

From: [REDACTED]
To: [AwelyMor](#)
Subject: Awel Y Mor - ExQ3 - Deadline 7 - GBL and IM Kerfoot Discretionary Trust
Date: 08 March 2023 11:03:52
Attachments: [image001.png](#)

Dear Sirs,

Please accept this submission further to REP5-034 and in consideration of the information put forward by the Applicant at Deadline 6 and during the CAH (EV-022). Despite this information and an email update from the Applicants appointed Agent on the 15th February 2023 there has been no substantive progress on the negotiated agreement for the acquisition of land rights and the Trustees maintain their objections based on REP-034, RR-037, earlier feedback at s42 Consultation and prior engagement with the Applicant. The Trustees maintain a preference to achieve a negotiated agreement with the Applicant and remain open to engagement.

ExQ 3 - Question 3.15

Having regard to submission [REP5-034], please address concerns around:

- a) Time periods for rights sought;*
- b) The necessity for certain plots (or parts of them) to be included within the Order land (i.e. Plots 142 and 145); and*
- c) Implications for future development / diversification of land.*

Trustees Comments on a)

The compulsory acquisition powers sought by the Applicant to take permanent rights and restrictions will have significant impacts on private and public interests. The Applicant suggests that taking of rights only will have a reduced impact when compared to the permanent freehold acquisition of land. However, the extensive nature of rights sought within the DCO will be extremely significant on the future use and enjoyment of interests held by any Affected Parties and this impact should not be underestimated. As drafted in the current version of the DCO these rights will persist as a blight in perpetuity long after the operational requirements and potential needs for the windfarm have expired.

The Trustees suggest that legal wording could be introduced into the draft DCO generally and/or added to the definitions of the specific rights and restrictions sought to tie in or limit their implementation of rights ***solely in connection with and a necessary for the Construction, Operation, Maintenance and Decommissioning of the Awel Y mor Wind Farm***. Whilst a record of such specified rights would similarly persist against private registered titles beyond the life of the project they could only be implemented when required and necessary, but would practically fall away on the decommissioning of the Project. The Applicant has partially attempted to do this with rights and restrictions sought in association with the Temporary Mitigation Areas, but this should go further and include the general rights sought for the ECC, Operational Access and other specific elements of the project.

The Trustees remain open to engagement on such wording for incorporation into the draft DCO.

Trustees Comments on b)

From initial engagement with the Applicants appointed Agent in September 2021 the

Trustees have clearly articulated requests for a sequential review of alternative design options that would seek to mitigate the impacts of the proposed development on both private and public interests. These requests have been maintained and reiterated at subsequent engagement meetings, formal s42 consultation feedback and throughout the Examination process. The Trustees do not consider the Applicant has sufficiently considered alternative design proposals nor properly engaged and consulted with them throughout the development of the Project.

In order to reduce the impacts on land interests the Trustees have suggested that design amendments should be reviewed through the following sequential process to mitigate impacts and reduce the areas where the acquisition of unnecessary rights and restrictions may be required.

Step 1 – Movement of the ECC route slightly East (Plot 140);

Step 2 – Dependent on the outcome of Step 1 - review and rationalisation of the areas required for Temporary Mitigation Areas (Plot 141, Plot 143, Plot 144, Plot 146);

Step 3 – Dependent on the outcome of Step 2 - review of Operational Access routes (Pt Plot 142, Plot 145) .

The Trustees maintain that :

1. Plot 140 could be partially moved to the East by 30-40m. No substantive investigation or justified response has been provided by the Applicant as to why this could not be accommodated. It is considered that such design alternative would not adversely impact Heritage, Environmental or Archaeological Assets; could be accommodated by design refinements to adjoining Plots to the North and South of Plot 140; would allow for pragmatic re-configuration and provisions of Temporary Mitigation Areas; reduce the footprint within in, and severance to fields currently used for intensive agriculture.
2. Plot 141, Plot 143, Plot 144 and Plot 146 can be reconfigured to accommodate possible amendment to Plot 140 (as above) or reconfigured alongside the existing Plot 140 to provide the required area as envisaged by the OLEMP; reduce the impact of severance on intensively utilised agricultural field parcels; incorporate further areas of severed land to provide enhanced environmental mitigation.

The Trustees specifically point to the example of Plot 141. This Plot could be removed from the DCO and amalgamated into Plot 143, Plot 144 or Plot 146, or the excluded area between Plot 141 and Plot 138 could be incorporated into Plot 141 and a corresponding area removed from either Plot 143, Plot 144 or Plot 146. Such poor design must not be used to justify or support the 'necessary' acquisition of rights, especially when based on a draft OLEMP and in conflict with the conditions of s122 Planning Act 2008 and current DCLG Guidance.

