

**Stonewall Hill Conservation Group. 17<sup>th</sup> January 2015**  
**Additional Objection: P/2012/0573 Access to Reeves Hill Wind Farm**  
with special reference to:  
**Construction Ecology Management Plan. December 2014 v2**

**Summary**

- 1. By this date, it is irrational to grant permission for Access construction to a 'consented wind farm' when the Wind Farm permission expires on 26<sup>th</sup> April 2015. Access construction cannot be completed before 26.4.15 without unacceptable risk to EPS (dormice and bats) and nesting birds.**
- 2. It is likely that EPS (GCNs and dormice) are present but this has not been established prior to determination. This is contrary to TAN 5 guidance which has regard to British legislation covering wildlife species and habitats.**
- 3. NRW has endorsed the CEMP although the proposed EPS surveys are voluntary and may not predate construction.**
- 4. NRW has insisted on a condition for pre-commencement surveys and said this condition cannot be reworded. TAN 5 says such conditions must not be used.**
- 5. CEMP proposes GCN surveys of 3 ponds associated with only one of eighteen discrete development areas outlined in red. Ponds and other standing water associated with the other seventeen development areas are ignored.**
- 6. There has been no comprehensive bat survey for P/2012/0573**
- 7. The extent of hedge relocation, hedge loss and verge habitat loss has not been discussed or quantified. CEMP virtually ignores verge habitat.**
- 8. There are no RAMs, mitigation, compensation or enhancement associated with the extensive loss of potential EPS habitat in road verges.**
- 9. The Phase 2 survey findings submitted to Herefordshire by the same Developer in connection with the same overall Wind Farm + Access project cover part of the Powys development site. These findings have not been discussed in the CEMP and no Welsh GCN licence is proposed.**
- 10. The cumulative ecological assessment of highways works in ES 2014 8.6, does not include the grid connection as requested in the Powys scoping opinion for Non-avian Ecology.**
- 11. The highways development, alone and in combination with the wind farm development, is likely to result in a significant net loss in habitat and biodiversity which will be impossible to assess due to lack of proper survey prior to determination.**

**Detailed Arguments**

**Wind Farm Permission**

Permission for the Wind Farm (DCNW2008/1289/F) expires on 26.4.15 after which a new application to Herefordshire would be required. Wind Farm construction cannot begin without Access completion and a subsequent successful turbine delivery trial (Herefordshire permission conditions and Planning Obligation signed by Powys). CEMP states that safe hedgerow working periods for EPS (dormice and bats) begin in May, therefore the Access development should not begin until May to protect EPS

(Herefordshire permission conditions and Planning Obligation signed by Powys). CEMP states that safe hedgerow working periods for EPS (dormice and bats) begin in May, therefore the Access development should not begin until May to protect EPS. Under these circumstances, it is irrational for Powys to give permission for access to 'a consented wind farm'.

Access permission with no Wind Farm permission would be contrary to the public interest as there can be no planning justification for incurring the negative ecological, landscape and visual, and public amenity impacts, to no purpose. It would be unreasonable, in planning terms, to determine a secondary, dependent proposal without any certainty that the prime proposal would be permitted. This would apply even if Access permission carried a negative condition requiring a new permission for the Wind Farm before Access development started.

SHCG sees three theoretical options for determining Wind Farm and Access:

- 1) combined into a single proposal for determination by both LPAs
- 2) separate determination at the same time by each LPA
- 3) Wind Farm consent obtained before Powys determines

Option 3 is the current situation and also the least desirable because Powys is deprived of authority in determining the Wind Farm element. Option 3 can only work at all if Access determination follows Wind Farm consent soon enough to leave a reasonable window enabling Wind Farm development to start before permission expires. The window period should be long enough for Access pre-construction requirements (compliance with conditions, CDM regulations etc.), Access construction, and all Wind Farm pre-construction requirements to be completed, without breaching any Powys or Herefordshire planning conditions or incurring avoidable risks. Given the time constraints (see also SHCG Objection 17.10.14), it is now too late for this. The Developer has missed the boat, largely due to a fifteen month delay in submitting an ES after the WAG EIA screening opinion was issued in February 2013.

