Commons Act 2006: Sections 16 and 38

Application by RWE Renewables UK Onshore Wind Limited for consent to deregister and exchange common land and to carry out works on common land located between Y Bala and Ruthin in the Counties of Denbighshire and Gwynedd.

Report on Common Land

Christopher Hadley BSc (Hons) Agric FBIAC

May 2025

CONTENTS

Section	Heading	Page
1	**QUALIFICATIONS AND EXPERIENCE**	2
2	**INTRODUCTION**	3
3	**THE LEGAL FRAMEWORK**	4
4	**STRUCTURE OF THIS REPORT**	7
5	**THE COMMON**	7
6	**THE PROPOSED DEVELOPMENT**	11
7	**THE SECTION 16 APPLICATION**	12
8	**THE SECTION 38 APPLICATION**	21
9	**INFORMAL CONSULTATION**	22
10	**SUMMARY AND CONCLUSIONS**	23

APPENDICIES

Appendix 1 – CL106 – Common Land Register
Appendix 2 – CL106 – Common Land plans
Appendix 3 – Infrastructure Plan

REPORT BY CHRISTOPHER HADLEY BSc (Hons) Agric. FBIAC

1 QUALIFICATIONS AND EXPERIENCE

1.1 My name is Christopher Hadley and I hold a Bachelor of Science degree (Honours Agriculture) from the University College of North Wales Bangor. I am a Fellow of the British Institute of Agricultural Consultants and a member of the Scottish Agricultural Arbiters and Valuers Association.

1.2 I am a Director with Savills and a senior consultant in their Agribusiness Department. I practice from Savills' office at, Earn House, Lamberkine Drive, Perth, PH1 1RA. Savills merged with Smiths Gore in June 2015. Having originally joined Smiths Gore's Edinburgh office in 1990, to deliver farm business consultancy advice throughout Northumberland and all regions of Scotland, I continue to do so following the merger.

1.3 Prior to joining Smiths Gore I worked for 12 years as a Farms and Estate Manager on private agricultural businesses in Shropshire and Nottinghamshire. The practical,

hands-on roles combined with my consultancy experience have given me considerable exposure to all aspects of agriculture, both livestock and arable, in a wide range of geographical areas.

1.4 In my present position I advise on a wide range of agricultural enterprises including lowland and upland livestock. I have given agricultural expert witness opinion at eight previous wind farm application public inquiries concerning agricultural and common land issues (Scout Moor, Whinash, Crook Hill, Reaps Moss, Todmorden and Mynydd y Gwair first, second and third Applications).

2 INTRODUCTION

2.1 I am instructed by RWE Renewables UK Onshore Wind Limited , (hereafter referred to as the "Applicant"), to consider the proposals for a 9 turbine wind farm development (the "Proposed Development") situated partially on registered common land to the north of Y Bala on Mynydd Mynllod (Common Land unit CL106), in the local administrative areas of Denbighshire and Gwynedd, from an agricultural perspective in connection with Section 16 and Section 38 applications under the Commons Act 2006 (the "Act"), to release land from, and carry out restricted works on, the Common to facilitate the construction of the Proposed Development.

2.2 This Report considers the impacts on the Common arising from the Proposed Development as set out in the Commons Act 2006 including the agricultural aspects of the Common and the interests of the commoners with regard to these applications.

2.3 I first visited the Common on 4th and 5th July 2022 to walk over the Common and see the proposed route of the access track, and the proposed location of the two up to 200m tip height wind turbines that will be located on common land. I also had opportunity to view the proposed Release and the Replacement Lands and to speak with some of the active common land graziers.

2.4 I made an additional visit to the Common on 25th and 26th April 2023 when further walkovers were taken, and in addition I viewed all the proposed turbine locations including those on non-common land.

2.5 On the 27th June 2024 I visited the Common again and walked over and assessed potential Replacement Land adjoining CL106.

2.6 The opinions and views which I have prepared and provide in this Report in support of the common land applications are my true and professional opinions.

3 THE LEGAL FRAMEWORK

3.1 The Commons Act 2006, together with other legislation relating to common land, enables the Welsh Government to safeguard commons for the current and future generations to use and enjoy, ensure that the open and unenclosed nature of common land is reserved.

3.2 In order for the Proposed Development to be carried out, which will result in a lasting change to the Commons, an application under Section 16 of the Act is required to deregister and release land from the Commons.

3.3 The common land to be deregistered is called “Release Land”. If the Release Land is more than 200sqm then the application may include a proposal to register Replacement Land in exchange of the Release Land. To construct the Proposed Development, more than 200sqm of Release Land will be required from the Commons, so Replacement Land will be provided.

3.4 In addition, consent is required pursuant to Section 38 of the Act to undertake “Restricted Works”. Restricted Works are those which have the effect of preventing or impeding access to or over any land to which this section applies and/or works for the resurfacing of land.

3.5 Section 38 applications do not require the provision of Replacement Land.

3.6 The Development of National Significance regime, under which the Proposed Development will be consented, amends the Regulations governing the procedure for the making and determination of applications under Sections 16 and 38 of the Act. While the procedure has been amended to align with the determination of the planning application, the tests which must be taken into account when determining the common land applications remain unchanged.

