



Ein cyf/Our ref : qA1487136

Dave Holmes
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By email: info@snowdoniapumpedhydro.co.uk

17 November 2021

Dear Mr Holmes

**THE PLANNING ACT 2008 – PARAGRAPHS 2(1) AND 2(9) OF SCHEDULE 6
THE INFRASTRUCTURE PLANNING (CHANGES TO, AND REVOCATION OF,
DEVELOPMENT CONSENT ORDERS) REGULATIONS 2011
APPLICATION FOR NON-MATERIAL CHANGE TO THE GLYN RHONWY PUMPED
STORAGE GENERATING STATION ORDER 2017**

1. I have considered the application made by Snowdonia Pumped Hydro Limited (“the applicant”) on 28 April 2021 for a non-material change to the Glyn Rhonwy Pumped Storage Generating Station Order 2017 (as corrected by the Glyn Rhonwy Pumped Storage Generating Station (Correction) Order 2017) (“the 2017 Order”) under paragraph 2 of Schedule 6 to the Planning Act 2008 (the “2008 Act”).
2. The applicant was granted a Development Consent Order (“DCO”) 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 2017. 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.
3. Article 2 of Schedule 1, Part 2 of the DCO requires development to commence within 5 years of the coming into force date of the DCO. The DCO was made on 29 March 2017 and the 5 year period expires at the end of 28 March 2022. Due to the impact of the pandemic the applicant is concerned it will not be able to meet this requirement and has sought an amendment to the DCO which requires development to be commenced no later than 29 March 2024.

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

4. The application has been considered by a Planning Inspector, Mr A Thickett BA(Hons) BTP Dip RSA MRTPI (“The Inspector”). The Inspector has provided a report for the Welsh Ministers to assist and inform the Welsh Ministers’ consideration of this application (“the Inspector’s Report”). The Inspector recommends the proposed change be accepted as a non-material amendment.
5. The application documents and the Inspector’s Report have informed my determination of this application.

The applicant’s reasons for seeking the extension

6. The applicant’s justification for seeking the time extension is set out in its document, “Consultation on proposed request for a non-material change”. The applicant explains Article 9 in Schedule 1, Part 2 of the DCO 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 private land and residents’ homes in order to take samples of private water supplies. The applicant states undertaking such monitoring was not practical or considered to be safe or desirable during lockdown. To be effective, access to private properties must be regular and unrestricted. Undertaking consecutive monthly air quality and noise monitoring is also required pre-commencement, as well as other surveys.
7. The applicant states repeated coronavirus lockdowns, activity restriction and concerns about operatives accessing local residents’ properties 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 the applicant considers it does not appear certain it will be straightforward in the coming year.
8. 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 continuing uncertainty means it may not be possible to commence the authorised development within the 5 year period.
9. The Inspector notes 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, there is no reason to doubt the applicant’s assertions in this matter. I have no reason to disagree with the Inspector’s opinion.

Consultation

10. Regulations 6 and 7 of the Infrastructure Planning (Changes to, and Revocation of, Development Consent Orders) Regulations 2011 (as amended) (“the 2011 Regulations”) set out the process for publicising and consulting on an application for a non-material change. The application was available to view on the applicant’s and the Planning Inspectorate’s 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.

11. The Snowdonia Society, Waunfawr Community Council and 8 local residents objected to the time extension arguing the applicant has had plenty of time to carry out the required surveys and lockdowns have not stopped people working in or around people's homes. The Snowdonia Society also questions the quality of the Environmental Statement ("ES") submitted in support of the application to change the DCO.
12. Natural Resources Wales ("NRW") raises no such concern and agree with the findings of the ES that the proposed change will not result in any new or different effects on any protected sites or species. NRW notes the species surveys supporting the DCO in 2017 are five years old, however, as further surveys are required as part of the Habitat Management Plan, NRW is satisfied suitable mitigation still exists within the DCO.
13. Neither Denbighshire County Council, Network Rail, Dŵr Cymru or Ofwat have raised any objections to the proposed extension.
14. I have taken into account all representations received and do not consider any further information is required from the applicant and no additional consultation is required before determining the application.

