



Penderfyniadau Cynllunio ac Amgylchedd **Cymru**

Planning & Environment Decisions **Wales**

Application for consent to construct works on common land

Commons Act 2006: Section 38

Return completed application to:

Planning and Environment Decisions Wales
2nd Floor West
Crown Buildings
Cathays Park
Cardiff
CF10 3NQ

Tel: 0300 060 4400

E-mail: PEDW.casework@gov.wales

Application for consent to construct works on common land

- Answer all the questions on this form in full and only use a separate sheet where there is insufficient space for your answer
- Refer to separate **Notes** on completing this form (the "Notes") and the 'Common Land Guidance - General Overview' note before, and when, applying
- Consult informally and widely about your ideas before developing a formal proposal

This application is made under (tick as applicable)

Section 38: Commons Act 2006



(if there is a Scheme of Management or local Act applying to the land, see Section I and 'Common Land Guidance – Special Consent Provisions (other than National Trust Land)' note before applying)

Section 23: National Trust Act 1971



(see Common Land Guidance – Special Consent Provisions (National Trust Commons)' note before applying))

SECTION A – The land (see Notes 1, 2 and 3)

1. Name of Common	Gelligaer and Merthyr	CL No.	CL38
(a) Community/Town of	Dowlais, Merthyr Tydfil		
(b) Borough/County Borough/City of	Merthyr Tydfil		
2. Commons Registration Authority	Merthyr Tydfil County Borough Council		
3. Does owner of common consent to proposals	Yes		

SECTION B – The applicant

4. Title (e.g. Mr/Mrs/Miss/Ms/Dr)	Mrs
(a) Forename(s)	Jenny
(b) Surname	Cowley
(c) Position/Organisation (if appropriate)	RWE Renewables UK Swindon Limited

5. Full postal address

Baglan Bay Innovation Centre
Central Avenue
Baglan Energy Park
Port Talbot

Postcode SA12 7AX

Telephone number See Agent's details (incl national dialling code)

Mobile number See Agent's details

Fax number (incl national dialling code)

E-mail address See Agent's details

I prefer to be contacted by E-mail ☒ Post ☐

Details of Agent (if appropriate)

6. Title (e.g. Mr/Mrs/Miss/Ms/Dr) Mrs

Contact Name Cathryn Tracey

Organisation Burges Salmon LLP

7. Full postal address

One Glass Wharf
Bristol

Postcode BS2 0ZX

Telephone number 0117 939 2000 (ext 2223) (incl national dialling code)

Mobile number 07807 550 254

Fax number n/a (incl national dialling code)

E-mail address Cathryn.Tracey@burges-salmon.com

Please copy all correspondence to Cathryn Tracey of Burges Salmon LLP at One Glass Wharf, Bristol, BS2 0ZX or Cathryn.Tracey@burges-salmon.com as the agent for the Developer, RWE Renewables UK Swindon Limited

SECTION C – Area of common and common rights (see Note 4)

8. (a) Is the land on which the works are proposed registered as common land? Yes ☒ No ☐

(b) If No, why do you need to apply?

9. (a) What is the total area of the common as registered?

(b) What common right(s); if any, are registered? (e.g. number and type)

A full copy of the Common Land Register (the "Register") and map for CL38 is included with the application.

Details of the rights are set out in the Register. These are given in terms of rights of pasture for the numbers of cattle, sheep or horses specified and the right to cut and take fern for bedding, rushes for thatching and to take stone for maintenance of roads and/or boundaries and/or other walls. The Register includes a total equivalent of 55,533 sheep equivalent grazing rights on CL38 distributed between 86 rights holders.

Please see section 5 of the supporting Common Land Report prepared by Christopher Hadley (the "Common Land Report") (document reference: Pen March COM_Section_16_&_38_Report on Common Land and Appendix) for full details.

Are they ever exercised?

Yes ☒ No ☐

.....
If Yes, to what extent (e.g. which commoners are active, which rights are exercised and how frequently?)

The Register and Common Land Report submitted with this application record the allocation of grazing rights over the common. During 2021/2022, there were six active graziers on the part of the common north of the A465 (the Northern Section). Further details of the extent to which the registered rights are exercised can be found within paragraphs 5.17 to 5.25 of the Common Land Report and register plan (document reference: Pen March COM_Section_16_&_38_Report on Common Land and Appendix, Pen March COM_CL38 plan (i/ii/iii)).

SECTION D – The proposal (see Note 5 and 6)

10. What works are proposed? (tick all that apply)

- (a) fencing ☒
- (b) building/s ☐
- (c) other structure/s ☐
- (d) ditch/es, trench/es, embankments/s . ☒
- (e) other works . ☐

Please specify

Open trenching for underground cabling for grid connection with temporary fencing where required for health and safety and animal welfare requirements.