3.7 In August 2014 the Welsh Government published guidance for the determination of common land applications, entitled *Common Land Consents Guidance* (the “Guidance”). The Guidance explains that the Welsh Ministers and Planning Inspectorate Wales (now Planning and Environment Decisions Wales) will follow the Guidance in processing and determining applications under Section 16 and Section 38 of the Act.

3.8 Section 3 of the Guidance headed: *Protecting commons-our policy objectives*, explains why the Welsh Government wishes to protect common land in recognition of its importance to a number of its strategic objectives.

3.9 To achieve these goals the Welsh Government has a consent/approval process in place which must be applied to any application to undertake works on common land to ensure that:

(a) the stock of common land is not diminished. Ensuring that on balance any deregistration of registered land is balanced by the registration of other land of at least equal benefit;

(b) works only take place on common land when they maintain or improve the condition of the common or, in exceptional circumstances, where they confer some wider public benefit and are either temporary in duration or have no lasting impact; and

(c) any use of common land is consistent with its status as common land.

3.10 Whether the application should be a Section 16 or Section 38 application is one for the applicant to determine and there is no exhaustive list of works that are restricted. However, the Guidance at paragraphs 4.12 and 4.13 states:

4.12 Some proposed works on common land do not benefit the common but nevertheless there is a potential underlying public benefit, for example works for the generation of sustainable energy (wind farms).

4.13 The Welsh Government wishes to promote sustainable energy generation in an appropriate setting but, equally, its policy is to ensure that the stock of commons is not diminished, that works on common land must maintain or improve the condition of the common, and the use must be consistent with its status as common land. To balance these issues the August 2014 Welsh Government's expectation is that applications for such infrastructure projects on common land are more likely to be successful under section 16 of the Act, so that an exchange of land is proposed and can be taken into account. An application for consent to such works under section 38 will rarely be granted unless there are convincing reasons why an application under section 16 cannot be pursued.

3.11 Sections 16(1) and 39(1) of the Act set out the criteria to which the Welsh Ministers must have regard when assessing an application. Section 3 paragraph 3.9 of the Guidance sets out each of the criteria with some of the considerations that should be taken into account:

3.9.1, the interests of persons having rights in relation to, or occupying the land (and in particular persons exercising rights of common over it);

(i) What effect will the proposals have on the ability of commoners or other rights holders (including the landowner) to exercise their rights?

(ii) *What alternatives have been explored that might reduce the impact of the proposals on the exercise of commoners' rights?*

(iii) *What effect will the proposals have on other rights holders, such as those with rights of access across the land?*

3.9.2, the interests of the neighbourhood

(i) *Does the proposed replacement land or outcome intended by the proposed works add something that will positively benefit the neighbourhood?*

(ii) *Does the loss of the release land or the construction of the works mean that local people will be prevented from using the common or green in the way that they are used to?*

(iii) *Does the construction of the works or, in relation to any exchange, will the removal of the release land from its status as common land or green, interfere with future use and enjoyment (whether by commoners, the public or others) of the land as a whole? Is it likely or possible that the release land could cease to be available as a means of access between other parts of the land as a whole?*

3.9.3, the public interest

(i) *What effect will the proposals have on those wishing to use the common for recreation and access?*

(ii) *Are there potential benefits to nature conservation from carrying out the proposals? Does Natural Resources Wales or any other competent person agree with the assessment of any proposed benefit?*

(iii) *In relation to any exchange, what will be the impact of the replacement land in relation to nature conservation compared with the release land? Does Natural Resources Wales or any other competent person agree with the assessment?*

(iv) *What will be the impact on the landscape if the proposals proceed? Is the landscape in a specially designated area, such as a National Park or Area of Outstanding Natural Beauty? Will the impact include an adverse effect on the enjoyment of the remaining part of the common or green? What consideration has been given to minimising any impact by good design?*

(v) Will the proposals help protect archaeological remains and features of historic interest?

(vi) How do the proposals fit into the historical context?

3.9.4, any other matter considered to be relevant.

3.12 In this supporting Report I cover in detail the considerations set out in these paragraphs drawing upon my agricultural qualification, experience and expertise.

4 STRUCTURE OF THIS REPORT

4.1 Section 5 of this Report introduces the common land unit involved and details the grazing rights as recorded on the Common Land Register and discusses the actual current use of the Common by those rights holders that are active graziers.

4.2 Section 6 outlines the proposed scheme, covers the background to the common land applications including the legal framework within which they are made.

4.3 Section 7 considers the Section 16 application against the Welsh Government's tests.

4.4 Section 8 considers the Section 38 application against the Welsh Government's tests.

4.5 Section 9 outlines the informal consultation undertaken by the Applicant in respect of the common land applications.

4.6 Section 10 sets out my overall summary and conclusions on the Applicant's secondary consent applications under Sections 16 and 38 of the Act.

5 THE COMMON

5.1 Description of the Common: CL 106

5.2 CL106 lies between the settlements of Llandderfel to the west and Glan yr Afon to the north east. It straddles the administrative boundaries of Denbighshire County Council, (DCC), and Gwynedd Council (GC). The Commons Registration Authorities for CL106 is DCC and GC (the "Commons Registration Authorities). It is surrounded by non-common land units, it does not adjoin any other common land.