### **NRW advice to Powys**

Powys (Case Officer and Biodiversity Officer) in correspondence with NRW have drawn attention to TAN5. This states:

#### **Welsh Planning TAN 5 6.2 Protected species as a material planning consideration.**

*6.2.2 It is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted*

*.....It is considered best practice that such a survey is carried out before the planning application is submitted. Planning permission should not be granted subject to a condition that protected species surveys are carried out and, in the event that protected species are found to be present, mitigation measures are submitted for approval.*

*.....the level of likelihood that should trigger a requirement for developers to undertake surveys should be low where there is a possibility that European protected species might be present*

*.....Where a survey is required by the authority, the survey should be completed and any necessary measures to protect the species should be in place, through conditions and/or planning obligations, before the permission is given. In appropriate circumstances, the permission may also impose a condition preventing the development from proceeding without the prior acquisition of a licence under the appropriate wildlife legislation.*

NRW (Gilpin to Griffiths 06.01.15) is the key response: “NRW are satisfied that the information provided by the applicant within their application and revised CEMP (in response to NRW’s December 14<sup>th</sup> comments) are sufficient to assess the impact on the relevant EPS.”

This satisfaction is based on various considerations set out in the letter (our numbering):

1. Extant records of dormice and GCN in locality
2. Paucity and quality of hedgerow network
3. Provision of suitable RAMs (reasonable avoidance measures)
4. Provision of suitable mitigation, compensation and enhancement
5. Planning conditions advised by NRW re implementation of mitigation, RAMs, enhancements and monitoring within final detailed CEMP, whose meaning and

4. provision of suitable mitigation, compensation and enhancement
5. Planning conditions advised by NRW re implementation of mitigation, RAMs, enhancements and monitoring within final detailed CEMP, whose meaning and form of wording must not be changed.
6. The purpose of the pre-commencement surveys is to update information on EPS and inform changes to the CEMP prior to commencement, which could be many years ahead.

NRW (Davies to Griffiths 17.10.14) had already advised three planning conditions, the first of which is:

*“a planning condition must be secured to any decision notice requiring submission by the developer of a final detailed CEMP to be approved in writing by the LPA in consultation with NRW. The CEMP must include all protected species pre-commencement surveys proposals and methodologies and RAMS and any other necessary mitigation work including the protection of all linear connecting habitats and features and the species used by them.”*

NRW to Dulas (Davies to Phillips 18.12.14) had also agreed to the Developer’s suggested change in wording for the CEMP whereby ‘are likely to be’ is substituted for ‘will still be’, thus:

*“the applicant fully accepts that dormice and GCNs are likely to be present within the locality and development footprint prior to construction.”*

The presence of EPS is acknowledged to be likely but has not been established. TAN 5 says establishing presence or otherwise is essential. No survey has taken place. TAN 5 says a survey should be both required and completed and any necessary protective measures should be in place before permission is given. NRW states that pre-commencement surveys are not necessary to assess the application and insists on a condition including details of pre-commencement protected species surveys. TAN 5 gives clear guidance that planning permission should not be granted subject to a condition that protected species surveys are carried out.

NRW has given advice contrary to Welsh Planning Policy TAN 5. This advice is justified by 6 'considerations' which are of no relevance to the implementation of the TAN 5 guidance. Some of these justifications are questionable, as we show below. Powys Planning Officers cannot accept advice from any consultee which they know to be legally flawed.

GCN Mitigation Guidelines 2001: 3.4 say “*The Developer is responsible for ensuring that they provide to the LPAs an accurate assessment of application site, including surveys for GCN if their presence is suspected*” and the LPA “*is responsible for ensuring that protected species issues are taken into account as a material consideration when determining planning applications, as set out in PPG9; this may involve refusal, deferral, conditions or agreements*” (in Wales TAN 5 replaces PPG9). However we have seen that conditions or planning obligations cannot be used and an agreement would not be binding on the Developer. Therefore, unless a survey takes place before determination, the application should be refused.