Consideration of the application

15. I have considered whether the application is for a material or non-material change. There is no statutory definition of what constitutes a "material" or "non-material" change for the purposes of Schedule 6 to the 2008 Act and Part 1 of the 2011 Regulations. Paragraph 2(2) of Schedule 6 to the 2008 Act requires the Welsh Ministers, when deciding whether a change is material, to have regard to the effect of the changes on the DCO as originally made.
16. As the Inspector notes, in 2015 the Department for Communities and Local Government published "Guidance on Changes to Development Consent Orders". The guidance states given the range of projects which are consented through the 2008 Act and the variety of changes which could possibly be proposed for a single project, it is not possible to attempt to prescribe whether any particular types of change would be material or non-material. Such decisions will depend on the circumstances of the specific case. However, the guidance states there may be circumstances which indicate a change to a consent is more likely to be treated as a material change, although these only form the starting point for assessing the materiality of a change. These are:
 - (i) Whether an updated ES would be required to take account of new, or materially different, likely significant effects.
 - (ii) If there is a need for a Habitats Regulations Assessment ("HRA") or a new or additional licence in respect of European Protected Species.
 - (iii) If the change would authorise the compulsory acquisition of any land, or an interest in or rights over land, that was not authorised through the existing DCO.
 - (iv) The potential impact 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.
17. Informed by the Inspector's report, I have considered the four matters outlined in (i) to (iv) above.

(i) Environmental Statement

18. I note the applicant commissioned an “Environmental Appraisal” to determine whether extending the timeframe for commencing the authorised development in the 2017 Order by 24 months would be likely to give rise to any new or different likely significant environmental effects. The appraisal covered the same areas as the ES which supported the original DCO application.
19. The Inspector notes no changes were identified which would give rise to any new or different likely significant effects compared to findings presented in the original ES, or which would not have ordinarily been addressed in subsequent planning permissions in the surrounding locality. The Environmental Appraisal concludes 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.
20. I agree with the Inspector there are no new, or materially different, likely significant effects on the environment. Therefore, I am satisfied an updated ES is not required.

(ii) Habitats Regulations Assessment (“HRA”)

21. The Inspector notes a HRA was produced for the original DCO application. The HRA concluded there would be no Likely Significant Effects on European sites and in terms of “in-combination effects”, in agreement with NRW and Gwynedd Council, concluded there were no projects or plans which would cumulatively lead to Likely Significant Effects on European sites.
22. This application is supported by an updated and expanded HRA to include an Appropriate Assessment (“AA”) to reflect the ruling by the European Court of Justice in People Over Wind and Peter Sweetman v Coillte (“the People Over Wind case”). The judgement in that case considered 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 Inspector notes the following were identified as potentially being impacted by the proposed development:
 - Lesser horseshoe bat roosts in relation to Glynllifon Special Area of Conservation (“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.
 - Water quality effects on Afon Gwyrfai a Llyn Cwellyn SAC.
24. The applicant’s AA concludes, 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. I note the CCP is a requirement under the 2017 Order.
25. The Inspector has reviewed the AA and is 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, impacts are unlikely and/or avoided through the design of the development. The Inspector has 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.

26. I note NRW agrees with the conclusion of the applicant's "No Significant Effects Report" that the non-material change will not result in any new or different effects on any protected sites.
27. For the purposes of the Conservation of Habitats and Species Regulations 2017 I am satisfied the project would not adversely affect the integrity of any of the European sites identified.
28. As the Inspector notes, the non-material change sought by this application does not change the scheme and the need for AA only arises from the judgement laid down in the People Over Wind case. In this context I do not consider the need for AA indicates the proposed change to the DCO should be treated as a material change.

(iii) Compulsory Acquisition

29. I note the proposed changes do not require any compulsory acquisition.

(iv) Impact on Local Residents and Businesses

30. I agree with the Inspector, other than the project taking longer to complete, impacts on local residents and businesses would not change.

Planning Policy

31. The Inspector's report notes since the DCO was granted in 2017, Future Wales has been adopted and Planning Policy Wales has been revised. However, as the Inspector states the consideration in this decision, as set out in paragraph 2(2) of Schedule 6 to the 2008 Act, is whether the proposed change is a non-material change to the DCO. I note the changes in planning policy, however, I do not consider they have any bearing on the decision of whether the change is material or non-material.

Other considerations

Equality Act 2010

32. The Equality Act 2010 includes a public sector "general equality duty". This requires public authorities to have due regard in the exercise of their functions to the need to eliminate unlawful discrimination, harassment and victimisation and any other conduct prohibited under the Act; advance equality of opportunity between people who share a protected characteristic and those who do not; and foster good relations between people who share a protected characteristic and those who do not in respect of the following "protected characteristics": age; gender; gender reassignment; disability; marriage and civil partnerships; pregnancy and maternity; religion and belief; and race. I am satisfied there is no evidence of any harm, lack of respect for equalities, or disregard to equality issues in relation to this Application.