5.3 The Common Land Registers, (the "Registers"), held by the Commons Registration Authorities record that CL106 extends in total to approximately 716.60 acres, or 290 hectares, of which 202.34 ha of the Common are recorded as being within the administrative boundaries of DCC, and 87.66 ha within the administrative boundaries of GC.

5.4 The plan of CL106 provided on the DataMapWales website indicates a total area of 484.29 acres, or 195.99 hectares. This discrepancy of 94.01 ha has no obvious

explanation. For the purposes of this report the area recorded on the Registers will be used.

5.5 CL106 is open access land under the Countryside and Rights of Way Act 2000 (CRoWA).

5.6 **The Interests of Persons having Rights to or Occupying the Common**

5.7 The Registers provide a record of landownership and the rights registered over the Common, including grazing rights.

5.8 The Commons Registration Act 1965 does not enable or require commons registers to be updated however Section 1 of the Commons Act 2006 requires the commons registration authorities to continue to keep registers of common land. Furthermore, Section 19 of the Commons Act 2006 also enables commons registration authorities to correct the register, including updating the details of any name and address referred to in an entry, which would include commoners and the transfer of rights of common.

5.9 In practice Common Land Registers are not always kept updated by commons registration authorities as agricultural land and holdings with attached rights change hands. Therefore, the information available regarding landownership and the number of rights over a common, is limited to the records available and the informal consultation the Applicant has had with the registered commoners.

5.10 The Applicant understands at the time of obtaining copies of the Common Land Registers and Plans for CL106 that the Register for the Common had not been updated recently. Therefore, the Register and map, included at Appendix 1 and 2, are the most up to date information that is available.

5.11 **The Landowner**

5.12 Part of the freehold of the CL106 belongs to Henry Geoffrey Robertson and Nicolaus Stuart Jenkins, and part of the freehold of CL106 belongs to Richard Williams and David Williams.

5.13 **The Commoners**

5.14 Whilst the Registers record grazing and non-grazing rights, they do not indicate whether these rights are actively used by the registered commoners.

5.15 The Register for CL106 (see Appendix 1) shows that, the grazing rights are limited to sheep grazing and that there are no other additional common land rights.

5.16 The details on the Registers are given in terms of the number of sheep, (ewes and lambs) that identified common land graziers are permitted to graze on the Common.

5.17 The Register shows that all the grazing rights are over the whole of the area of the Common.

5.18 The stocking density that any grazing land can carry is determined by the amount of dry matter that the herbage upon the ground can provide over the year and thus is available for animals to consume. In the main CL106 consists of typical upland moorland, but there are some fields of improved grassland measuring approximately 25.98 ha, within the common land boundary to the west.

5.19 The moorland on CL106 is typical of upland common land grazing in Wales. The higher ground is upland heath and acid grassland with scatterings of bracken, rushes dwarf shrubs and bog. The vegetation structure on the open common is a product of a combination of varied grazing and periodic burning. The anticipated stocking density on upland grazing of this type in Wales could be expected to be approximately 2.5 ewes per hectare.

5.20 The improved grassland fields have the capacity to carry a higher stocking density. Improved upland grassland could be expected to carry approximately 8 to 10 ewes per hectare.

CL106 The Registered Grazing Rights

5.21 The Register for CL106 indicates that there are a total of 910 registered sheep grazing rights distributed between over 9 rights holders. If all the registered rights were simultaneously utilised, it would equate to a stocking density of 3.14 ewes per hectare over the whole common.

5.22 Bearing in mind the higher productivity of the improved upland grassland fields CL106 has almost sufficient grazing capacity to physically carry all the registered sheep grazing rights recorded on the Register.

5.23 From walk over inspections very few sheep were seen grazing the moorland of CL106. Sheep were seen grazing the improved common land upland grazing fields. There was no indication that all of the registered grazing rights are being fully utilised.

5.24 **Typical annual pattern of Sheep Husbandry on Common Land**

5.25 Most if not all farmers who exercise their grazing rights on common land do so in conjunction with their home farm units which predominantly adjoin the common land directly at some location. Part of the reason for this is that supplemental feeding is not permitted on common land.

5.26 It is likely that each home farm unit has some improved grassland, or in bye land, which will be more productive than the common. Livestock can be held on the home

farm unit at critical times of the season such as tupping, (mating of ewes with a ram or tup) in the autumn and lambing in the spring. In addition, silage and or hay may be conserved from these improved fields during the summer for wintertime fodder.

5.27 Thus the extensive common land grazings which are attached to farms mainly surrounding the common provide the opportunity for more livestock to be carried than could be accommodated solely on the home farm unit.

5.28 The grazing rights on common land offer extensive grazing at certain times of the year to allow any improved land at home to be rested from stock pressure and thus to grow some forage for conservation as winter fodder, and to improve lambs etc.

5.29 Generally, the integration of the common land grazings and in bye land involves running the ewes with the ram or tup on the fenced in bye fields in November/December. The ram is removed around the end of December and the ewes are turned onto the common land until early March.

5.30 In early March, the in-lamb ewes are brought onto the in bye fields for lambing in late March/April. Once lambed, ewes with single lambs and strong twins are put back to the common in early May to summer out and take advantage of the extensive summer grass. Any ewes with weaker lambs may be kept back a little longer on the in bye land before being turned out to the open common.

