

Adroddiad

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Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 19.08.2021

Report

**by Mr A Thickett BA(Hons) BTP Dip RSA
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an Inspector appointed by the Welsh Ministers

Date: 19.08.2021

Regulation 4 of the Infrastructure Planning (Changes to, and revocation of, Development Consent Order) Regulations 2011

Application to make a non-material change to the Glyn Rhonwy Pumped Storage Generating Station Order 2017 (S.I. 2017/N.330)

Site address: Glyn Rhonwy Glyn Rhonwy and Chwarel Fawr quarries, Gwynedd

- The application is made by Snowdonia Pumped Hydro Ltd.
- The application Ref EN010072 is dated 28 April 2021.
- The change proposed is to extend the time period by which development must commence by two years.

Summary of Recommendation: That the proposed change be accepted as a non-material amendment.

Background

1. Snowdonia Pumped Hydro Limited was granted a Development Consent Order for the construction and operation of a 99.9MW pumped storage scheme by the Secretary of State for Business, Energy and Industrial Strategy on 8 March 2017¹. The authorised development would be located on land at the Glyn Rhonwy and Chwarel Fawr quarries in Gwynedd. The site comprises several disused quarries, pits and slate tips, woodland, grazing land and an industrial estate. The majority of the eastern end of the land is owned by Gwynedd Council and the majority of the western end is owned by the Crown Estate.
2. Requirement 2 of the DCO requires that development must commence within 5 years of the date of the Order. That period is due to expire on 29 March 2022. Due to the impact of the pandemic the applicant company is concerned that it will not be able to meet this requirement and is seeking an extension to 29 March 2024.

The Applicant's reasons for seeking the extension

3. Requirement 9 of the Order requires 12 consecutive months of water monitoring to establish baseline water conditions at the site prior to construction commencing. This requires monthly visits to various sites including on private land and within resident's homes to take samples of private water supplies. Undertaking such monitoring was not practical or considered to be safe or desirable during lockdown. To be effective, access to private water supply holder's properties needs to be regular and unrestricted. Undertaking consecutive monthly air quality and noise monitoring is also required pre commencement, as well as other surveys.
4. Repeated coronavirus lockdowns, activity restriction and concerns about operative's accessing local resident's properties has made carrying out the water monitoring scheme impractical over the course of last year. Surveys need to be carried out by specialist technicians often travelling from outside Wales and requiring overnight accommodation. It was not possible to carry out many of these long-term surveys in the past year, and it does not appear certain that it will be straightforward in the coming year.
5. The threat to public health has led to many businesses being temporarily closed and required individuals to remain at home unless there was a justifiable reason for leaving. These measures have had significant implications on economic activity which has affected contractors and supply chains relating to the development. There have been general difficulties surrounding the contracting associated with the Glyn Rhonwy project; especially where site visits have or would be required. These delays and

¹ Statutory Instrument 2017 No. 330) as corrected by the Glyn Rhonwy Pumped Storage Generating Station (Correction) Order 2017 (Statutory Instrument 2017 No. 969) (the "Order") following an application made by SPH (Planning Inspectorate reference EN010072).

continuing uncertainty means that it may not be possible to commence the authorised development within the 5 year period.

Procedure

6. The National Strategic Infrastructure Project consenting regime was introduced by the Planning Act 2008 (as amended). That Act and the Infrastructure Planning (Changes to, and Revocation of, Development Consent Orders) Regulations 2012, allow for changes to DCOs. These can be material or non-material changes which have separate procedures. In 2015 the Department for Communities and Local Government published 'Guidance on Changes to Development Consent Orders' to assist in determining whether a change is material or non-material.
7. The Guidance states that a change is unlikely to be non-material if it requires any of the following.
 - i. An updated Environmental Statement to take account of new, or materially different, likely significant effects on the environment,
 - ii. It would invoke a need for a Habitats Regulations Assessment,
 - iii. It would authorise the compulsory acquisition of any land, or an interest in or rights over land, that was not authorised through the existing Development Consent Order,
 - iv. Regard must also be had to impacts on businesses and residents in relation to matters such as; visual amenity from changes to the size or height of buildings; impacts on the natural or historic environment; and impacts arising from additional traffic.