Human Rights Act 1998

33. I have considered the potential infringement of human rights in relation to the European Convention on Human Rights by the Application. I note the proposed changes would not require compulsory purchase of land and I am satisfied the grant of changes would not be incompatible with any Convention right protected by the Human Rights Act 1998.

Well-being of Future Generations (Wales) Act 2015 ("WFG Act")

34. The Welsh Ministers must, in accordance with the WFG Act, carry out sustainable development. In reaching my decision on the application, I have taken into account the ways of working set out at section 5(2) of the WFG Act and 'SPSF1: Core Guidance, Shared Purpose: Shared Future – Statutory Guidance on the WFG Act'. My assessment against each of the ways of working is set out below.

Looking to the long-term

35. The decision takes account of the long-term benefits of securing a low carbon form of energy production, supporting WGs decarbonisation objectives and additional storage of energy, helping to manage peaks in demand for electricity. The consented project would generate these benefits over a long time period, having a 125 year operational lifespan.

Taking an integrated approach

36. I have considered the impacts from the development proposal on the Welsh Government's well-being objectives, which incorporate the well-being goals set out in section 4 of the WFG Act. Where an objective is not set out, the effect of this decision is neutral.

Impact on well-being objectives

- Build a stronger, greener economy as we make maximum progress towards decarbonisation – positive effect.
- Make our cities, towns and villages even better places in which to live and work – potential short-term negative effect during construction, however long-term positive effect through the reduction of carbon emissions and managing peaks in demand for electricity.
- Embed our response to the climate and nature emergency in everything we do – positive effect.

Involving people/Collaborating with others

37. Within the framework of a statutory decision making process, which is governed by prescribed procedures, the application was subject to publicity and consultation, providing the opportunity for public and stakeholder engagement. Representations received through these procedures have been considered and taken into account in making a determination on this application.

Prevention

38. The decision provides the opportunity for works to commence on a consented scheme, which would provide low carbon electricity generation and help manage peaks in demand. The scheme would help decarbonise the energy sector. The development would help meet the Welsh Government's well-being objectives focussed

on building a stronger, greener economy and addressing the climate and nature emergency.

39. I consider my decision accords with the sustainable development principle set out in the WFG Act. The decision does not have any negative effects on the Welsh Government's well-being objectives, however if the application was refused the benefits in terms of decarbonisation and responding to the climate change emergency would not be secured. Therefore, I consider the decision is a reasonable step towards meeting the Welsh Government's well-being objectives.

Conclusions and Decision

Decision

40. I agree with the Inspector, for the reasons given in this decision letter and contained in the Inspector's report, the proposed extension to the commencement date to 29 March 2024 comprises a non-material change to the DCO. Therefore, I have decided under paragraph 2(1) of Schedule 6 to the 2008 Act to make a non-material change to the DCO to authorise the changes detailed in the application.
41. This letter is the notification of my decision in accordance with Regulation 8 of the 2011 Regulations.

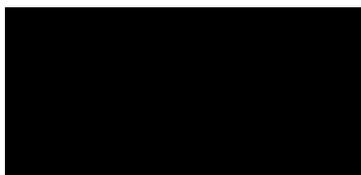
Challenging the Decision

42. The circumstances in which the Welsh Ministers' decision may be challenged are set out in the note attached in the Annex to this letter.

Publicity for Decision

43. The Welsh Ministers' decision on this application is being notified as required under regulation 8 of the 2011 Regulations.

Yours sincerely



Julie James AS/MS

Y Gweinidog Newid Hinsawdd
Minister for Climate Change

ANNEX

LEGAL CHALLENGES RELATING TO APPLICATIONS FOR DEVELOPMENT CONSENT ORDERS

Under section 118(5) of the Planning Act 2008, a decision under paragraph 2(1) of Schedule 6 to the Planning Act 2008 to make a change to an Order granting development consent can be challenged only by means of a claim for judicial review. A claim for judicial review must be made to the Planning Court during the period of 6 weeks beginning with the day after the day on which the Order making the change is published. The amending Order as made is being published on the Planning Inspectorate website at the following address:

<https://infrastructure.planninginspectorate.gov.uk/projects/wales/glyn-rhonwy-pumped-storage/>

These notes are provided for guidance only. A person who thinks they may have grounds for challenging the decision to make the Order referred to in this letter is advised to seek legal advice before taking any action. If you require advice on the process for making any challenge you should contact the Administrative Court Office at the Royal Courts of Justice, Strand, London, WC2A 2LL (0207 947 6655)