5.31 Lambs are brought off the common in late summer to wean them from their mothers.

5.32 Female lambs for replacements to enter the breeding flock are selected and of the remaining lambs those that are finished in terms of condition would be sold immediately into the fat market. Less mature lambs may benefit briefly from silage or hay aftermath grazing before being sold as store lambs.

5.33 Depending upon the amount of clean grazing available on the aftermaths, lambs may either be sold as stores immediately or allowed to put on some condition before sale, however much will depend upon the individual farmer's situation and the availability of improved grass resources.

5.34 The majority are likely to be sold as store lambs to be finished on lowland farms elsewhere, which will have more favourable grass pastures and possibly forage crops grown on arable land specifically intended for finishing store lambs.

5.35 The ewes are returned to the common to dry off, (that is to encourage them to cease producing milk), and brought back to in bye fields in mid-October, after the lambs have been sold.

5.36 Once back on the better quality in bye land the ewes will pick up in condition (flush) and be in improving condition to better take the ram again in November and thus the annual cycle commences again.

5.37 **The Public**

5.38 The general public has the right to take air and exercise over the Release Land due to its status as CRoWA.

5.39 The whole of the Replacement Land does not benefit from open access to the public under CRoWA.

6 THE PROPOSED DEVELOPMENT

6.1 The Proposed Development is illustrated on Environmental Statement, Chapter 3; Proposed Development Figure 3.1 and will consist of the following principal components:

- Nine wind turbines and external switchgear buildings. Seven of the turbines with a maximum blade tip height of up to 180 m and two with a maximum blade tip height of 200m. Each turbine may have a transformer. Four turbines will have required aviation lighting.
- Wind turbine foundations and hardstanding areas which will include crane hardstanding areas and laydown / storage areas.
- An electrical substation and control building with additional hardstanding for battery energy storage.
- On-site vehicle turning heads and passing places.
- Six watercourse crossings and associated infrastructure
- Onsite underground electrical cables linking the turbines and the onsite substation, generally laid in cable trenches alongside access
- Approximately 7.5 km of access tracks (of which approximately 7.3 km will be new track and 0.2 km will be upgraded existing track) and associated engineering works
- A temporary Construction Compound and the creation of up to two temporary borrow pits for the extraction of stone (subject to detailed site investigation)
- Construction working areas associated with turbine locations and access tracks which will be restored after construction is complete.

- Site signage: and
- Habitat Management Proposals.

6.2 The majority of the construction works will not be on common land. The substation, battery storage hardstanding, temporary construction compound, two temporary stone borrow pits, seven of the nine proposed turbines associated crane hard standings, and 6.32 km of access tracks with turning heads and passing places will be constructed on private non-common land.

6.3 Just two turbines, numbers 5 and 7, (hereafter referred to in this report as 'T5' and 'T7'), associated crane hard standings and access tracks with turning heads and passing places are proposed to be sited on CL 106. This will result in a change on the Common for the lifecycle of the Proposed Development by the continued existence of hard-core/stoned access tracks and wind turbines.

6.4 **The Proposed Works Required on the Release Land to Construct and Operate the Proposed Development**

6.5 An overview of the Proposed Development and the extent to which it extends onto the Common and details of the proposed works on the Release Land are shown on Section 16 Application Plan and Appendix 3: Infrastructure Layout Plan.

6.6 The upgrading of 0.25 km of existing track and construction of a further 6.32 km of new track, (leading from the A494 public road), all on private non common land, will provide vehicular access to CL106. Thereafter there will be only approximately 1.18 km of access track on CL106.

6.7 After the upgrading and creation of the new access track over private land stoned access tracks will be laid over the land released from CL106 so that construction of T5, (200 m tip height), and T7, (180 m tip height) and attendant crane hard standings, can progress.

6.8 Any temporary fencing required for health and safety considerations around deep construction areas particularly at turbine sites will only be erected after the deregistering of the Release Land and will therefore be erected upon land which is not common land so no further consent will be required.

7 THE SECTION 16 APPLICATION

7.1 Section 16 applications under the Act involve releasing land from a common and offering Replacement Land in exchange. The following terms will be used throughout this section of the Report which considers the Section 16 application in greater detail:

(a) The “Release Land” is the land that will be removed from the Commons to facilitate the construction and operation of the Proposed Development. The area of Release Land will be the same during the construction and operational phases of the Proposed Development in absolute terms.

(b) The “Replacement Land” is the land offered in exchange for the Release Land. This land will become part of the Common with the same registered rights attached to it as were attached to the Release Land.

(c) The “Loss of Grazing Land” is the area within the Release Land that will not provide grazing for animals that use the Common after the Proposed Development has been constructed. Specifically, the stoned tracks themselves and the areas alongside access tracks and turbine sites that have not revegetated. This is the area taken up by the turbine towers and access tracks (needed for maintenance.

7.2 The nature of wind farm construction requires a larger area of land to be released from a common to facilitate the construction phase than is required during the 35 year operational phase. For example, to create an access track with a finished running width of 5.5 metres a working width, without the need for additional earthworks, 20 to 25 meters is required.

