.-(1) The development consent granted by this Order shall expire 25 years after the first export date.

(2) Confirmation of the first export date must be provided by the undertaker to the relevant planning authority within one month of its occurrence.

Decommissioning and site restoration

5.- (1) Not less than 12 months before the expiry of the development consent granted by this Order, a decommissioning and site restoration scheme must be submitted to the relevant planning authority for its approval.

(2) The decommissioning and site restoration scheme must include provision for:

- (a) removal of all above-ground elements of the authorised development (with the exception of the access tracks);
- (b) removal of turbine bases and cabling to a depth of up to 1m below ground level, such depth to be specified in the decommissioning and site restoration scheme; and
- (c) restoration of the areas disturbed by the authorised development.

(3) Decommissioning and restoration must be completed in accordance with, and within the period set out in, the approved decommissioning and site restoration scheme.

(4) No development will commence until the undertaker has submitted to the local planning authority details of a mechanism, such as a restoration bond or similar form of security, and arrangements which will ensure that funds sufficient to cover the completion of the decommissioning, site restoration, monitoring and any subsequent remediation costs, in accordance with paragraphs (1) (2) and (3) of this Requirement, are available to the undertaker and local planning authority prior to the commencement of decommissioning and site restoration. The mechanism shall include arrangements for funds to increase with inflation and shall include a review provision upon the 5th, 10th, 15th and 20th anniversary of the date of first export to the grid network to ensure that the provision remains sufficient to cover the completion of the decommissioning and site restoration costs in accordance with paragraphs (1) (2) and (3) of this Requirement.

(5) No development will commence until the local planning authority has approved the arrangements in paragraphs (1) (2) and (3) of this Requirement, the approved mechanism is in place and arrangements have been secured to ensure that funds will be in place prior to the

commencement of decommissioning and site restoration. The security mechanism shall be maintained throughout the duration of the permission and reinstatement period.

Failure of turbines

6. If any wind turbine fails to provide electricity to the grid for a continuous period of 12 months the undertaker must:

- (a) notify the relevant planning authority within one month of the expiry of that 12 month period;
- (b) if so instructed by the relevant planning authority, submit to the relevant planning authority for approval within 2 months of that instruction a detailed scheme setting out how the wind turbine and its ancillary equipment, including cabling (but excluding the turbine bases more than five hundred millimetres below ground level) will be removed from the site and how the disturbed areas will be restored; and
- (c) implement the approved scheme no later than 6 months from its approval unless a longer period is agreed in writing by the relevant planning authority.

Plans

7.- Subject to the power to deviate set out in article 6 of this Order and any other Requirement the authorised development must be carried out in accordance with the plans or other documents certified in accordance with article 14 of this Order.

Construction traffic management plan

8.-(1) No authorised development is to commence until, following consultation with the Department for Transport of the Welsh Government and any relevant highway authority, a construction traffic management plan has been submitted to and approved by the relevant planning authority . The construction traffic management plan must include-

- (a) construction vehicle routeing plans;
- (b) evidence of trial runs demonstrating the suitability of the route from point of entry onto the highway network to the site for all abnormal indivisible loads;
- (c) site access plans;
- (d) proposals for the management of junctions to and crossings of highways and other public rights of way;
- (e) proposals for scheduling the timing of movements of delivery vehicles including details of abnormal indivisible loads;
- (f) details of escorts for abnormal indivisible loads;

- (g) proposals for temporary warning signs and banksman and escort details;
 - (h) proposals for assessing the existing condition of affected highways;
 - (i) details of any temporary or permanent improvements to highways; and
 - (j) proposals for the making good of any incidental damage to highways by construction traffic associated with the authorised development including street furniture, structures, drainage features, highway verge and carriageway surfaces;
 - (k) provision for pre-commencement update surveys for protected species and must identify avoidance and mitigation measures.
- (2) The construction traffic management plan must be implemented as approved.
- (3) Before any wind turbine is removed or replaced a revised construction traffic management plan, dealing with that removal or replacement, must be submitted to and approved by the relevant planning authority.