### **EPS surveys in CEMP Dec 2014 v2**

CEMP 1.1 confirms that the Developer regards the surveys as voluntary:

*“all the recommendations of NRW have been incorporated within this updated CEMP except in respect of pre-commencement surveys which, for the reasons stated below, will be required to be a voluntary undertaking by the applicant.”* But no such reasons are given in the remainder of the report.

CEMP 4.5 says no surveys of GCNs or dormice have been undertaken but proposes a full GCN survey on the “*identified three ponds*” and goes on to say “*If construction has not commenced before this work has been completed, the results may influence the implementation of RAMs*” (our underlining). CEMP 4.5 also proposes a dormice survey, March to November, which “*will be carried out on areas of suitable hedgerow*

has not commenced before this work has been completed, the results may influence the implementation of RAMs” (our underlining). CEMP 4.5 also proposes a dormice survey, March to November, which “*will be carried out on areas of suitable hedgerow that may be affected by construction works*”. There is no information on whether this would be prior to construction. CEMP 5. d). says “*if the dormice survey finds dormice present along these hedges then post construction surveys must be carried out in the second and fourth years to ensure the continued presence of dormice.*”

NRW (consideration 6 on p. 3 above) irrationally justifies the pre-commencement survey requirement by the need to “*update*” EPS data (especially if the development is delayed for years). Currently, there has been no survey so there are no EPS data to update. Also, given that construction requires hedgerow destruction and relocation and extensive destruction of thickly vegetated grass verges, much potential GCN and dormouse habitat will be altered or destroyed in the process of construction. Unless surveys are completed before construction begins, post-construction monitoring will have no comparative baseline. The post-construction monitoring will only show whether the mitigation measures attract individuals of any species. It will not show whether populations have increased or declined or help to assess the impact of the development.

NRW has endorsed a CEMP which asserts that pre-commencement surveys are a voluntary undertaking. From the planning point of view, the crucial fact is that the presence or otherwise of EPS might not be established before construction. Indeed, since the LPA cannot enforce post-permission surveys, there is no guarantee that EPS surveys will be done at all.

#### **CEMP and the extent of development**

The CEMP author has not addressed all the elements of the development discussed in her own 2011 Phase 1 Habitat survey and GCN assessment. There are eighteen separate application areas outlined in red in P/2012/0573.

The areas are:

1) 0.5 Km private haulage road connecting the A4113 to Llanshay Lane with a new public road junction at either end.

2) 8 ALV and 6 Construction Traffic (CT) 'passing places', some very extensive, and a further section of hedge relocation marked on the plans. These fifteen areas extend up 4 km of public road.

3) two wind farm site entrances (SE1 and SE3) in Powys. SE3 may also impact on Powys verges.

#### **Also:**

4) P/2012/0573 Construction Management Plan 6.4.7 states that: “*Further smaller passing places can be created at between (sic) the three site accesses to ease the passing of construction traffic between the site compound and the turbine sites if required by the main contractor*”.

5) Trenches, 1m deep and 0.45 m wide and in the Powys verge between entrances 3 and 1, for Wind Farm infrastructure cables are proposed to connect the wind turbines to the substation (2008 ES 3.3.4.1). These have not been applied for in P/2012/0573 (nor in DCNW2008/1289/F). An operating windfarm either requires a further application to Powys or a section 73 amendment to Herefordshire’s permission to include Wind Farm cable trenches in Herefordshire (if such is a legitimate use of Section 73). This would be in addition to the outstanding changes in conditions 1 and 19 already required to alter the site layout in the approved plans in order to conform with Powys’ requirement for perpendicular site entrances. This point once more calls into question the description 'consented wind farm'.

6) Cable trenches for the grid connection will probably go down Llanshay Lane verge as far as Knighton. Powys' scoping opinion (4. Non-avian Ecology) asked the Developer to assess the cumulative ecological impact of access, wind farm and the grid connection. The Developer has not done this.

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7) The roads are narrow and steep. Large vehicles for access construction and wind farm construction will inevitably trash the verges between 'passing places'.