7.3 Micro siting tolerances to allow a degree of flexibility to a scheme’s design for the location of the wind turbine bases and their associated infrastructure are included in the application. It is not possible until detailed design, including intrusive ground investigation surveys, to be certain about the exact location of the turbines. However, the micro siting areas have been limited to land that can reasonably be expected to be considered. For example, where there are other constraints that would prevent a turbine being micro sited in an area this land has been excluded from the micro siting tolerance.

7.4 **The Release Land**

7.5 In this case, to allow for the ability to micro site, the Release Land has to be greater than the area that will be used to construct and operate the turbines.

7.6 The Release Land on CL106 is on enclosed common land which has been improved at some time in the past, from typical upland vegetative cover of moorland grasses, bracken and rushes, to a mix of more productive grass species.

7.7 The vegetative cover in the vicinity of T5 exhibits the improvement more so than the area in the vicinity of T7. Some of the improved grassland (close to the T7 location) is reverting to back to more typical upland grazing, namely upland acid grassland with

scattered bracken, dwarf shrubs, and rushes. It is grazed by sheep, and available to the public for air and exercise.

7.8 There are no structures upon the Release Land on CL106. There is a known non-designated archaeological site within the Release Land of CL106. Further detail of the non-designated site can be located within Chapter 6 of the Environmental Statement, Cultural Heritage and supporting Figure 6.1 .

7.9 It has been calculated that in order to construct the access track and operate the Proposed Development, it is necessary to release 10.59 hectares from CL106.

7.10 In exchange for the Release Land, 10.59 hectares of Replacement Land will be offered for registration, meaning all the Release Land will be replaced. This ensures that the overall stock of Common Land on CL106 is not at any time diminished.

7.11 The proposed Replacement Land is as shown on Section 16 Application Plan and as described below.

7.12 **The Replacement Land**

7.13 The Replacement Land is located immediately adjacent to and adjoining CL106. It is open agricultural land grazed by livestock and consists of upland acid grassland, purple moor grass and rush pasture with scattered scrub, trees, and rushes, a small area of bog and some improved grassland. It is generally similar ground cover to that on the Release Land.

7.14 The parcel is currently fenced off from CL106 along its eastern boundary and fenced against non-common land on its northern boundary. There is currently no stock proof fence on the western and southern boundaries of the land parcel. There are two internal semi derelict wire fences within the replacement land.

7.15 On the making of the de-registration order, the Applicant will remove the two semi derelict internal wire fences, erect stock proof fencing on the western and southern boundaries, ensure that the northern boundary fence is secure and remove the eastern boundary fence to open the Replacement Land up to CL106 thus adding the Replacement Land to the common and opening it up for use by the common land graziers livestock and to the public for air and exercise. Access to the replacement land will be directly from the existing common.

7.16 Neither the Release Land nor the Replacement Land lies within any designated or protected landscape, nor does either contain any rare landscape features or elements.

7.17 The Replacement Land contains one recorded Historical Asset, the remains of dry stone structures for managing sheep, a sheepfold. It is also a non–designated

archaeological site. There are no Scheduled Monuments within the Replacement Land.

7.18 There are no recorded archaeological remains on the Release nor the Replacement Land. The potential for archaeological remains are considered in the Environmental Statement, Chapter 6 Cultural Heritage.

7.19 In terms of recorded Historical Assets, the Replacement Land and the Release Land are the same. There will be minimal impact upon the public interest in terms of features of historic interest, and no impact in terms of archaeological remains arising from the provision of Replacement Land to replace land released from the common.

7.20 The whole of the Replacement Land is not currently open access land under CRoWA. Offering currently non open access land as Replacement Land brings benefits as it increases the amount of open access land available to the public on the making of the deregistration order.

7.21 **Post-Exchange**

Regranting of grazing rights

7.22 Once the Proposed Development has been constructed, the intention is that the Applicant will permit access and grazing over that part of the Release Land not required for physical infrastructure during the operational phase.

7.23 This will be delivered via a Unilateral Undertaking under Section 106 of the Town and Country Planning Act 1990 (the "TCPA"). The rights will be similar to those that existed prior to the land being released from the Commons and, in practice, use will be indistinguishable from the surrounding common land such that commoners with grazing rights are not disadvantaged in terms of the area of grazing available to them and their grazing livestock.

Grazing

7.24 The actual Loss of Grazing Land on CL106 will be less than the 10.59 hectares of Release Land. It is anticipated that of the 10.59 hectares of Release Land required to construct the Proposed Development, approximately 2.00 hectares may not be disturbed and therefore surface cover (and thus grazing potential) will not be lost on approximately 2.00 ha of the Release Land once the exact site of the turbine bases has been established. However, any land disturbed by the construction process will be reinstated to minimise the disruption to the exercise of the rights of common.

7.25 After construction, during the operational phase there will be physical infrastructure present on CL106 in terms of turbine towers which will be inaccessible land and take up less than 0.01 ha.

7.26 Reinstatement and regeneration of track sides and the working areas not occupied by hardcore tracks and/or infrastructure, on the Common, will result in the loss of grazing land of approximately 0.78ha. This represents less than 1% of the 290 hectares that make up CL106.