3. The Operational Access required through the southern part of Plot 142 and Plot 145 should be removed from the DCO as they may not be required if incorporated within steps 1 and 2 above, or they that are unnecessary, and a duplication of rights contained within Plots 140, Plot 143, Pot 144 and Plot 146 for the provision of access.

In response to the ExA's Questions at Agenda Item 3 during the CAH with regard to Plot specific matters (particularly Pt Plot 142 and Plot 145) the Applicants Agent

suggested that it would not be possible to take operational access via rights contained in adjacent plots due to the presence of an important hedge and tree at point 21a on the Hedgerow and Protected Tree Plan submitted at REP 6-036. The Trustees wish to point out that there is already an existing field gateway adjacent to point 21a (within Plot 144) that would facilitate operational access via rights already contained within the Northern Pt of Plot 142, Plot 140 and Plot 144 without the need to take separate and duplicated rights through the Southern pt of Plot 142 and Plot 145. There are no records of an important tree at or near point 21a or any indications or constraints that would prevent widening or minor relocation of the existing gateway if required by the Applicant.

The Trustees maintain their request for the removal from the DCO of the unnecessary rights sought over the southern Part of Plot 142 and Plot 145.

The Trustees request the removal Plot 141 as unnecessary, or the incorporation into Plot 141 of the isolated area (currently outside the DCO) immediately north.

It is also maintained that, given the lack of design interrogation or satisfactory justification for the chosen options, the Applicant fails to satisfy conditions (a) (b) and (c) of s122 Planning Act 2008, where the definition of 'required' should be defined by the ruling in **Sharkey and Another v Secretary of State for the Environment and South Buckinghamshire District Council (1992)**.

Trustees Comments on c)

The Trustees have challenged the chosen design with a view to limiting or reducing the impact of the rights being sought through the DCO. As set out above, the rights sought by the Applicant will have a severe impact on the use and enjoyment of land which is subjected to them. There will be practical impacts during the Construction, Operation, Maintenance and Decommissioning of the Wind Farm, but there will be legacy legal restrictions on land use thereafter should rights not be directly associated with the Awel Y Mor Project.

In the short term these impacts will be on the practical agricultural use of the land, both directly and indirectly by severing fields, to the point where the Trustees agricultural unit may no longer be economically viable to farm. Furthermore, the geographical layout of the rights and restrictions proposed would make it very difficult to physically construct any sort of useful agricultural building or to locate any sort of diversified enterprise within the unit further limiting the earning capacity of the holding.

In the medium to long term the rights proposed would prevent the physical development of the land for residential or other commercial uses, thus limiting the strategic growth of Rhyl in this otherwise unconstrained area. As drafted within the DCO these restrictions would continue past the life of the project and endure indefinitely. Significant weight in the public interest should be given maintaining flexibility for any urban extension to Rhyl in this South-easterly direction during the upcoming revision of the LDP or in through future revisions of the LDP.

ExQ 3 - Question 9.3

Agricultural Holdings Table

Please update the table within Appendix D in relation to ExQ2.9.6 [REP5-004] to include

the following detail:

- a. *Total size of each holding;*
- b. *Loss of holding to Proposed Development by hectare;*
- c. *Loss of holding to Proposed Development, split by temporary and permanent development by hectare;*
- d. *Percentage loss of holding to Proposed Development, split by temporary and permanent development; and*
- e. *Significance of loss in EIA terms for each holding.*

Trustees Comments on Question 9.3

The Trustees support further assessment on the impact of the project on agricultural holdings. It is suggested that further assessment is undertaken by the Applicant to illustrate:

- I. Area affected by permanent rights by hectare;
- II. Area of land temporarily lost during construction period by hectare and % of holding;
- III. Area of land severed during construction by hectare and % of holding;
- IV. Assumed period for construction (pre-entry to operational and hand back);

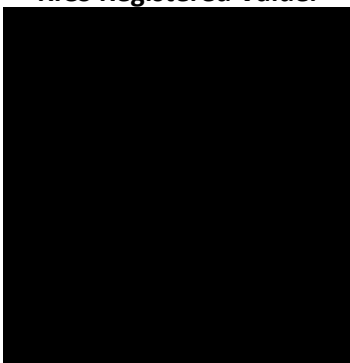
I am sorry for having to bring such detail to the attention of the Examining Authority at this stage of proceedings, but the Applicant has been reluctant to engage in meaningful design amendment conversations or to provide the necessary justification for the chosen design options other than through their staggered responses at examination (as late as Deadline 6).

On behalf of the Trustees, I respectfully request that as part of this examination due consideration is given to the issues above and the earlier representations that have been made.

Yours sincerely

Richard Fearnall MRICS

RICS Registered Valuer



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