Construction environment management plan

9.-(1) No authorised development is to commence until a construction environment management plan has been submitted to and approved by the relevant planning authority and Natural Resources Wales.

- (2) The construction environment management plan must include details of-
- (a) the mitigation measures to be implemented to avoid harm to protected species and minimise damage to Local Biodiversity Action Plan habitats;
 - (b) the timing of construction works, including the timing of vegetation removal to avoid the potential for effects on reptiles and nesting birds;
 - (c) the wheel washing facilities, including siting;
 - (d) the timing of works and methods of working for cable trenches, foundation works and erection of the wind turbines;
 - (e) the timing of works and construction of the substation / control buildings and anemometry mast;
 - (f) the cleaning of site accesses, site tracks and the adjacent public highway and the sheeting of all heavy goods vehicles taking spoil or construction materials to/from the site to prevent spillage or deposit of any materials on the highway;
 - (g) the pollution control and prevention measure to be implemented including-
 - (i) sediment control,
 - (ii) the bunding of fuel, oil and chemical storage areas,
 - (iii) sewage disposal,
 - (iv) measures for the protection of water courses and ground water and soils and,
 - (v) a programme for monitoring private water supplies, water courses and water bodies before and during the authorised development, including details of the

action to be taken if monitoring indicates adverse effects on private water supplies, water courses or water bodies;

- (h) the disposal of surplus materials;
 - (i) the management of construction noise and vibrations (including identification of access routes, locations of materials lay-down areas, details of equipment to be employed, operations to be carried out, mitigation measures and a scheme for the monitoring of noise);
 - (j) the handling, storage and re-use on site of soil;
 - (k) the handling, storage and management of any peat excavated;
 - (l) the design and construction methods of the access tracks including drainage provisions, and the pollution prevention measures to be implemented to ensure there are no polluting discharges from tracks and disturbed areas including provision to ensure that no polluting discharge from the access tracks and disturbed areas enters any watercourse;
 - (m) the landscaping of the access tracks;
 - (n) the nature, type and quantity of materials to be imported on site for backfilling operations or construction of access tracks;
 - (o) the management of ground and surface water (including mitigation to protect private water supplies);
 - (p) the management of dust;
 - (q) the proposed temporary site compounds for storage of materials, machinery and parking within the sites clear of the highway, including the siting of the temporary buildings and all means of enclosure, oil/ fuel and chemical storage and any proposals for temporary lighting, and details of proposals for restoration of the sites of the temporary compounds and works within 12 months of the first export date;
 - (r) the design and construction of any culverts; and
 - (s) the restoration of the site which will be temporarily used for construction.
- (3) Before any wind turbine is removed or replaced a revised construction environment management plan, dealing with that removal or replacement, must be submitted to and approved by the relevant planning authority.
- (4) The construction environment management plan must be implemented as approved.

Highways

10. No authorised development is to commence until, following consultation with the Department for Transport of the Welsh Government and any relevant highway authority, details of temporary or permanent improvements to the public highway have been submitted to and approved by the relevant planning authority. The improvement works must be implemented in accordance with the approved details.

11. No authorised development is to commence until, following consultation with the Department for Transport of the Welsh Government and any relevant highway authority, details of the reinstatement of the public highway and its associated street furniture following completion of the construction of the authorised development have been submitted to and approved by the relevant planning authority. The reinstatement works must be implemented in accordance with the approved details.

Construction hours

12. The hours of work during the construction phase of the authorised development and any traffic movements into and out of the site associated with the construction or maintenance of the authorised development are to be 0800 to 1800 hours on Mondays to Fridays and 0800 to 1300 hours on Saturdays other than as allowed for under Requirement 13. No work is to take place outside these hours, or on public holidays, unless otherwise previously agreed by the relevant planning authority.

13. Notwithstanding the provisions of Requirement 12, delivery of turbine and crane components may take place outside the times specified in Requirement 12 subject to such deliveries first being approved by the relevant planning authority.