Consultation

8. Regulations 6 and 7 of the 2012 Regulations set out the process for publicising and consulting on an application for a non-material amendment. The application was available to view on the applicant's and Planning Inspectorate websites and hard copies could be requested free of charge from the applicant. Notice of the application was published in The Caernarfon and Denbigh Herald. Those consulted on the original application, those who benefited from the original DCO and those who may be directly affected by the proposed change were notified directly.
9. The Snowdonia Society, Waunfawr Community Council and 8 local residents object to the proposed time extension arguing that the applicant has had plenty of time to carry out the required surveys and that lock downs have not stopped people working in or around people's homes. The Snowdonia Society also questions the quality of the Environmental Statement submitted in support of the application to change the DCO.
10. NRW raises no such concern and agree with the Environmental Statement that the proposed change will not result in any new or different effects on any protected sites or species. NRW notes that the species surveys supporting the Order in 2017 are five years old but as further surveys are required as part of the Habitat Management Plan², NRW is satisfied that suitable mitigation still exists within the Order.

² Schedule 1, Part 2, Requirement 6 (7) of the DCO

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11. Neither Denbighshire County Council, Network Rail, Dŵr Cymru or Ofwat have any objection to the proposed extension.

Planning Policy

12. This is a decision regarding whether the proposed change can be described as a non-material change to a consented scheme. This will revolve around fact and degree and the magnitude of the change and it is arguable that planning policy has no bearing. Nonetheless, it is worth noting two significant changes to national policy since the DCO was granted in 2017. These are the revision of Planning Policy Wales (PPW) to better reflect the aims of the Well-being of Future Generations Act and the adoption of Future Wales.

Future Wales – The National Plan 2040

13. Future Wales supports and helps deliver the aims of the Economic Action Plan by, amongst other things, supporting a low carbon economy and the decarbonisation of industry, and the growth of sustainable and renewable energy. Its ambition is for Wales to become a world leader in renewable energy technologies but also recognises the need to care for the environment.
14. Policy 17 set out the Welsh Government’s strong support for the principle of developing renewable and low carbon energy from all technologies and at all scales to meet future energy needs. In determining planning applications for renewable and low carbon energy development, decision-makers must give significant weight to the need to meet Wales’ international commitments and our target to generate 70% of consumed electricity by renewable means by 2030 in order to combat the climate emergency.
15. Policy 18 relates to Developments of National Significance but the principles it sets are relevant here. The policy is permissive of renewable energy schemes subject to effects on, amongst other things, residential amenity, designated nature conservation sites and built heritage assets.

Planning Policy Wales 11 (PPW)

16. PPW recognises that the provision of renewable energy contributes to the seven goals of the Well-being of Future Generations Act, especially a Prosperous Wales, a Resilient Wales and a Globally Responsible Wales. With regards to energy, it states; *‘The Welsh Government’s highest priority is to reduce demand wherever possible and affordable. Low carbon electricity must become the main source of energy in Wales³’*. Further; *‘The planning system should secure an appropriate mix of energy provision, which maximises benefits to our economy and communities whilst minimising potential environmental and social impacts⁴’*.
17. PPW recognises that the planning system has an active role in ensuring the Government’s target of 70% of energy in Wales being generated from renewable sources is met.

Environmental Appraisal

18. The applicant commissioned an environmental appraisal to determine whether extending the timeframe for commencing the authorised development in the DCO Order by 24 months would be likely to give rise to any new or different likely significant

³ Paragraph 5.7.1

⁴ Paragraph 5.7.6

environmental effects. The appraisal covered the same areas as the Environmental Statement (ES) which supported the DCO. These include, amongst other things, ecology, geology, flood risk, noise and socio economics.

19. No changes were identified that would give rise to any new or different likely significant effects compared to findings presented in the original ES, or that would not have ordinarily been addressed in subsequent planning permissions in the surrounding locality. The authors' concluded that the proposed extension of time would not alter any previously agreed mitigation measures, and the same commitments in the DCO to limit effects on receptors would continue to apply in the event of an extension to the time period for commencement.