In summary, P/2012/0573 covers the haulage road, 15 separate locations up Llanshay lane and on Stonewall Hill Road, 2 site entrances and an unquantified length and width of verge between all these red-line application areas.

CEMP does not mention the site entrances, verges or any tree removal/replacement above Llanshay Farm.

**Hedgerow network** - The Phase 1 Survey (8.5.5) says hedges should only be moved November to March. This is not repeated in the CEMP.

The unsatisfactory figs. and descriptions give a poor idea of exactly how much hedgerow will be relocated or destroyed. Leaving aside the new haulage road and acknowledging NRW's advice that hedge replanting is only acceptable for filling small gaps, something like 300 - 400m of hedgerow along public roads is to be relocated. The table below does not bear out NRW's opinion that the hedgerow network impacted is of limited significance due to its '*paucity and quality*'. All this hedgerow might provide dormouse or GCN habitat and, since it is well over 30 years old, it is classified as 'important hedgerow' (Hedgerow Regulations 1997). The application and CEMP are vague about plans for the visibility splays and junction itself at the Llanshay lane junction but, from ES 2014 fig. 5.10 Visibility splays on Llanshay lane, it seems that far more than 5m for a gate (CEMP 2.3.4.) will be lost and up to another 80m will be relocated for visibility splays (see \* in table).

HEDGE	A4113 junct.	LLLa junct.	ALV1	ALV2	hedge work	ALV 3	ALV4	ALV 5	CT1
length	?	80m?	30m?	44m?	55m?	40m?	30m?	65m?	50m?
set back/loss ES figs	?	*loss & setback ?length	1m	2m	1.5m	3.5m	1m	3.5m	3.2m
ecologist's description	no info	rich	rich	rich	medium	mod poor	mod poor	poor	poor replant
LVIA description	no info	loss splay	for ignored	ignored	not rich trimming	mod poor	mod poor trimming	poor replant	poor replant

Table of Hedge works proposed for Llanshay Lane from 2012 and 2014 ES

**Verges** – There is no account of the total area of verge habitat to be lost. The northern verges are probably priority S42 lowland meadow habitat as identified by the Welsh Government under the NERC Act, 2006. The southern verges contain ideal newt hibernacula in the stone-piles collapsed from the Herefordshire wall. There has been no botanical survey of the verges to establish whether there are priority species. Presence of bluebells demonstrates the age these habitats. In parts, brambles and wild raspberry provide thick cover food for wildlife. The area of verge loss for the 'passing places' is enormous (ES 2014 figs 5.12, 5.13 & 5.14), but impossible to calculate from the ES plans. The loss from 4) to 7) above will significantly increase the total. The Phase 1 report only considers verge habitat conservation for CT3 and the CEMP does not mention verges at all.

The verges are wide, varied habitats at a range of elevations, full of flowering plants and other wildlife. Southern verges are briefly mentioned in the Herefordshire 2008 SER 5.8.1 which describes '*The flowering herb species rich expanse of roadside verge on the Herefordshire side of the road will be enhanced through a regime of judicious clearance of scrub and differential mowing of verge vegetation. Management of this will accommodate potential scrub nesting birds such as willow warbler (Physoscopus trochilus) also seen within this habitat. The management prescription for this will necessitate liaison with Herefordshire's ecologist and the Herefordshire Council in order to ensure the plan is commensurate with roadside management priorities.*' This aspirational proposal was proffered before the Developer was made aware that these verges were actually in Powys. No such proposals have been submitted to Powys and none are reflected in the CEMP. Regrettably there has never been any suggestion that a joint Herefordshire/Powys ecological management plan is required for this cross-

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### **CEMP and EPS**

The CEMP 1.1 cites 4 sources:

- Data search updated in November 2014 from BIS
- Phase I survey in May 2008 (confined to proposed new haulage track)
- Extended Phase 1 survey and GCN assessment in June 2011 (haulage track, passing places and site entrances)
- Design and Access Statement 2012 ( no significant ecological information)