Habitat management plan

14.-(1) No authorised development is to commence until, following consultation with Natural Resources Wales, a habitat management plan has been submitted to and approved by the relevant planning authority. The habitat management plan must accord with the principles set out in the habitat management plan at Appendix 11.21 of the Environmental Statement.

(2) The habitat management plan must be implemented as approved.

European and nationally protected species

15.-(1) No part of the authorised development, and no felling, is to commence until a scheme for the mitigation of potential adverse impacts on any European or nationally protected species has been submitted to and approved by the relevant planning authority.

(2) The scheme must include-

- (a) a comprehensive survey report which details the methods and timings of surveys to be undertaken;

- (b) details of mitigation measures to be provided appropriate for the species present, including a timetable of when the mitigation will be in place.
 - (c) a method statement for the works detailing the methods, timing, and phasing of works, which seeks to minimise the impacts on any European protected species present, in line with best-practice guidelines; and
 - (d) proposals for monitoring before, during and post-construction which must include mechanisms to initiate and direct any remedial works required. The applicant must undertake remedial works, as directed by the relevant planning authority in consultation with Natural Resources Wales.
- (3) The scheme must be implemented as approved.

Access management plan

16.- (1) No authorised development is to commence until, following consultation with Natural Resources Wales, an access management plan has been submitted to and approved by the relevant planning authority.

- (2) The access management plan must include-
- (a) details of the provision of signage and other information alerting the public to construction works;
 - (b) details of any fencing or barriers to be provided during the construction period;
 - (c) details as to how public rights of way, paths and roads will be inspected prior to and monitored during the construction period;
 - (d) a commitment to return all public rights of way, paths and roads to the same condition as they were, or better, once the construction period has ceased;
 - (e) details of an active management plan for crossing points for public rights of way; and
 - (f) details of the temporary re-routeing of public rights of way during construction of the authorised development.
- (3) The access management plan must be implemented as approved.

Felling

17.- (1) All felling must be undertaken in accordance with the relevant guidance specified in paragraph (2) and Natural Resources Wales' best practice (as amended from time to time).

- (2) The relevant guidance is-
- (a) The UK Forestry Standard;
 - (b) UKFS Guidelines – Forests & Water (2011);
 - (c) UKFS Guidelines - Forests & Soil (2011);
 - (d) UKFS Guidelines – Forests & Biodiversity (2011); and

(e) UKFS Guidelines - Forests & Historic Environment (2011).

Appearance

18. The wind turbines must not be erected until details of their external appearance and colour and surface finish and the design and appearance of the external transformer / switchgear units (if any) have been submitted to and approved by the relevant planning authority. The authorised development must be completed in accordance with the approved details.

19. Notwithstanding any design or colour approved by the relevant planning authority pursuant to Requirement 18, all wind turbines must be of a three-bladed configuration and must be of a semi-matt finish.

20.-(1) No wind turbines are to display any name, sign, symbol or logo on any external surface unless required by law or for health and safety reasons.

21. All wind turbines' blades must rotate in the same direction. Without prejudice to Requirement 29, the wind turbines must not be illuminated, save for a sensor-operated access light.

22. Before construction of the Substation, details of the external design, appearance and finish of the Substation, including any hardstanding areas and the electrical compound must be submitted to and approved by the relevant planning authority. The authorised development must be completed as approved.

Shadow Flicker

23. The authorised development must not commence until a scheme for the avoidance of any shadow flicker effect at any dwelling which lawfully existed or had planning permission at the date of this Order has been submitted to and approved by the relevant planning authority. The scheme must be implemented as approved.

TV Interference

24. No authorised development is to commence until a scheme has been submitted to and approved by the relevant planning authority providing for the investigation of and remediation of any interference with television reception at any dwelling which lawfully existed or had planning permission at the date of this Order. The scheme must be implemented as approved.

Archaeology

25.-(1) No authorised development will commence until a scheme of archaeological investigation has been submitted to and approved by the relevant local planning authority.