Habitats Regulations Assessment and Appropriate Assessment

20. As part of the preparation of the original DCO application in 2016, a Habitats Regulations Assessment (HRA) was produced to assess whether the proposed development had the potential for Likely Significant Effects on European sites. It was determined that it would not and, in terms of 'in-combination effects', in agreement with NRW and Gwynedd Council, concluded that there were no projects or plans identified in which would cumulatively lead to Likely Significant Effects on European sites.
21. The updated HRA concludes that this remains the case. The only projects that were identified as potentially in scope for in combination effects were Wylfa Newydd Nuclear Power Station and the Bontnewydd Bypass. The Wylfa Newydd project has been cancelled and the Bontnewydd Bypass is under construction.
22. Following the European Court of Justice's ruling in the People Over Wind case⁵ an Appropriate Assessment (AA) has been undertaken to reflect that, as a result of that judgement, mitigation measures intended to avoid or reduce the harmful effects of a proposed project on a European site may not be taken into account by competent authorities at the Likely Significant Effects stage of HRA.
23. The following were identified as potentially being impacted by the proposed development.
- lesser horseshoe bat roosts in relation to Glynllifon SAC,
 - water pollution and runoff effects on Afon Gwyrfai a Llyn Cwellyn SAC,
 - nutrient enrichment and eutrophication effects on Afon Gwyrfai a Llyn Cwellyn SAC,
 - flow regime effects on Afon Gwyrfai a Llyn Cwellyn SAC and,
 - water quality effects on Afon Gwyrfai a Llyn Cwellyn SAC
24. These matters were subject to AA which is contained in the No Significant Effects Report produced by the applicant's ecological consultants⁶. The AA considers the potential impacts on the species and features listed above and concludes that subject to the measures included within the proposed development and within the Code of Construction Practice (CCP), it is likely significant effects on European sites would be avoided.

⁵ People Over Wind & Peter Sweetman v Coillte Teoranta C-323/17

⁶ Chapter 5 and associated appendices.

25. I have reviewed the AA and am satisfied its approach and the evidence supporting its conclusions is robust and sound. The AA considers the impact pathways to determine whether there is any potential for effects on European sites. With regard to lesser horseshoe bats, tunnels used for roosts will be lost as a result of the development but others enhanced to maintain a roosting resource and the AA concludes that the project would deliver a net enhancement. In relation to potential impacts regarding pollution, nutrients, water quality and flow regimes either impacts are unlikely and/or avoided through the design of the development. I have no reason to dispute that, subject to the measures within the proposed development and CCP, the project would not harm the conservation status of the lesser horseshoe bat or the integrity of the sites listed above.

Conclusions

26. The Guidance on Changes to Development Consent Orders advises that a change is not likely to be non-material if an Environmental Statement is required to take account of new, or materially different, likely significant effects on the environment. Also, if it would invoke a need for a Habitats Regulations Assessment.
27. No changes are proposed to the DCO other than the extension of time for commencement of the works. Given the period of time that has elapsed since the original ES was produced, it was sensible and right to undertake a review. The scheme is exactly as it was when the DCO was approved. The updated ES concludes that the project would not give rise to any new or different likely significant effects compared to findings presented in the original ES.
28. With regard to the HRA, again the scheme has not changed and the need for AA arises only from the judgement laid down in the *People Over Wind* case. The HRA concludes that subject to the measures included within the proposed development and within the Code of Construction Practice, likely significant effects on European sites would be avoided.
29. NRW do not share the concerns of the Snowdonia Society with regard to the conclusions of the ES or HRA and as the body charged by Welsh Government with safeguarding the protected habitats and species of Wales, NRW's views should be favoured. I note residents' scepticism with regard to the extent to which the pandemic and lockdowns have limited the applicant's ability to conduct the necessary surveys. However, from experience of the impact of the lockdowns and other limitations on the Planning Inspectorate with regard to travel and the ability to arrange site inspections, I see no reason to doubt the applicant's assertions in this matter.
30. Returning to the Guidance and the matters to be considered in determining whether a proposed change is non-material. An updated ES and HRA were required but there are no new, or materially different, likely significant effects on the environment. The AA was required only due to a change in caselaw and its findings are, as with the original HRA, that likely significant effects on European sites would be avoided. Compulsory acquisition is not relevant and, other than the project taking longer to complete than previously thought, impacts on businesses and residents would not change.
31. For the reasons given above, I conclude that the proposed extension to 29 March 2024 would constitute a non-material change to the DCO.

Anthony Thickett

Inspector