



Ref: DNS/3272053

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Re: The Developments of National Significance (Wales) Regulations 2016 - Response to Application DNS/3272053 Consultation – Proposed Twyn Hywel Energy Park, Caerphilly.

In reference to your email 26th September consulting on the above proposed application. The Department offers the following response for your consideration in respect of, soils and peatlands. This response is made in accordance with:

- Schedule 5 of the Town and Country Planning Act 1990 (as amended)¹,
- MTAN 1 Aggregates, Chapter D – 2004²
- Annex B of Technical Advice Note (TAN) 6 – 2010³.
- Planning Policy Wales (PPW), Edition 11 – 2021⁴.
- DCPO letter and Updated Chapter 6 of PPW – published with immediate effect on 18th October 2023⁵.
- National Development Framework (NDF) Future Wales: The National Plan 2040⁶

¹ <https://www.legislation.gov.uk/ukpga/1990/8/schedule/5>

² <https://www.gov.wales/sites/default/files/publications/2018-09/mtan1-aggregates.pdf>

³ <https://www.gov.wales/technical-advice-note-tan-6-planning-sustainable-rural-communities>

⁴ https://www.gov.wales/sites/default/files/publications/2021-02/planning-policy-wales-edition-11_0.pdf

⁵ <https://www.gov.wales/addressing-nature-emergency-through-planning-system-update-chapter-6-planning-policy-wales>

⁶ <https://www.gov.wales/future-wales-national-plan-2040-0>

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.

1. Expression of View

Having considered this proposal in light of Policy 9, 17 and 18 of National Development Framework (NDF) Future Wales, The National Plan 2040 and Planning Policy Wales (PPW); the Department for Climate Change **objects** to the application on the following policy grounds:

1. The proposal is contrary to Policy 17 of Future Wales, Renewable and Low Carbon Energy and Associated Infrastructure. The proposals will have an unacceptable adverse impact on the environment and represents a net loss of the peat resource.
2. The proposal is contrary to Policy 18(11) of Future Wales, which sets out the provision for effective restoration. The Department does not consider acceptable provisions for the conservation and protection of peat can be achieved, and the proposal lacks detail for the effective site restoration of mineral soils.

Borrow pits and associated infrastructure:

3. The proposal has not demonstrated that the site can be reclaimed to an acceptable standard and after-use. This should have been presented in sufficient detail for the MPA and statutory consultees to form a judgement as to its feasibility (MTAN1 paragraph 106).
4. There is significant doubt as to whether satisfactory reclamation can be achieved at the site, and as such, the planning permission should be refused (MTAN1 paragraph 97). Paragraph 119 (MTAN1): 'As stated in paragraph 97, for short-term workings it is usually appropriate to impose a detailed set of conditions at the time of granting planning permission'.
5. The lack of a detailed scheme means the Department does not have confidence that the land can, as far as reasonably practicable, be brought to the required standard when it is reasonably fit for that use (agriculture) or be brought to the required standard when it is suitable for sustaining trees, shrubs or other plants (amenity) (in accordance with paragraph 3(2) or 3(4) of Schedule 5 of the 1990 Act).
6. The proposal is contrary to Paragraph 5.14.34 of Planning Policy Wales, "Borrow pits must be restored to the high standard expected of other forms of mineral development". The proposal lacks the detail necessary to assess whether this is achievable and to be able to condition against.
7. When operations cease land needs to be reclaimed to a high standard and to a beneficial and sustainable after-use so as to avoid dereliction and to bring discernible benefits to communities and/or wildlife (Planning Policy Wales paragraph 15.14.4 – bullet 3). The proposal lacks the necessary detail to reasonably assess and provide confidence that a high standard of reclamation and beneficial and sustainable after-use can be achieved.
8. Paragraph 5.14.34 of Planning Policy Wales, "The potential cumulative impact of a number of closely sited borrow pits must be carefully considered and it is likely that the impact will not be acceptable in particularly sensitive locations". The Department considers locating borrow pits on areas of peat, which is an acutely sensitive natural resource with multiple benefits, as unacceptable. The proposal describes peat depth

at the borrow pit locations as 0.1m, 0.5m and less than 0.3m. It is not clear what impact closely sited borrow pits will have on the peat resource present.