7.27 Although there will be a loss of 0.79 ha of grazing land, taking into account the Replacement Land provided and the permitting of grazing and access over the Release Land following the construction phase will ensure that the graziers have access to an additional 9.80 ha of grazing land on CL106 for their livestock.

Access

7.28 Once the Proposed Development has been constructed, the intention is that the Applicant will grant access rights over that part of the Release Land not required for physical infrastructure during the operational phase.

7.29 The granting of access rights will be delivered via a Unilateral Undertaking under Section 106 of the TCPA. The rights will be similar to those that existed prior to the land being released from the Commons and, in practice, use will be indistinguishable from the surrounding common land such that the public are not disadvantaged in terms of the area of land available to them to take air and exercise.

7.30 Once the Proposed Development is constructed, the only areas that the registered commoners and public will not have rights of access over on the Release Land are the areas where infrastructure physically prevents access being available i.e. the actual turbine towers.

7.31 After construction there will be 2 turbine towers remaining as physical infrastructure during the operational phase.

7.32 Each turbine tower will prevent access to an area of just 0.002 hectare at 2 locations over the whole of CL106. Thus, the loss of land to which the public will not have access due to physical constraints amounts to 0.004 hectares. Due to the infrastructure being located at just two separate places over the Common, walking access will not be materially impeded.

7.33 Whilst there will be an actual loss of access land, of 0.004 hectares on CL106, when this loss is assessed against the backdrop of the total area of the Common (290 hectares), the loss could be considered to be de minimis.

7.34 In terms of overall access rights, once the Proposed Development has been constructed, 10.59 ha of Replacement Land, (all of which is not Open Access land), has been provided and the Applicant has regranted rights similar to those that existed over the Release Land prior to de registration, over the area of Release Land not taken up with infrastructure, the commoners will have to use, and the public will have to enjoy air and exercise over an additional 10.58 ha of land.

7.35 **Decommissioning**

7.36 Post-decommissioning, the Applicant will endeavour to secure that the permission granted under the Unilateral Undertaking over the Release Land will continue and that the same rights will be permitted over that part of the Release Land where infrastructure was in place during the operational phase.

7.37 In any event the overall stock of common land CL106 post decommissioning will not be less than is currently registered.

7.38 **The Public Interest, Interests of the Neighbourhood and Any Other Matters Considered Relevant**

7.39 Throughout the whole planning and common land applications process, the Applicant has considered the relevant criteria set out in the Guidance.

7.40 The registered commoners and the public will be able to use and enjoy the Common as they do now. Their use will not be negatively impacted by the Proposed Development. In fact the existence of access tracks will make it easier for the graziers to access their livestock and provide improved access over the Common for walkers, which may offer the opportunity of access for the less abled.

7.41 There will be no new permanent fences erected on the Common during the construction or operational phases of the Proposed Development. Nor will there be partitioning of the Common which would make any areas of the Common inaccessible. During operation there will be nothing to detract from the feeling of space and openness that the Common currently provides.

7.42 There will be turbines on CL106 that are not present now, which may be regarded as creating a more ‘industrial feel on the common’, however, wind turbines close by on adjoining private land already exist.

7.43 The proposal is to include a Habitat Management Plan over part of CL106, as detailed in the planning application, (Environmental Statement, Chapter 7: Ecology – Appendix 7.7) will ensure that the public interest in nature conservation will not be diminished.

7.44 The construction of the Proposed Development will offer a wider public benefit over its operational lifetime of up to 35 years. It is estimated that the average annual generation of clean renewable energy from the Proposed Development could be equivalent to the approximate domestic needs of around 48,000 average Welsh households[1]. Energy predicted to be generated by the Proposed Development is derived using wind speeds monitored in the local area and correlating to longer term historical weather data using meteorological models seeded with data obtained from satellite, surface-based and airborne measurement systems.

7.45 Consequently, it will positively contribute to the Welsh Government's policy of increasing renewable energy production to contribute towards its own, and the United Kingdom's wider, targets to reduce reliance on other non-renewable energy sources, and will contribute to reducing the effects of climate change caused by CO2 emissions from other means of fossil-fuelled energy production.

Potential Disturbance and Proposed Mitigation Measures

Access to Livestock and the Public

7.46 There will be some disturbance to livestock and the public using the Common during the construction phase of the Proposed Development.

7.47 The Applicant, whilst mindful of not wishing to impede the general movements of livestock and the public around the Common, recognises the need for ensuring safety and security of livestock and the public during the construction phase.

7.48 Some temporary fencing will be required to serve health and safety requirements during the construction phase, particularly at each turbine location to protect deep excavations when the turbine bases are being constructed.

7.49 The Applicant will minimise the amount of fencing used to avoid severing the Common and temporarily restricting the movement of grazier's livestock, or creating situations where livestock could be encircled or trapped by temporary fencing. Public access will only be restricted when health and safety regulations dictate.

[1] The equivalent homes supplied figure is based on an annual mean domestic electricity consumption of 3,125 kWh per household in Wales from the latest statistics from Department of Business,
Energy and Industrial Strategy (Subnational Electricity Consumption, Great Britain, 2005-2022, annual mean domestic electricity consumption (kWh per household) for Wales, 2022 (https://bit.ly/3QRaYHv) Regional and local authority electricity consumption statistics (www.gov.uk). Figures are rounded.