11. Area and extent of works

(a) What area will be occupied by the works or enclosed by the fencing? sq m/ha

(b) What length of works/fencing is proposed? m

12. Are the proposed works:

(a) permanent? ☐

(b) time-limited? (see Note 7) ☐

(c) a mixture of both (a) and (b) ☒

For time-limited works, how long will they be needed? weeks/months/years

13. Is this application, or any part of it, for works that have already been constructed? (see Note 8)

Yes ☐ No ☒

14. Describe the proposed works below

The works consist of the installation of underground power cables linking Turbines 4 and 5.

The site of the proposed works will be accessed using the network of onsite access tracks for the Proposed Development and the land to be deregistered as part of the Proposed Development.

The cable route will be permanently installed under the surface of the common, however; works to install the cable will take between two and four weeks and fencing will only be used during construction where necessary to satisfy health and safety or animal safety requirements and for the minimum amount of time. The cable will be installed by way of open trenching and the common land restored once the cable has been installed.

15. Say more about the nature and purpose of the proposal, and explain why the proposed works are needed on the common (see Note 9)

The proposed works form part of the Proposed Development, which is a development of national significance being promoted under the DNS regime, to which this section 38 application is a secondary consent.

The proposed works are needed to secure the delivery of the Proposed Development that will meaningfully contribute to the generation of renewable energy. Further information about the need for the Proposed Development, and consequently the proposed works, is set out in the planning statement (document reference: Pen March Wind Farm – Planning Statement) that accompanies the DNS application.

To minimise the impact of the Proposed Development on the common it is proposed to install an underground power cable between Turbines 4 and 5 to connect Turbine 4 to the electrical compound as shown on Figure 3: Infrastructure Layout Plan (document reference: Pen March COM_Fig3_Infrastructure_Layout_Plan) and Figures 4a & b: Section 38 Application Plan (document reference: Pen March COM_Fig4a_Section_38_Application_Plan and Pen March COM_Fig4b_Section_38_Application_Plan).

It should be noted that this application includes land which is not currently registered as common land but that will be registered as common land at the time that the proposed works take place. This is because as part of the related section 16 application (document reference: Pen March Wind Farm - Section 16 Application Form) the proposed Replacement Land is located adjacent to the eastern boundary of the common. The proposed works will only occur if both the DNS application for planning permission and the related s16 application have been granted. This application, therefore, should only be granted in the event that the two related applications are granted.

Protection of the common

Routing the cable between Turbines 4 and 5 will have a lesser effect on the common than laying the cable alongside the access tracks between Turbines 4 and 6. To do this would mean that a greater area of common land would need to be deregistered as there would need to be wider working areas and separation distances between the cables running adjacent to the sides of the access tracks.

Consideration was given to including the proposed works within the related section 16 application, but this was considered to have a greater impact on the common land, due to the need to deregister the land, than installing the cable under a section 38 consent. A section 38 consent is considered reasonable because the proposed works are of a nature that they will not affect the use of the common once the cable is installed, the installation will occur in a short period of time and following the installation of the cable, the common will be reinstated.

Protection of the interests of commoners and rights holders

The grazing rights noted at 9(b) above will be unaffected by the works once they are complete.

Recreational users of the common will only be affected by the proposed works during the two to four weeks installation period which will run simultaneously with the wider construction works for the Proposed Development. The construction team will have due regard to the presence and safety of people using the common whilst installing the works.

Once the works are completed, the common will be reinstated for use.

16. It is strongly recommended that you consult **informally** on your proposals at an early stage in their development. (See Note 10 and 'Common Land Guidance - General Overview' note)

What **informal** consultation have you carried out? Give details below

Informal consultation with the commoners was undertaken as detailed in section 9 of the Common Land Report (document reference: Pen March COM_Section_16_&_38_Report on Common Land and Appendix). The application has been consulted on as part of the DNS regime and the statutory consultees for a common land application have been consulted as part of that process.

SECTION D1 – Additional questions where proposed works involve fencing (If your proposal does not include fencing, go straight to Section E)

17. Please give details of:

(a) the type(s) of fence proposed

The fencing will be construction/heras fencing and will be used only during the installation of the cable and, if possible, will be used on a rolling basis i.e. only used where there are active works taking place.

(b) the height of fencing

Approximately 2m.

18. Please give full details of the need for fencing. This should cover: why fencing of this type is needed, what the aim of the fencing is, and why it is the length proposed.

The fencing is required for health and safety and animal safety purposes and to warn the public users of the common of the need for care to be taken around the vicinity of the works.

19.(a) What other measures (i.e. alternatives to fencing) have you considered? Why are these not available to you, or not considered to be practical?