(2) The scheme of archaeological investigation must include:

(a) a walkover survey of the areas to be affected by construction before commencement of the authorised development noting the updated prediction of scheme effects, including specialist palaeo-environmental advice on effects to peat;

(b) where presence of archaeological remains is established a watching brief will be undertaken during construction to record the surviving archaeological remains;

(c) a watching brief during construction of all other infrastructure to record any previously unknown archaeological remains that may be present; and

(d) proposed palaeo-environmental sampling.

(3) The scheme of archaeological investigation shall be implemented as approved.

(4) Fencing is to be provided around the probable Bronze Age cairns on Waun Goch, the 19th Century features associated with the Wye Valley Mine at Nant y Gwrddy and the area of the Nantiago Mine.

Ecological clerk of works

26.-(1) No authorised development is to commence until an ecological clerk of works has been appointed in consultation with the relevant planning authority.

(2) The ecological clerk of works must be a suitably qualified environmental professional and must be retained throughout the duration of civil construction works on site to advise on minimizing ecological effects of the construction activities.

Surface water drainage

27.- (1) No authorised development is to commence until, following consultation with Natural Resources Wales, details of the surface water drainage system (including means of pollution control) have been submitted to and approved by the relevant planning authority.

(2) The surface water drainage system must be constructed in accordance with the approved details.

Accumulations and deposits

28.-(1) No authorised development is to commence until, following consultation with Natural Resources Wales, a written scheme for the management of any accumulations and deposits has been submitted to and approved by the relevant planning authority.

(2) The approved scheme for the management of accumulations and deposits must be implemented before and maintained during the construction, operation and decommissioning of the authorised development.

Infra-red aviation lighting

29. No wind turbine is to be erected until, after consultation with the Ministry of Defence, details of the installation of infra-red aviation warning lights have been submitted to and approved by the relevant planning authority. The lights must be installed in accordance with the approved details and maintained until the wind turbines are decommissioned in accordance with Requirement 5.

Defence Geographic Centre

30. No wind turbine is to be erected before information on the accurate location of the wind turbines has been provided to the Defence Geographic Centre of the Ministry of Defence.

Noise

31. The level of noise imissions from the combined effects of the wind turbines (including the application of any tonal penalty) when calculated in accordance with the Guidance Notes must not exceed the values set out in Tables 1(a) and 1(b) below. Noise limits for dwellings which lawfully existed or had planning permission at the date of this Order and which are not listed in Tables 1(a) and 1(b) shall be those of the physically closest location listed in Tables 1(a) and 1(b) below, unless otherwise agreed with the relevant planning authority. The coordinate locations to be used in determining the location of each of the dwellings listed in Tables 1(a) and 1(b) shall be those listed in Table 2.

Table 1(a): The LA90, 10min dB Noise Level Between 23:00 and 07:00 hours.

Table 1 (a): The LA90 dB Noise Limit Between 23:00 and 07:00 hours.									
Position	Standardised Wind speed (m/s) at 10m height								
	4	5	6	7	8	9	10	11	12
	Maesnant	45	45	45	45	45	45	45	45
Rhyd-y-benwch	43	43	43	43	43	43	43	43	43

Manod	45	45	45	45	45	45.5	46.7	48	49.3
Bont Isaf	45	45	45	45	45	45	45	45	45
Penrhiwgaled	43	43	43	43.2	44.3	45.5	46.7	48	49.3
Blaenbythigion	43	43	43	43	43	43	43	43	43
Glansevern Arms New Property	43	43	43	43.2	44.3	45.5	46.7	48	49.3
Siop Newydd	43	43	43	43.2	44.3	45.5	46.7	48	49.3
Bryn Gwy	45	45	45	45	45	45.5	46.7	48	49.3
Gwyn-y-Nant	43	43	43	43.2	44.3	45.5	46.7	48	49.3
Glanrhyd	45	45	45	45	45	45.5	46.7	48	49.3