7.50 The temporary fencing required during the construction phase will be located on Release Land and no fencing will be situated on common land. This will be erected for health and safety reasons when deep excavation work is being completed.

7.51 Livestock safety and security at the two Common Land access points onto CL106, one to the south of T7 and one to the north from the new assess track on private land will be provided by the installation of gates to prevent livestock walking off the common.

7.52 During informal consultation the active graziers on the Commons did not raise concerns in connection with how their grazing animals would be able to use the Common during the construction phase of the Proposed Development. Neither did they voice concern that their livestock would not have enough land to graze confirming perhaps that the actual stocking density on the Common currently is much less than the number of registered grazing rights indicate, and or that the improved upland grazing in conjunction with the moorland is providing all that the number of livestock utilising the common require.

7.53 It was discussed that there would be a requirement to have some temporary fencing around deep excavations for health and safety reasons and that there was no intention to fence the whole of the works during construction. The commoners did not express concern that any minor disruption that may occur would materially affect how they currently exercise their grazing rights over the Common.

7.54 During the operational phase there will be no new permanent fencing over the Common.

7.55 It is not envisaged that there will be any disturbance or interference during the operational phase with how the graziers, their stock or the general public use the Common.

7.56 Apart from when a major component requires replacement, when a larger team and specialist equipment is likely to be on site, during the operational life of the Proposed Development only technicians will periodically be on site for carrying out monitoring and maintenance. They will only require access with standard service vehicles or vans.

7.57 Experience on established wind farm sites shows that livestock are not unsettled during the operational phase. They graze close to and under the turbines and in fact make use of the shade provided by the turbine columns during fine weather, seek shelter provided by the turbine towers during high winds, lie on the hard tracks when it is wet, and use the tracks to move over the common.

7.58 That said there is the potential of hindering livestock movements at sheep gathering times, during the construction phase as the sheep using the Common will be used to the Common as they are now, however as time passes during the operational phase the sheep utilising the Common will become another generation of breeding stock which will have grown up on the Common with the turbines and tracks in situ and hence they will likely flock together and move over the Common according to the terrain that they have grown up with and have become accustomed to.

7.59 Similarly at the decommissioning phase, for those sheep utilising the Common during the latter stages of the operational phase, what has become the normal terrain for them will change again.

7.60 During the decommissioning phase whilst any potential disturbance is likely to be less than during the construction phase, there will be more activity on the Common than during the operational phase.

7.61 The Applicant, having had experience of constructing the Mynydd y Gwair Wind Farm in 2017-2019 is aware that there may be limited disturbance to livestock movements over the Common during the construction phase, and possibly at the decommissioning phase.

7.62 The Applicant is committed to working with the Commoners during the construction phase and throughout the operational life of the Proposed Development and during decommissioning to minimise disruption to their normal practices.

7.63 **Financial Support**

7.64 In addition to receiving income from rearing and selling livestock, farmers receive financial assistance in the form of agricultural and environmental support payments from the Welsh Government which have evolved over a period of time and form an important part of their annual income.

7.65 Initially, the support mechanisms rewarded farmers simply for the number of certain categories of livestock kept on their farms each year, often referred to as ‘headage payments’, which encouraged the keeping of ever-increasing numbers of livestock and over-production.

7.66 This mechanism evolved to the provision of decoupled payments that farmers were paid, whether they kept livestock or not, based upon the historic headage retained and claimed for on farms during a three-year base period.

7.67 In May 2015, the decoupled, area-based, flat rate payment delivered via the Basic Payment Scheme (BPS) was introduced and became fully implemented in 2019.

7.68 Agri-environmental schemes, such as Glastir, also deliver Welsh Government support to farmers for operating their farms and adopting livestock stocking densities that are sympathetic to environmental improvement objectives.

7.69 The BPS and associated agri-environmental schemes are due to be reformed again in 2026. Whilst there are currently very few details confirmed for the potential new schemes, it is likely that support will place heavy emphasis on sustainable farming systems with the improvement of the environment as a paramount objective. Due to the lack of detailed information, it is difficult to establish how the support will interact with the Proposed Development.

8 THE SECTION 38 APPLICATION

8.1 In order to deliver habitat enhancement on CL106, the Applicant has investigated what beneficial measure may be introduced to provide compensation for the potential displacement of breeding waders.

8.2 Annually, curlew nesting sites will be identified and thereafter temporary electric fencing will be installed to protect curlew nests and eggs from predation and trampling from livestock. The approximate area included within each fence will extend to an area of up to 700 m^2 around each active nest.

8.3 The fencing would be in place for approximately 28 days, after which time it would be removed. This would occur annually.

8.4 As the temporary fencing would be: on common land, very temporary in nature, would temporarily prevent or impede access over a very small area of common land, and would not result in a lasting change on the Common, consent under section 38 of the Commons Act 2006 is considered necessary.

8.5 The varying nesting patters of the curlew means that the exact locations of the potential temporary fencing and the exact areas temporarily enclosed will vary from year to year.

8.6 The section 38 application requests consent to erect temporary electric fencing on the common each year, for up to 40 years solely for the purpose of protecting curlew nesting sites from predation and trampling by livestock for just a maximum of 28 days per year. The accompanying application plan identifies the general area on the common where the fencing would be located.