Construction fencing has the advantage of being easily removed and causing negligible detriment to the surface of the common. Other measures of demarcating where operational construction works are being undertaken, such as flags or tape are not practicable for ensuring the safety of livestock albeit they could be sufficient for the public. To minimise the amount of fencing, banksmen will also be used but there will be occasions where that is not possible to ensure the safety of all.

(b) Give details of any measures proposed to mitigate the visual effect of the fencing.

None are proposed as it will only be in place for a very short period and the works will be carried out during the construction of the Proposed Development so any visual impacts from the restricted works applied for here will be negligible when considered in the context of the Proposed Development.

20.(a) How will you ensure that the public and others with rights (e.g. common rights holders) will have access to the land after the fencing is in place? Give details of the number, type and location of stiles and gates (see also question 17.(b)).

Fencing will be limited to the works areas with the remainder of the common being available to the public and others with rights for access. No stiles or gates are required.

(b) Will the fencing cross any public right of way or road? (See 'Common Land Guidance - General Overview' note) ... Yes ☐ No ☒

If yes, has the consent of the highway authority been given for any stile, gate or cattle grid and bypass which may be required? Yes ☐ No ☐

.....

If Yes, please enclose a copy. Copy enclosed

☐

If No, but consent is needed please give:

Date of Application

Reference Number

Highway Authority Contact: Name

Tel

E-mail

Details of Application and stage reached

SECTION E – Other consents (see Notes 11 and 12)

21.(a) Is planning permission needed for your proposal? Yes ☒ No ☐

If Yes, has planning permission already been obtained? Yes ☐ No ☒

If Yes, please enclose a copy. Copy enclosed

If No, but application has been made please give:

Date of Application

Reference Number

Planning Authority Contact: Name

Tel

E-mail

Details of Application and stage reached

The DNS application for the Proposed Development has been submitted to Planning and Environment Decisions Wales together with this application in order that they can be determined together.

In the event consent is not given for the DNS application, consent should also not be given for this application nor the connected section 16 application.

(b) Has an Environmental Impact Assessment screening opinion been adopted? Yes ☒ No ☐
(See 'Common Land Guidance - General Overview' note)

If Yes, has a screening application been approved by Welsh Government? Yes ☐ No ☒
.....

If Yes, please enclose a copy.

Copy enclosed

If No, but an opinion is needed, please give details of application:

SECTION F – Designations

22.(a) Is the proposal in or near a Site of Special Scientific Interest (SSSI), a Special Area of Conservation (SAC) a Special Protection Area (SPA), a wetland listed in accordance with the Ramsar convention? (See Note 13 and General Overview) Yes ☐ No ☒

If Yes, please give details, identify on the map (see Section K), and provide evidence that you have consulted Natural Resources Wales.

(b) Will the proposal affect a Scheduled Ancient Monument (SAM)? Yes ☐ No ☒
.....

If Yes, please give details, identify on the map (see Section K), and provide evidence that you have consulted Cadw (see Note 14).

(c) Is the proposal in a National Park or Area of Outstanding National Beauty (AONB)? Yes ☐ No ☒
.....

If Yes, please give details and provide evidence that you have consulted the National Park Authority or Natural Resources Wales.

SECTION G – Existing works and adjacent common land (see Note 15)

23.(a) Are there any existing buildings, roads, fences or other constructions on the common?

Yes ☒ No ☐

.....
If Yes, give details below (see Section K)

There is an existing Common Road and fencing along the boundary with the Common Road in the Northern Section of the Common, however; there are no buildings or other constructions that the Applicant is aware of. Please see paragraph 5.7 of the Common Land Report (document reference: Pen March COM_Section_16_&_38_Report on Common Land and Appendix) for further details on the Common.

(b) Does any area of common land or village green, of a different registration number, adjoin the common on which the works are proposed?

Yes ☒ No ☐

.....
If Yes, give details and identify the boundaries on the map (see Section K)

The Bannau Brycheiniog National Park to the north of the proposed works is designated as common land and shown on Figure 1: Common Land, Release and Replacement Land – Overview (document reference: Pen March COM_Fig1_Common_Land_Release_and_Replacement).

SECTION H – Public access (see Notes 16, 17 and 18)

24.(a) Do the public have a right of access to the common for air and exercise under section 193 of the Law of Property Act 1925?

Yes ☒ No ☐

(b) Is the common subject to an Order of Limitation made under section 193?

Yes ☐ No ☒

.....
If Yes, give its date and other details, and send us a copy of the Order

SECTION I – Schemes of management and local Acts (see Notes 19 and 20)

25.(a) Is there a Scheme of Management for the common made under the Commons Act 1899?

Yes ☐ No ☒

(b) Is there any other regulatory Scheme or Act for the common?
(e.g. a Provisional Order Confirmation Act under the Commons Act 1876)

Yes ☐ No ☒

If Yes to (a) or (b), give its date and other details, and send us a copy of the Scheme or Act.