Table 1(b): The LA90, 10min dB Noise Level at all other times (between 07:00 and 23:00) –
Noise level dB LA90, 10-minute

Table 1 (b): The LA90 dB Noise Limit Between 07:00 and 23:00 hours.									
Position	Standardised Wind speed (m/s) at 10m height								
	4	5	6	7	8	9	10	11	12
Maesnant	45	45	45	45	45	45	45	45.8	46.7
Rhyd-y-benwch	35	36	37.6	39.4	41.2	43	44.5	45.8	46.7
Manod	45	45	45	45	45.9	47.1	48.4	49.7	51.2
Bont Isaf	45	45	45	45	45	45	45	46	49.9
Penrhiwgaled	42.8	43.3	44	44.9	45.9	47.1	48.4	49.7	51.2
Blaenbythigion	35	36	37.6	39.5	41.2	43	44.5	45.8	46.7
Glansevern Arms New Property	42.8	43.3	44	44.9	45.9	47.1	48.4	49.7	51.2
Siop Newydd	42.8	43.3	44	44.9	45.9	47.1	48.4	49.7	51.2
Bryn Gwy	45	45	45	45	45.9	47.1	48.4	49.7	51.2
Gwyn-y-Nant	42.8	43.3	44	44.9	45.9	47.1	48.4	49.7	51.2
Glanrhyd	45	45	45	45	45.9	47.1	48.4	49.7	51.2

Table 2: Coordinate locations of the properties listed in Tables 1(a) and 1(b)

Table 2: OS (GB) Coordinate locations of the properties listed in Tables 1(a) and 1(b)		
Property Name	Easting	Northing
Maesnant	284956	286372
Rhyd-y-benwch	285952	286581
Manod	283950	282670
Bont Isaf	284162	282802

Penrhiwgaled	283634	282740
Blaenbythigion	288183	282860
Glansevern Arms New Property	284718	282467
Siop Newydd	284531	282564
Bryn Gwy	284314	282652
Gwyn-y-Nant	284865	282398
Glanrhyd	284031	282761

32. Within 21 days from the receipt of a written request from the relevant planning authority and following a complaint to the relevant planning authority from the occupant of a dwelling which lawfully existed or had planning permission at the date of this Order, the undertaker must, at its own expense, employ an independent consultant approved by the relevant planning authority to assess the level of noise imissions from the authorised development at the complainant’s property following the procedures described in the Guidance Notes.

33. The undertaker must, if directed by the relevant planning authority, switch off any of the wind turbines in order to assess compliance with the noise limits.

34. The undertaker must provide to the relevant planning authority the independent consultant’s assessment and conclusions regarding the noise complaint, including all calculations, audio recordings and the raw data upon which those assessments and conclusions are based. Such information must be provided within 3 months of the date of the written request of the relevant planning authority unless otherwise extended in writing by the relevant planning authority.

35. The undertaker must continuously log wind speed and wind direction at the site and power generation relating to authorised development. The undertaker must provide all logged data to the relevant planning authority at its written request and in accordance with the Guidance Notes within 28 days of such request. All data must be retained until the commencement of a decommissioning and site restoration scheme under Requirement 5.

Community liaison

37. – (1) No authorised development is to commence until a community liaison scheme has been submitted to and approved by the relevant planning authority.

(2) The community liaison scheme must include:

- (a) details of how the undertaker will liaise with the local community to ensure residents are informed of how the construction, operation and decommissioning of the authorised development are progressing;
- (b) a mechanism for dealing with complaints from the local community during the construction, operation and decommissioning of the development; and
- (c) a nominated representative of the undertaker who will have the lead role in liaising with local residents and the relevant planning authority.

(3)The undertaker must comply with the approved community liaison scheme throughout the construction, operation and decommissioning of the authorised development.