The sources do not include Herefordshire DCNW2008/1289/F application documents addressing Ecology:

- 2008 ES Written Statement Section 6 and Appx 13
- 2008 Oct. SER Section 5 and Appx 1a
- 2008 Autumn bat survey submitted to Herefordshire Council
- 2010 Oct. FSEI Section 6

These omissions once more highlight the problems caused by the Developer applying to different authorities (in different countries) for integral parts of the same development, often with negative impacts on the very same biological individuals. Will a bat or bird stay on one side of the border? In ES 2014, the Developer has reduced the cumulative impact of Wind Farm and Access construction on biodiversity to a question of GCNs and proceeded to grant these less importance in Powys than in Herefordshire.

The Phase 2 survey of Stonewall Hill for Reeves Hill Wind Farm, described in ES2008 Appx 13 and commissioned by the same Developer, included the upland part of the public road and verges and therefore included some development sites applied for in P/2012/0573. The species records and other findings are not properly discussed in the P/2012/0573 application. The Phase 2 survey results found various red-list and BAP priority bird species associated with hedges and verges and a skylark zone (no. 2) actually incorporating the road and its verges. There were also 6 species of EPS bats. The report contains a Site Map of ponds and GCN (Fig 15) with five GCN locations in very close proximity to parts of the P/2012/0573 development. There is a GCN pond in the narrow fork between Reeves Lane and Stonewall Hill Road at ALV 6. Although the verges of ALV6 are likely GCN habitat, the ecologist considers there are “*no wildlife issues*”.

### **CEMP and EPS sites**

The author has watered down her Phase 1 recommendations to a significant degree for the CEMP as detailed below. This does not bode well for the later ‘*final detailed CEMP*’, required by NRW (Davies to Griffiths 17.12.14). This would presumably be signed off by NRW and Powys without public consultation.

**GCNs** - CEMP 4.3 states “*the construction of the access route will not damage any known newt sites but may affect their access to refugia or hibernation sites.*”

The highly misleading statement that the construction ‘*will not destroy any known newt sites*’ is technically correct because the lack of any survey guarantees no ‘*known newt sites*’.

TAN 5 does not use the term ‘*GCN site*’ presumably because GCNs are largely terrestrial and dispersed for much of their life-cycle and, even for breeding adults, much of the year. Although GCNs are easiest to find in ponds in the breeding season, all eighteen development areas could provide GCN habitat. GCN Mitigation Guidelines explain that GCN may be present anywhere within 500m of a pond or other standing water, particularly where there are refuges, which include hedgerows, grassland and scrub. Therefore wide, uncultivated road verges are suitable refuges.

The following examples show the limitations of CEMP. The 1:25000 OS map, backed by an amateur walk-over, shows ponds, bogs or springs well within 500m of every development area on the public road. The 2011 Phase 1 survey mentions some of

The following examples show the limitations of CEMP. The 1:25000 OS map, backed by an amateur walk-over, shows ponds, bogs or springs well within 500m of every development area on the public road. The 2011 Phase 1 survey mentions some of these in connection with highways works but the conclusion (section 5) only specifies 3 ponds (with OS coordinates) in the vicinity of the new haulage track. The other ponds close to the public roads, including the Laws Barn pond cited earlier in the report, are not mentioned at all in the conclusions about the passing places. The 2011 Phase 1 Habitat Survey notes a pond near ALV1 but does not recommend survey: the author also notes a pond near the hedge-work area and ALV3 which is marked on the OS map just by the road, and does recommend a GCN survey but does not confirm this in her conclusions and fails to mention it in CEMP. In her Phase 1 survey, she notes a pond near Site entrance 2 and says there were GCN recorded '*in a previous survey*' but none found in 2011 (over 3 years ago now) and says '*Provided the wall remains undisturbed, there will be no necessity to obtain a licence*'. She regarded the field in which Turbines 2 and 3 would be located as unsuitable for GCN because it is grazed by sheep. This would apply to nearly all the surrounding land. Nevertheless GCNs were found in the Phase 2 survey in 2007. This suggests either that GCN do survive in the rough pasture or, if this is not the case, that the ungrazed road verges themselves are a crucially important GCN habitat.