Peat Soils:

9. Policy 9 of Future Wales, highlights soil carbon, biodiversity hotspots / networks, natural flood management and upland habitats as 'national natural resources'. These national natural resources exist as a direct result of the presence of peat soils. Peat soils are extremely fragile. The proposal risks compromising the long-term integrity of the peat resource and as such puts at risk the resilience of the multiple ecosystems which peat support. This is further recognised under the revision to Chapter 6 of PPW through the step-wise approach, and in the new Peatlands paragraph in 6.4.20. As per Objections 15 and 16.
10. The proposal is contrary to Paragraph 6.4.3 of Planning Policy Wales. By developing peat, the proposal compromises the resilience of ecological networks (bullet 4 of Paragraph 6.4.3 includes peat). Development proposals must consider the need to (bullet 4) safeguard protected species and species of principal importance and existing biodiversity assets from direct, indirect or cumulative adverse impacts that affect their nature conservation interests and compromise the resilience of ecological networks and the components which underpin them, such as water, air and soil, including peat. As Policy 9 of Future Wales highlights through the identification of National Natural Resources, peat is the critical component underpinning these networks.
11. The proposal is contrary to Chapter 6 of Planning Policy Wales because it does not protect the peat resource – “Desired Distinctive and Natural outcomes will be based on sustaining and creating places in which: [bullet 4] opportunities in all areas to improve the resilience of ecosystems are taken by addressing building on floodplains, diffuse pollution, soil compaction and sealing, ensuring the protection of peat resources and improving approaches to coastal flood defence in urban areas and coastal margins”.

Review against [Addressing the nature emergency through the planning system: update to Chapter 6 of Planning Policy Wales | GOV.WALES](#) - Annex to Heads of Planning Letter Dated 11 October 2023: Addressing the Nature Emergency through the Planning System: Updated National Planning Policy for Chapter 6 of Planning Policy Wales.

12. The proposal is contrary to the principles of *Distinctive and Natural Trends*. The proposal contributes to:
 - a. Long-term peatland habitat loss.
 - b. Negative adaptation response (the importance of which is further recognised in Paragraph 6.2.10).
13. The proposal is contrary to the principles of *Distinctive and Natural Linkages* due to the disturbance, degradation and inappropriate reuse proposals of peat soils. Desired Distinctive and Natural outcomes will be based on sustaining and creating places in which:
 - a. opportunities in all areas to improve the resilience of ecosystems are taken by addressing problems such as, building on floodplains, diffuse pollution, soil compaction and sealing, ensuring the **protection of peat resources** and improving approaches to coastal flood defence in urban areas and coastal margins (Bullet point 5. Emphasis added).
 - b. opportunities to improve health and well-being are taken, in particular, to reduce average levels of airborne pollution, protect appropriate soundscapes, create

areas of tranquillity, secure sustainable drainage systems, ensure water sensitive design, **address soil carbon management** and secure access to informal spaces for recreation through green infrastructure provision so as to improve capacity for adaptability to the challenges of climate change, such as flood risk and increased temperatures (Bullet point 6. Emphasis added) This directly links to the carbon reference in Chapter 6 Peatlands New Paragraph, page 19. The proposal will contribute to the loss of soil carbon stocks.

14. The proposal does not meet the Green Infrastructure Statement requirements (*New Paragraph* page 7). See Objection point 15, the proposal is not compliant with the step-wise approach (Paragraph 6.4.21).

15. The requirements of the Step-Wise Approach have not been met regarding irreplaceable habitats. The following Figures demonstrate overlap between turbines, compound, tracks, passing places, substation and irreplaceable habitats:

- 2023-05-25 ES 097 Vol 2 Figure 7.5 – Peat Depth⁷
- 2023-05-25 ES 101 Vol 2 Figure 8.3 – i-iv National Vegetation Classification habitats⁸
- 2023-05-25 ES 102 Vol 2 Figure 8.4 – i-iv Groundwater Dependent Terrestrial Ecosystems v8⁹
- 2023-05-25 ES 037 Vol 2 Figure 4.11 – Indicative Access Track Arrangement¹⁰

Table 6-1 Excavated Materials Management Plan of ES 145 Vol 3 Part 5 – Appendix 7.6 Outline Peat Management Plan implies contradictory excavation and reuse volumes as well as inappropriate reuse in measures such as landscaping which further highlights the impact on the peat resource and the regard given to its protection. Planning Policy Wales is clear, as a matter of principle, the proposal is unacceptable; it would be wholly exceptional for development to be justifiable.

- a. Part 1 a: The Department does not consider the proposal can satisfy the following statement, especially given the Part 1 b requirement; *that any reasonable alternative sites (including alternative siting and design options) that would result in less harm, no harm or benefit have been fully considered.*
- b. Part 1 b: *Proposals in statutory designated sites are, as a matter of principle unacceptable, and therefore must be excluded from site searches undertaken by developers. This principle also extends to those sites containing protected species and habitats which are irreplaceable(8) and must be safeguarded. Such sites form the heart of resilient ecological networks and their role and the ecosystem services they provide must be protected, maintained and enhanced*

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<https://planningcasework.service.gov.wales/api/documents/download/A45382456?hash=23c009125878b24983bc400c70da8f473bc5f1dab0014d06a15adb36ca21191e>

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<https://planningcasework.service.gov.wales/api/documents/download/A45382425?hash=0d78a33ba5918a5865a0a3fae7e8701394c03f0f7ae33b768cb0769bd699b725>

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<https://planningcasework.service.gov.wales/api/documents/download/A45382434?hash=7d9c4d884111e8acead5770e76559911bfc4bfde7486373eb5a6a7f4fb2ec970>

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<https://planningcasework.service.gov.wales/api/documents/download/A45382241?hash=a4d4b2c26e6551499149fcb1f5423477b361ed0c5b7479cf88df6351894ad6d9>

and safeguarded from development. It will be wholly exceptional for development to be justifiable in such instances.