8.7 The general area within CL106 that would currently be affected by the restricted works, pre section 16 consent, is shown on Section 38 Application Plan Pre Section 16 Consent.

8.8 Section 38 Application Plan Post Section 16 Consent illustrates the area of common over which the Applicant seeks consent to carry out the restricted works post section 16 consent, once the Release Land has been de-registered from the Common and the Replacement Land becomes common land.

8.9 The Applicant wrote to the registered commoners on CL106 explaining the proposed measures and seeking their views on how the proposals may affect their sheep's use of the common and asking for their input into the proposed scheme.

8.10 There were two responses asking for telephone contact from the Applicant on the matter. One respondent has been contacted directly however, despite attempts by the Applicant to contact the other respondents by telephone, they have not taken the calls nor made any other contact with the Applicant.

8.11 The Applicant is committed to ensuring that the Commons Registration Authorities and commoners are kept updated as protected curlew habitat areas are erected each year. Notices will also be erected on site to ensure public users of the common are aware of the temporary fences. At the end of the breeding season, the Applicant will issue a plan of where the fenced areas were erected throughout the season to the Commons Registration Authorities for their records.

9 INFORMAL CONSULTATION

9.1 Throughout the evolution of the Proposed Development the Applicant has sought to engage with the registered commoners.

9.2 **The Registered Commoners**

9.3 In order to gain more knowledge of the actual active usage of grazing rights over the Common, the Applicant sent letters to all the registered commoners at the addresses recorded on the Registers for CL106. The letters outlined the Proposed Development and asked for confirmation from the registered commoners what rights they held and whether they were actively using those rights on the Common.

9.4 Three replies were received and any amendments to contact details updated for future correspondence.

9.5 As the Applicant was aware that there was no formal Commons Association for CL106, through local contacts the Applicant has had meetings with some of the active common land graziers to obtain more information about their use of the Common and for them to express any concerns that may hold about the proposed development.

9.6 At these meetings the Applicant explained the Proposed Development and stressed that they wished to establish a sound and productive relationship with the commoners

recognising their invaluable knowledge and their concerns so that any possible mitigation measures can be implemented and included in the plans for the Proposed Development.

9.7 **Outcome of Informal Consultation**

9.8 There has been little feedback from the commoners to date despite two letters to them in connection with the Proposed Development: one outlining the whole scheme and indicating what part would affect the common, and one explaining the proposed Habitat Management Plan to assist curlew.

9.9 Informal public exhibitions were held on 2nd and 3rd of December 2022 at Corwen, Llandderfel and Llandrillo where the commoners and the general public had opportunity to view the outline of the Proposed Development and speak to the Applicant's representatives. There were a total of 192 attendees at the events.

9.10 **STATUTORY CONSULTATION**

9.11 The Applicant undertook formal statutory Pre-Application Consultation (PAC). There were no responses at PAC relating to how the Proposed Development may adversely affect the common land graziers' use of the Common. Responses that were received that made any reference to common land matters are within the PAC report.

9.12 In his response dated 30th August 2024, the Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs, Huw Irranca-Davies AS/MS, as the person to whom a common land application would usually be made, did not object to the proposed applications, concluding that, *"the application for the deregistration and exchange of common land and restricted works on common land [do] not detrimentally [affect] the criteria under section 16(1) and 39 of the 2006 Act at this preliminary stage".*

9.13 The Applicant will continue to engage with the commoners, and those with an interest in the Common as part of the DNS application process.

10 SUMMARY AND CONCLUSIONS

10.1 In my opinion, the Applicant has considered the use of the Common and interests of the commoners throughout the design of the Proposed Development and in the preparation of the Section 16 and Section 38 applications.

10.2 The Applicant has sought to consult with the active graziers to understand their views and any concerns they may have for the continued use of the Common during the construction and operational phases of the Proposed Development.

10.3 The Applicant has presented their proposals to those commoners identified as actively using CL106, seeking feedback upon the proposed release of land from the Commons.

10.4 Over CL106 the area of Replacement Land provided is the same size as the Release Land so the overall area and stock of Common land will be maintained.

10.5 Through the re-granting of rights over the majority of the Release Land post-construction, those persons who have rights in relation to, or occupying the Common will not be disadvantaged by the operation of the Proposed Development. Following the deregistration and replacement, those persons will be able to continue using the Common as they currently do. Post construction when the additional rights are granted over the Release Land that is not physically occupied by infrastructure those same persons will benefit from the formal rights to use the release land. In practice, this results in a benefit on CL106 of 10.58 ha land available for use and grazing.

10.6 For the public, the access tracks will improve walking access onto the Common and, due to the provision of Replacement Land equal in area to the Release Land, they will continue to enjoy access for air and exercise over a greater area of land than they currently do.

10.7 The restricted temporary works described in the Section 38 Application will not affect the use of the land as common land: there will be no permanent fencing on the common that will materially impact the use of the common either by the commoners or public users.

10.8 For all the reasons cited in this Report, I conclude that the Applicant has identified the relevant interests and activities on the Commons and ensured that the commoners and the public will not be disadvantaged by the proposed common land applications.