SECTION J – Advertisement and consultation (see Notes 21, 22 and 23)

You must advertise your proposal in one main local newspaper and at the main points of entry to the common within 7 days of making your application. Use the draft notice at Annex A of Notes.

You must also send a copy of the notice (using the letter at Annex C of Notes) to the following:

- the owners of the land
- the commons council or association (if there is one)
- all known commoners
- others with a legal interest e.g. tenants, those with easements, or other rights over the land
- any relevant community/town, borough/county borough, city or county council
- Natural Resources Wales
- Cadw
- National Park authority (if the proposal is in a National Park)
- Open Spaces Society (see Note 24)

26. Which newspaper will the advertisement appear in, and on what date?

Not applicable – Addressed as part of the DNS application.

27. Are you the owner of the land?

Yes ☐ No ☒

.....

If No, does the owner support your application?

Yes ☒ No ☐

.....

Provide written evidence of the owner's views.
Evidence enclosed

Yes – landowner letter of consent enclosed with this application.

SECTION K – Maps (see Note 25)

You must include with your application **two copies** of a map which fully meets the requirements set out in Note 25. The map must clearly show what you are proposing to do and where.

28. Two copies of the map that meets the requirements set out in see Note 25 are enclosed ☒

SECTION L – Public inquiry or hearing (see Note 26 and 'Common Land Guidance - General Overview' note)

29. Give the name and address of a suitable place in the locality for holding a public inquiry or hearing, should this be needed.

Not applicable – Considered as part of the DNS application as a secondary consent.

Contact Name/Tel Number:

Checklist (tick to confirm)

For all applications:

I have read the relevant **Notes** and 'Common Land Guidance - General Overview' note ☒

For section 38 applications only:

- I am satisfied that:
.....
 - the land is registered as common land or is otherwise within the scope of section 38 ☒
 - the proposed works would prevent or impede access ☒

For section 23 applications only:

- I have enclosed a letter from the National Trust confirming its view that the proposed works are "desirable" under section 23(1) ☐

For all applications:

- I have:
 - answered all the questions on this form in full ☒
 - enclosed two copies of the map that meets the requirements of Section K ☒
 - enclosed a copy of the commons register in respect of this common, where registered (i.e. details of land, rights, and ownership, and the register map) ☒
 - enclosed a copy of any document mentioned in answering the questions on this form (e.g. planning permission, scheme of management, written permission of the landowner, letters from informal consultees etc.) ☒
 - understood that any of the application papers may be copied to interested parties on request, and have informed people as necessary ☒

I will within 7 days:

- advertise the proposal in one local newspaper ☐
- post a copy of the notice at the main entry points to the common ☐
- send a copy of the notice to all those listed at Section J ☐
- place a copy of the notice, map and application at the inspection point ☐

I will write to you as early as possible, using the letter at **Annex D** of the **Notes** to confirm that the advertising requirements have been met ☐

Applicant's Note: The above requirements do not apply where a Section 38 application is submitted as an application for secondary consent in connection with a DNS application.

SECTION M – Declaration

We apply under section 38 of the Commons Act 2006/~~section 23 of the National Trust Act 1971*~~ to the Welsh Ministers for CONSENT to construct the works described in Section D of this form.

**delete as appropriate*

Signed

Name (BLOCK letters)

Position (if applicable)

Organisation (if applicable)

Date

You must keep a copy of your completed form

Data Protection Act

Your application will be in the public domain. As such, all papers associated with it will be disclosed during the application process to others, including other Central Government Departments, public bodies, local authorities, other organisations and members of the public.

Planning and Environment Decisions Wales
Crown Buildings
Cathays Park
Cardiff
CF10 3NQ

RWE Renewables UK Swindon Limited
Baglan Bay Innovation Centre
Central Avenue
Baglan Energy Park
Port Talbot
SA12 7AX

20th July 2023

Dear Sirs

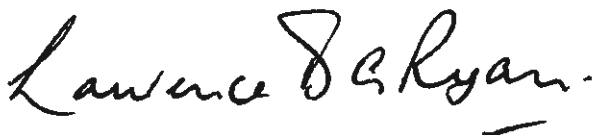
Section 38 secondary consent application for proposed open trenching for underground cable with temporary fencing (where required)

Applicant: RWE Renewables UK Swindon Limited ("RWE")

We, Dowlais Top Investment Company Limited, have agreed that RWE can use our land, that forms or part of common land parcel CL38, for open trenching to install an underground cable.

RWE is applying for secondary consent to undertake open trenching for underground cabling with temporary fencing (where required) on common land under section 38 of the Commons Act 2006. Please accept this letter as our confirmation for consent to RWE to submit its section 38 application.

Yours faithfully



Dowlais Top Investment Company Limited