The Department views any peatland which supports habitat, whether directly or indirectly, as falling under the definition of *habitats which are irreplaceable* (footnote 8 *Habitats, including the natural resources which underpin them, which would be technically very difficult (or take a very significant time) to restore, recreate or replace once destroyed, taking into account their age, uniqueness, species diversity or rarity*).

The proposal demonstrates peat soil resource and peatland habitat damage, loss and disturbance. Where irreplaceable habitats are not found on peat, but the damage, loss or disturbance has a negative impact on irreplaceable peatland habitats, such as through hydrological function, Part 1 b still applies given that Footnote 8 on Page 13 states...*including the natural resources which underpin them...*

Any peat soils not supporting irreplaceable habitat, whether directly or indirectly, would fall under Peatlands New paragraph on Page 19 where *unless other significant material considerations indicate otherwise it will be necessary to refuse permission*. See Objection 16.

The presence of irreplaceable habitats has already been established by the following documents:

- 2023-05-25 ES 097 Vol 2 Figure 7.5 – Peat Depth¹¹
 - 2023-05-25 ES 101 Vol 2 Figure 8.3 – i-iv National Vegetation Classification habitats¹²
 - 2023-05-25 ES 102 Vol 2 Figure 8.4 – i-iv Groundwater Dependent Terrestrial Ecosystems v8¹³
 - 2023-05-25 ES 037 Vol 2 Figure 4.11 – Indicative Access Track Arrangement¹⁴
- c. The proposal is contrary to Part 5. The Department views the reliance on post condition consents, inadequate restoration measures for both peats and mineral soils, and the lack of regard to mineral planning policy as incompatible with, *Each stage of the step-wise approach must be accompanied by a long term management plan of agreed and appropriate avoidance, minimisation, mitigation/restoration and compensation measures alongside the agreed enhancement measures.*

¹¹

<https://planningcasework.service.gov.wales/api/documents/download/A45382456?hash=23c009125878b24983bc400c70da8f473bc5f1dab0014d06a15adb36ca21191e>

¹²

<https://planningcasework.service.gov.wales/api/documents/download/A45382425?hash=0d78a33ba5918a5865a0a3fae7e8701394c03f0f7ae33b768cb0769bd699b725>

¹³

<https://planningcasework.service.gov.wales/api/documents/download/A45382434?hash=7d9c4d884111e8acead5770e76559911bfc4bfde7486373eb5a6a7f4fb2ec970>

¹⁴

<https://planningcasework.service.gov.wales/api/documents/download/A45382241?hash=a4d4b2c26e6551499149fcb1f5423477b361ed0c5b7479cf88df6351894ad6d9>

- d. Given the weight and status afforded to irreplaceable habitats, the resources which underpin them and peatlands, Part 6 reinforces the Department's view that the adverse effect on biodiversity and ecosystem resilience clearly outweighs other material considerations and as such the development should be refused.

16. The proposal is contrary to the *Peatlands New paragraph* Page 19. The policy clearly articulates the importance and fragility of peatlands both as an irreplaceable habitat and soil resource. The proposal does not address the policy requirements presented. *Peatland habitats cover only 3-4% of Wales yet store in the region of 20-25% of all soil carbon. Where peat is identified within proposed developments considerable weight should be given to its protection because of its special importance in underpinning and supporting national natural resources such as soil carbon, biodiversity and flood management, and unless other significant material considerations indicate otherwise it will be necessary to refuse permission.*

Soils:

- 17. The lack of detail regarding soils and their use is contrary to Paragraph 6.4.3 (bullet 4) of Planning Policy Wales. The proposal compromises the resilience of ecological networks by not giving proper consideration to the soil components which underpin them.
- 18. The proposal is contrary to the objective of a Resilient Wales (Chapter 6, Planning Policy Wales). There is no evidence to demonstrate the proposal protects and enhance biodiversity, protects and enhance water resources, protect soils, enables flood mitigation, and the creation of carbon sinks.

The expression of view and advice expressed does not bind any other part of Welsh Government or the Department from commenting on the proposal. I trust the above comments are clear and unambiguous.

Yours sincerely

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Welsh Government
Department for Climate Change
Landscapes, Nature & Forestry Division
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