In summary, CEMP only recommends survey of 3 ponds near the haulage road, whereas there are likely breeding sites near all the other likely GCN habitats in the 17 other development areas.

**Dormice** - The English Nature Dormouse Conservation Handbook (2006), which covers Wales, describes mixed hedgerows as an important habitat and explains that fragmentation of habitat is a critical factor in decline for this species with sparse distribution of individuals. Section 6.5 on Planning describes TAN5 as '*particularly relevant to Local Authority road schemes and associated developments*'. The Handbook (p.70) presents a highly relevant road junction reconstruction project.

Dormice were found nesting in the hedge to be relocated but, four years after translocation, the hedge was '*just beginning to recover as most shrubs and trees failed to survive the move*'.

**Bats** - There were 6 EPS species of bats found in the 2007/8 Phase 2 survey. The professional report submitted for SHCG by Steve Lomax criticised the methodology and under-reporting in this survey. The adverse impact of wind turbines on bat populations is indisputable. Disturbance in foraging network must have a negative cumulative impact. A full bat survey for P/2012/0573 should be required to establish a baseline prior to determination, design appropriate mitigation, compensation and inform post construction monitoring across the two projects (Access and Wind Farm).

Construction will pave over, fragment, or churn up a large, but unquantified, area of rich habitat suitable for GCNs, small mammals including dormice, birds and invertebrates and will destroy plant species. Digging up and translocating old hedgerow risks killing GCN and disturbing dormice. Some tree/shrub loss will occur and the hedgerow network takes time to recover. Translocation cannot be regarded as a habitat-neutral operation for nesting birds, dormice or foraging bats. All of these would suffer disruption at the time and during the following seasons which could result in permanent population loss. There will be a further cumulative adverse ecological impact from the physical disturbance and noise of road construction and subsequent wind farm construction traffic.

It is likely that the extent of the ecological damage for these EPS and many other species will never be known because:-

- no Phase 2 survey has been required for Access and the 2007 Wind Farm Phase 2 survey is out of date
- no properly informed cumulative impact assessment can be made
- joint ecological management across the Herefordshire/Powys border has not even been considered.

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### **Mitigation, enhancement and compensation**

The unrealistic aim of CEMP is '*to preserve and enhance the ecology of the site*'. To achieve this there should be no net loss in EPS species, no net loss in habitats and an overall biodiversity gain.

NRW considers that suitable RAMs and '*mitigation, compensation and enhancement*' has been provided in the CEMP. There are some measures proposed for the haulage track but they are not commensurate with the scale of the whole highways application. Unfortunately, the map promised in CEMP Section 4 has not been supplied and the CEMP is so vague about numbers and areas that the dimensions of the mitigation/compensation cannot be assessed.

No '*mitigation, compensation or enhancement*' is proposed for the extensive loss of habitat, including EPS habitat, along the 4km of public road. While there are some RAMs for hedgerow work, there are none for the remainder of the verges.

**For the reasons summarised at the beginning of this report and detailed above, SHCG considers that CEMP Dec. 14 v2 is unacceptable.**

**SHCG considers that NRW has failed in its statutory duty to address the whole application and to follow appropriate planning and wildlife guidance in order to protect and enhance Welsh habitats and biodiversity. We therefore requests that Powys consult Radnorshire Wildlife Trust for a second opinion on the ecological impact of this project (see TAN 5 Section 15).**

**Notwithstanding NRW advice, permission granted before correct Phase 2 EPS surveys are completed and a satisfactory CEMP and satisfactory planning conditions can be provided would be open to legal challenge. Therefore the application should be refused.**

**Permission for the Wind Farm will expire before Access and other pre-commencement requirements can be completed. The application should be refused on the grounds that there is no certainty that the Wind Farm will obtain permission after 26.4.15.**

We may have further comments to make on these matters.

Dr Stephen Hugh-Jones

Chair: Stonewall Hill Conservation Group

17 January 2015

