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Interested Party Ref: 10031956

Common Land and Access Land

Dear Mr Cowperthwaite

I write on behalf of Cymdeithas Eryri the Snowdonia Society, the charity which since 1967 has worked to protect, enhance, and celebrate Snowdonia.

Thank you for the opportunity to speak at the Issue Specific Hearing on 17th May 2016. This submission provides further observations on Common Land and Access Land discussed under items 12.5, 12.6, and 12.7 at the hearing.

We have consulted with the Open Spaces Society and provide comments from their Case Officer Mr Hugh Craddock below. Mr Craddock's relevant experience includes working for the Department for Environment, Food and Rural Affairs (Defra) and its predecessor departments (1986-2016) to deliver access under the Countryside and Rights of Way Act 2000, commons legislation though the Commons Act 2006, and recent reforms to town and village greens under the Growth and Infrastructure Act 2013.

Comments from Mr Hugh Craddock, Open Spaces Society on the report *Glyn Rhonwy Pumped Storage Development Consent Order, Common, Access Land and Public Rights of Way Strategy*.

"1. I'm puzzled about the process for changes to the common land. On the one hand, we are told that applications are proposed under section 38 and 16 of the Commons Act 2006. On the other hand, this appears to be a major infrastructure project under the Planning Act 2008. Sections 131, 132 and 139 apply to such a project: section 131 provides that the project cannot acquire open space or common land compulsorily without a certificate of the Secretary of State (the 2008 Act applies in Wales where a Welsh Minister's certificate is required instead), and section 139 provides that a development consent order cannot override the protections in the 2006 act. Section 131 provides that a certificate

cannot be granted by the Secretary of State unless replacement land is provided which is equally advantageous.

My assumption is that the developer prefers to deal with the development, so far as it affects common land, under the 2006 Act, and that if the necessary consents are granted under section 38 and 16 in advance of a Development Consent Order (even if only momentarily in advance), then there will be no need for a section 131 certificate (at least in relation to common land: see paragraph 3.4 in relation to open space). This must mean that the affected common land is already owned by the developer (or will be acquired in sufficient time), and that any exchange land is likewise already owned, or can be acquired by voluntary agreement. But note that the 2008 Act does allow the developer to acquire replacement land compulsorily — so the developer is not necessarily restricted in offering exchange land to what it can obtain by agreement.

2. The proposal to use existing 'open country' as replacement land for the release common land is obviously disappointing. But there may be some excuse for this if there is very little or no suitable candidate replacement land contiguous with the existing common, which is not already open country. If so, the developer has seen the provision of replacement land for commoning purposes as one objective, and achieved it with the integration of the new common north of the existing register unit.

3. The other objective is then to compensate for the point that the replacement land does not offer any new access to substitute for what is lost in the release land. This is achieved by the dedication of the forestry land south of the development site. The OS 1:25,000 map shows a couple of rides across the woodland, in addition to the public footpath, and so there may be some new practical access where I assume there is none at present. Are there other paths or tracks not marked on the map which would be useful? I would certainly expect access to be facilitated by stiles or gates from neighbouring areas of open country, and from both ends of the public footpath along the south side of the woodland. As a minimum, one would expect there to be an opportunity to complete purposeful circular or cross-woodland walks (or rides: see below).

How will the woodland be managed in the future: it would be helpful if there were a commitment to facilitate further access where possible, for example, by creating new rides after any clear felling and replanting? A commitment to management and access arrangements could be secured with the local planning authority under section 39 of the Wildlife and Countryside Act 1981, or by a section 106 agreement. Without these, there is a risk that the woodland is unmanaged, or managed without consideration of the promotion of access.

I suggest that the section 16 (of CROW Act 2000) dedication should include the removal of certain restrictions which would otherwise arise under Schedule 2 to CROW: for example, the restriction which prevents horse riding and cycling, so that horse riders and cyclists would have a legal right of access to the site from the adjacent minor road (see regulation 3 of the Access to the Countryside (Dedication of Land) Regulations 2003 for the power to lift these restrictions in a dedication). Again, it would be appropriate to get commitments to ensure that such rights could be exercised by the provision of appropriate gates. Such

additional rights would help compensate for the more limited access across afforested access land.

4. The foregoing comments assume that you wish to make the best use of the offer on the table. But is there other land in the vicinity which would make a better offer for dedication as access land?

5. So far as I can tell, the intention is that the area of common land required for temporary works will not be subject to a section 16 exchange, but will be fenced off with section 38 consent. This means that, when the works are complete and the fence removed, the land will continue to be common land. If so, it is important that the section 38 application makes clear the intention to exclude commoners and the public from the fenced area, and that the fencing is to be time limited, and that the consent reflects these elements.

6. I found some of the tables showing the 'net result' of the changes confusing, because the values do not obviously generate the net result through simple arithmetic."

