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**From:** Richard Fearnall [REDACTED]  
**Sent:** 15 March 2023 10:10  
**To:** AwelyMor  
**Subject:** Awel Y Mor - Deadline 8 - GBL and IM Kerfoot Discretionary Trust

**Categories:** Deadline

Dear Sirs,

Please accept these comments as the Trustees Deadline 8 submissions.

### **ExQ3 – Further comments on Applicants D7 Response (REP7-004)**

#### **Question 3.15**

- a) The Trustees maintain that suitable wording should be incorporated with in the DCO to ensure that Temporary and Permanent Rights sought are limited for the sole benefit of the Construction, Operation, Maintenance and Decommissioning of the Awel Y Mor Windfarm Project as previously set out in REP7-053. Such rights would not be ‘time limited’ per se, but would practically expire when the windfarm is decommissioned (the rights cannot be exercised). This seems equitable it is unnecessary for Rights and Restrictions to persist beyond the life of the Project and continue to blight private interests.

In their response to ExQ2 Question 3.4 (REP6-003) the Applicant refers to the wording of the Restrictive Covenants in the DCO at Schedule 7 and suggests restrictions on apply “*during the period within which the undertaker is bound by any consent to maintain that ecological mitigation areas or areas of habitat creation*”. This principle is welcomed by the Trustees, but specific wording relates to the Restrictive Covenants only and not to the Rights taken. This principle of linking the benefit of rights and restrictions to ‘need’ has been proposed by the Applicant in connection with the Temporary Mitigation Areas and should be expanded and applied to all Rights and Restrictions sought within the DCO. Such clearly defined limitations to Rights and Restrictions would not create any risk for the delivery of the project, would ensure compliance with conditions set out in s122 (2) of the Planning Act 2008 and would mitigate the impact on private interests affected by the Project.

Whilst it is acknowledged that a more flexible approach could be agreed voluntarily, the DCO and any private agreements and negotiations must be treated distinctly and separately. The ExA are asked to ensure that the Applicant does not use the weight of the DCO process to extract leverage on independent voluntary negotiations. The Trustees must ensure their position under the DCO is protected as far as possible on the assumed basis that any statutory powers granted will be invoked.

- b) The Applicant openly agrees that the access routes were initially designed from a desktop review. Despite numerous meetings with the Applicants appointed Agent no amendments to the general design, or the specific design for of Plot 142 and Plot 145, have been fully considered for possible inclusion within the DCO. From the outset of engagement with the Applicant, the Trustees have requested general and specific reviews and amendments to the design in accordance with the sequential approach as set out in REP7-053. Rights that can facilitate operational access are being

sought in Plots adjacent to Plot 142 and Plot 145 and can be fully utilised for operational access without any significant ecological impacts. The current rights sought in Plots 142 and 145 are unnecessary duplication.

The Applicant states *'Plot 145 is required to secure access to the southern section of plot 140 which lies to the eastern extent of the Order Limits and has been deliberately divided from plots 146 and 144 to ensure only the permanent operational access rights endure once the ecological mitigation areas (if required) are restored to agricultural use and returned to the landowner'*. The Trustees maintain that operational access can be achieved across the entirety of Plot 140 through existing gateways (and one slightly realigned gateway) and through Plot 140 to Plots 143, Plot 144 and Plots 146 without further rights taken in Plot 145 or the Southern element of Plot 142. Notwithstanding this the general rights in Plots 144 and 146 will endure beyond the period the Restrictive Covenants may remain effective (see above).

The fact the Applicant is prepared accept proposed amendments through a voluntary agreement illustrates that changes can be accommodated. The Trustees again maintain that the draft DCO reflects these acceptable changes in order to protect their position should a negotiated agreement not be achieved.

- c) The Trustees fundamentally disagree with the Applicants statement that *'The introduction of underground cables and associated land rights is not considered to materially reduce the quantum of development achievable across a site.'* The very principles of securing associated land rights with new infrastructure of any kind is to facilitate the delivery of those assets and ensure their protection from future development and disturbance. With regard to the Trustees land 100% of the road frontage onto Dyserth Road will be affected by rights that will severely restrict the construction of any improved highway layout, highway junction, new or improved entrance road or agricultural access into the Holding (see rights and protections on Plots 130, 133, 134, 135, 136, 137, 138, 139). Furthermore, rights are proposed and will endure across a central band through approximately 10% of the Holding, severing it into two smaller blocks that would be extremely difficult to link to each other or the public highway for any form of strategic development proposal in the future. Linking the benefit and ability to exercise any Rights to the operational period of the Project as suggested above would mitigate these impacts once the Project has ceased and been decommissioned.

The Applicant has suggested that 'agricultural development' would be allowed on the Trustees Holding, subject to the rights they are seeking. The Trustees do not agree that this would be the case in practice. As an example, can the Applicant please consider and confirm where, subject to the rights sought, they would allow the construction of a new 40m by 20m steel portal framed agricultural building, with associated concrete yard/hard standing and necessary improved highway access on the Holding within 200m of the Dyserth Road ?

The Trustees maintain their objections and proposals lodged at Deadline 7 (REP7-053).

In summary, if the DCO is granted in its current form the Trustees land will become impossible to use as a viable agricultural Holding during extended temporary mitigation, construction and re-instatement periods (10-15 years). The rights and restrictions sought will prevent a range of diversified and expanded agricultural enterprises in the medium term and, in the longer term, will sterilise and curtail any strategic expansion to Rhyl in this area.

The Trustees do not believe that there has been a general willingness by the Applicant to explore alternative design options within the scheme. Significant impacts of the scheme could have been

mitigated by the Applicant through a more determined and constructive approach to engagement and respectfully refer the ExA to recent decisions in the ***London Borough of Barking and Dagenham Council (Vicarage Field and surrounding land) Compulsory Purchase Order 2021*** and the ***Royal Borough of Windsor & Maidenhead (Nicholsons Shopping Centre and Surrounding Area at High Street, Queen Street and King Street, Maidenhead) Compulsory Purchase Order 2022***.

The Trustees are broadly supportive of this important project and will continue to remain engaged with any efforts to explore reasonable solutions to the specific issues raised.

Yours faithfully

Richard

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