Training and employment management plan

- 36.** - (1) 'No authorised development is to commence until details of a Training and Employment Management Plan have been submitted to and approved in writing by the local planning authority.
- (2) The plan is to promote training and employment opportunities at all stages of the development for local people and maximise the use of local contractor and supply chains, in so far as commercially viable.
- (3) The training and employment management plan must be implemented as approved and any amendments must be agreed in writing with the local planning authority'.

PART 3

SCHEDULE OF NOISE GUIDANCE NOTES

These notes form part of Requirements 31 to 35. They further explain these Requirements and specify the methods to be employed in the assessment of complaints about noise imissions from the authorised development. The rating level at each integer wind speed is the wind farm noise level as determined from the best-fit curve described in Note 2 of these Notes and any tonal penalty applied in accordance with Note 3. Reference to ETSU-R-97 refers to the publication entitled “The Assessment and Rating of Noise from Wind Farms” (1996) published by the Energy Technology Support Unit (ETSU) for the Department of Trade and Industry (DTI).

Note 1

- (a) Values of the LA90, 10 min noise statistic must be measured at the complainant’s property, using a sound level meter of EN 60651/BS EN 60804 Type 1, or BS EN61672 Class 1 quality (or the equivalent UK adopted standard in force at the time of the

measurements) set to measure using the fast time weighted response as specified in BS EN 60651/BS EN 60804 or BS EN 61672-1 (or the equivalent UK adopted standard in force at the time of the measurements). This is to be calibrated in accordance with the procedure specified in BS 4142: 1997 (or the equivalent UK adopted standard in force at the time of the measurements). Measurements must be undertaken in such a manner to enable a tonal penalty to be applied in accordance with Note 3.

- (b) The microphone should be mounted at 1.2 – 1.5 metres above ground level, fitted with a two-layer windshield (or suitable alternative approved in writing by the relevant planning authority), and placed outside the complainant’s dwelling. Measurements should be made in “free field” conditions. To achieve this, the microphone should be placed at least 3.5 metres away from the building façade or any reflecting surface except the ground at a location that must be approved by the relevant planning authority. In the event that the consent of the complainant for access to his or her property to undertake compliance measurements is withheld, the undertaker must submit for the written approval of the relevant planning authority details of the proposed alternative representative measurement location prior to the commencement of measurements and the measurements must be undertaken at the approved alternative representative measurement location.
- (c) The $L_{A90, 10 \text{ min}}$ measurements should be synchronised with measurements of the 10-minute arithmetic mean wind and operational data logged in accordance with Note 1(d), including the power generation data from the turbine control systems of the authorised development.
- (d) The undertaker must continuously log arithmetic mean wind speed in metres per second and wind direction in degrees from north at hub height for each turbine and arithmetic mean power generated by each turbine, all in successive 10-minute periods. Unless an alternative procedure is previously agreed in writing with the relevant planning authority, this hub height wind speed, averaged across all operating wind turbines, must be used as the basis for the analysis. All 10 minute arithmetic average mean wind speed data measured at hub height is to be ‘standardised’ to a reference height of 10 metres as described in ETSU-R-97 at page 120 using a reference roughness length of 0.05 metres. It is this standardised 10 metre height wind speed data, which is correlated with the noise measurements determined as valid in accordance with Note 2, such correlation to be undertaken in the manner described in Note 2. All 10-minute periods must commence on the hour and in 10-minute increments thereafter.