Cymdeithas Eryri the Snowdonia Society comments

With reference to Mr Craddock's point 1 above we urge you to scrutinise with care the implementation of the 2008 Planning Act as it affects common land, its interaction with the Commons Act 2006, and the exact process which the applicant proposes to pursue.

Throughout the applicant's document *Common, Access Land and Public Rights of Way Strategy* repeated emphasis is placed on the quantitative measure of replacement land. It would be helpful if the applicant's tables showed more transparently how the calculations are done. However we think it worthwhile to look beyond the bald acreage figures to consider the comparability of the land parcels and the access experiences which they afford the public.

Regarding the Common Land 'swap' on Cefn Du, do the commoners consider the offer of replacement land reasonable?

We welcome the proposal that the boundary between the existing common and the replacement land will be removed, but if the replacement common land is itself to be fenced (except on the join with the existing register unit), and it is contiguous with open country, should there not be stiles or gates installed in the new fencing to maintain access across the moor as a whole? Will the new fencing itself be an intrusion into the landscape which detracts from the public's experience of access?

In paragraph 3.1 the applicant does not quite rule out the possibility of reduced or impeded access to the newly-fenced block:
'*It is however noted that the change from Access Land to Common will not prevent public access to that area, there is no proposal to make the replacement common inaccessible and that in practice there will be no physical change to the Access Land or the rights of way across it.'* The difference between 'not preventing' access and enabling access can be a

critical one for the walker who does not wish to climb over a barbed wire fence or detour round to a new access point, if they can find one in the fog.

Without adequate entry points in the new fencing around the combined Common Land block there could be an overall *decrease* in access quantity as well as quality. The applicant does not mention how the public will access this fenced Common Land block - see paragraph 2.8:
"All fencing between the existing Common and the exchange land will be removed and free access allowed onto this area – new fencing will be erected to form one contiguous area of grazeable land."

The access maps do not show any entry points into this grazing block. This may be an oversight on the applicant's part but given the amount of work which has gone into this aspect of the project this raises concerns about priorities.

Our principle concerns are with the block of conifer plantation land proposed as compensation for access lost.

Paragraph 3.3 of the applicant's *Common, Access Land and Public Rights of Way Strategy:*
"The replacement of the loss of 40 acres of Access Land with 64.8 acres provides a net overall benefit to the public of 24.8 acres of land accessible for recreation. This proposal will also increase variety in the types and use of Access Land available within the vicinity, and will increase the connectivity of access land from Cefn Du to Moel Eilio."

We draw attention to the recognition in the last sentence of the essentially different character of the proposed new Access Land from that which would be lost. If I replace one of your £10 notes with a fiver do you benefit from the 'increased variety'?

We dispute that there would be a *de facto* access benefit from the forestry land, which has been treated as access land by the public. Indeed our copy of the 1:50,000 scale Ordnance Survey Sheet 115 Yr Wyddfa (1999 edition, revised 2005) shows this land parcel clearly marked as Access Land. Its ownership and status may have changed since then, but few are aware of that – myself included - and *de facto* access has been consistent for at least twenty five years, this being the length of time which I have known the site.

The key issue here is the provision of 'equally advantageous' access in the replacement land. This concept encompasses both physical and sensory or experiential criteria. Within a commercial conifer plantation the physical access constraints are absolute – it is generally impossible to move through such dense vegetation other than by following the prescribed paths and tracks. This physical constraint is compounded by sensory constraints in that there is zero visibility through the conifers to the wider landscape. The sense of hearing is similarly reduced to that of the immediate surroundings.

We note with interest that the applicant has not anywhere addressed the question of quality of experience afforded by the replacement Access Land. This is curious in that the applicant has sought to demonstrate equality when comparing the quality of the grazing for the Common Land 'swap' (paragraphs 2.8 and 2.9).

We refute any suggestion that enclosed forest tracks in a dark non-native conifer plantation will offer 'equally advantageous' access when compared with the open views – views stretching from mountain summits to coast - which are afforded by much of the Access Land to be lost.

We see no evidence that the applicant has exhausted the alternative options for securing more appropriate replacement land, given that compulsory purchase is a tool at their disposal.

A further disbenefit derives from the likely closure of access routes in the forestry for health and safety reasons and clearance work following storms and during planned forestry operations such as thinning and harvesting. See paragraph 3.2:
"*The use of the area to be acquired is commercial, mature softwood plantation. This use means that, of necessity, some access may be temporarily restricted in some areas during felling operations*."

Such built-in conditionality on access is a direct consequence of the existing land-use, but the applicant has nowhere proposed any action to address these constraints.

We conclude that the applicant overstates the benefits of the proposed 'new' Access Land which:

- does not provide equally advantageous access opportunities compared to those which would be lost
- would be 'accessible for recreation' on conditional terms which represent a significant disbenefit to the public.

Yours faithfully,

John Harold

Director, Cymdeithas Eryri the Snowdonia Society