Note 2

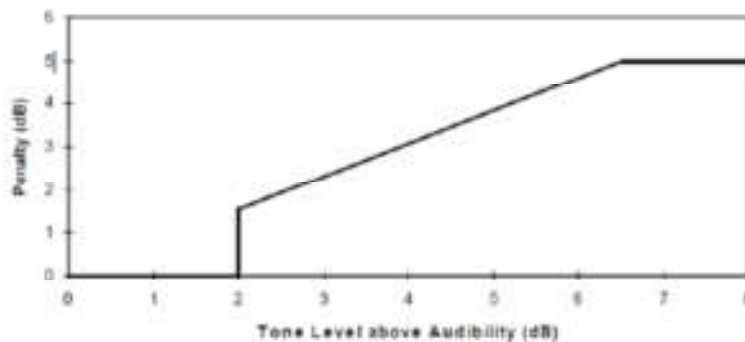
- (a) The noise measurements must be made so as to provide not less than 20 valid data points as defined in Note 2 paragraph (b). Such measurements must provide valid data points for the range of wind speeds, wind directions, times of day and power generation requested by the relevant planning authority. In specifying such conditions the relevant planning authority must have regard to those conditions which were most likely to have prevailed during times when the complainant alleges there was disturbance due to noise. At its request the undertaker must provide within 28 days of the completion of the measurements all of the data collected under Requirement 35 to the relevant planning authority.
- (b) Valid data points are those that remain after all periods of rainfall have been excluded. Rainfall must be assessed by use of a rain gauge that shall log the occurrence of rainfall in each 10 minute period concurrent with the measurement periods set out in Note 1(c) and is situated in the vicinity of the sound level meter.
- (c) The “best fit” curve (linear to fourth order polynomial or otherwise as may be agreed with the relevant planning authority) must be fitted between the standardised mean wind speed (as defined in Note 1 paragraph (d)) plotted against the measured LA90,10min noise level. The noise level at each integer speed must be derived from this best-fit curve.

Note 3

Where, in the opinion of the relevant planning authority, noise imissions at the location or locations where assessment measurements are being undertaken contain a tonal component, the following rating procedure must be applied-

- (a) For each 10 minute interval for which LA90, 10 min data has been determined as valid in accordance with Note 2 a tonal assessment must be performed on noise imissions during 2 minutes of each 10 minute period. The 2 minute periods must be spaced at 10 minute intervals provided that uninterrupted clean data is available (“the standard procedure”). Where clean data is not available, the first available uninterrupted clean 2 minute period out of the affected overall 10 minute period must be selected. Any such deviations from the standard procedure, as described in Section 2.1 on pages 104-109 of ETSU-R-97, must be reported.

- (b) For each of the 2 minute samples the tone level above or below audibility must be calculated by comparison with the audibility criterion given in Section 2.1 on pages 104-109 of ETSU-R-97.
- (c) The tone level above audibility must be plotted against wind speed for each of the 2 minute samples. Samples for which the tones were below the audibility criterion or no tone was identified, a value of zero audibility is to be used.
- (d) A least squares “best fit” linear regression line must then be performed to establish the average tone level above audibility for each integer wind speed derived from the value of the “best fit” line at each integer wind speed. If there is no apparent trend with wind speed then a simple arithmetic mean must be used. This process must be repeated for each integer wind speed for which there is an assessment of overall levels in Note 2.
- (e) The tonal penalty is derived from the margin above audibility of the tone according to the figure below.



Note 4

If the authorised development noise level (including the application of any tonal penalty as per Note 3) is above the limit set out in the Requirements, measurements of the influence of background noise must be made to determine whether or not there is a breach of Requirement. This may be achieved by repeating the steps in Notes 1 and 2 with all of the wind turbines switched off in order to determine the background noise, L3, at the assessed wind speed. The wind turbine noise at this wind speed, L1, is then calculated as follows, where L2 is the measured authorised development noise level at the assessed wind speed with turbines running but without the addition of any tonal penalty—

$$L_1 = 10 \log \left[10^{L_2/10} - 10^{L_3/10} \right]$$

The authorised development noise level is re-calculated by adding the tonal penalty (if any) to the authorised development noise.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order grants development consent for, and authorises Mynydd y Gwynt Limited to construct, operate and maintain a wind electricity generating station (comprised of up to 27 wind turbine generators) at the Sweet Lamb Rally Complex, Y Foel, near Llangurig, Powys. The Order imposes requirements in connection with the development for which it grants development consent.

A copy of the plans and other documentation certified in accordance with article 14 (certification of plans, etc) of this Order may be inspected free of charge during working hours at the offices of Powys County Council at County Hall, Llandrindod Wells, Powys LD1 5LG.