

Application for consent to construct works on common land

Commons Act 2006: Section 38

~~National Trust Act 1971: Section 23~~

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 | <input type="text" value="Aberedw Hills Common"/> | CL No. | <input type="text" value="CL46"/> |
| (a) Community/Town of | <input type="text" value="Aberedw"/> | | |
| (b) Borough/County Borough/City of | <input type="text" value="Radnor"/> | | |
| 2. Commons Registration Authority | <input type="text" value="Powys County Council"/> | | |
| 3. Does owner of common consent to proposals | <input type="text" value="Yes – letter of consent to be provided on submission of the DNS application to which this application relates."/> | | |

SECTION B – The applicant

- | | |
|--|--|
| 4. Title (e.g. Mr/Mrs/Miss/Ms/Dr) | <input type="text" value="Mr"/> |
| (a) Forename(s) | <input type="text" value="Tom"/> |
| (b) Surname | <input type="text" value="Edmunds"/> |
| (c) Position/Organisation (if appropriate) | <input type="text" value="Aberedw Energy Park Limited"/> |

5. Full postal address

Hodge House
Guildhall Place
Cardiff

Postcode CF10 1DY

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

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, Aberedw Energy Park 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 CL46 (the "Common") is included with this application.

Details of the rights are set out in the Register. These are given in terms of rights of pasture for the numbers of sheep specified, and rights to take bracken for bedding and fern for the benefit of farms. There are a total of 67 sets of rights registered on the Common, including:

- 1 common right to graze 150 sheep and 20 cattle on Llanfraith Hill;
- 65 common rights to graze sheep, cows or horses across the whole common area, with a combined right to graze 12,837 Sheep Units*;
- 4 of the above common rights include the right to graze one weaning lamb per grazing sheep (this right applies to a combined 798 sheep);
- 2 of the above common rights include the right to graze the suckling young of grazing animals, including ponies (this applies to a total of 195 Sheep Units); and
- 48 common rights include the right to take bracken off the Common for bedding or reasonable agricultural purposes, and 2 include the right to take fern for the benefit of the farm.

Please see paragraph 3.28 and Appendix 4 of the supporting Common Land Report prepared by John Eirian Davies (the "Common Land Report") for full details.

*Sheep Unit: a sheep unit is a number of livestock equivalent to 1 sheep. 1 cow or 1 pony would be equivalent to 10 sheep units.

Are they ever exercised? Yes ☒ No ☐

.....

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

Consultation with the registered commoners has confirmed there are ten active graziers of the Release Land. There also rights to take bracken from the Common, which are exercised by custom. Further details of the extent to which the registered rights are exercised can be found at Appendix 4 of the Common Land Report.

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

Temporary open trenching with full reinstatement 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?

Approximately 0.6 ha. Please see Section D1 below.

sq.m/ha

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

Approximately 100-200m of fencing is proposed on a temporary rolling basis where required to protect public health and safety, and animal welfare.

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?

Please see question 14 below. All works will be undertaken during the construction period of the Proposed Development, which is anticipated to be 15 months.

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

All works that are subject to this application are required to facilitate the construction and operation of Aberedw Energy Park (the "Proposed Development").

The works consist of the construction, operation and maintenance of underground cables to deliver energy from the Proposed Development to the onsite substation. A search corridor, shown between points 'A' and 'B' on the CL46 - Section 38 Application Plan is required, as it is not possible to determine the exact location of the cable route until further intrusive groundworks have been undertaken. The entire area of the cable route corridor shown on the CL46 - Section 38 Application Plan will not be used.

Once the cable routes have been identified within the corridor, a working area of up to 30m will be required to install the underground cables. The actual cable routes will be approximately 1.5m wide and will be installed by way of open trenching, with the surface of the Common reinstated as soon as the cables have been installed. The laying of the cable route will cause temporary disruption to the Common, however; once installed below the ground, the cables will remain in place for the life of the Proposed Development, such that there will be no impact on the Common or the users of the Common.

The proposed works will take place during the main construction period of the Proposed Development and take no more than 24 weeks to complete. Heras, or other construction, fencing will be used during the works, where required, to satisfy health and safety, or animal safety requirements. The fencing will be used on a rolling basis for the minimum amount of time such that an area of approximately 100-200m long by a width of 30m (0.6 ha) may be fenced at a time. Where alternative methods of demarcating the works can be utilised, for example where there are no animal welfare concerns, flags or other markers may be deployed to minimise the erection of fencing on the Common as far as practicable.

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

The proposed works are required to facilitate the Proposed Development and in particular to enable the export of the renewable electricity generated, which is the subject of the related application for a Development of National Significance ("DNS"). This section 38 application is a secondary consent pursuant to the DNS regime. There is also a related section 16 application being made to deregister part of the Common and offer replacement land in exchange.

The Proposed Development will contribute to the generation of renewable energy in Wales. The Planning Statement for the Proposed Development, which accompanies the DNS application, contains further information on the need for the Proposed Development, and consequently the need for the proposed works that form part of this application.

To minimise the impact of the proposed works on the Common, the overwhelming majority of the cabling will be routed alongside the access tracks on the deregistered common land and the surface of the Common restored post-installation. However, the cable route needs to travel downhill from the Proposed Development to the onsite substation and must cross the Common to do this.

Protection of the Common

Following the installation of the cables, the surface of the Common will be reinstated such that on completion of the works, which will take a short period of time to complete causing minimal impact to the Common, the Common will be available for use by the commoners and public. A section 38 consent is therefore considered appropriate as the proposed works will not change the existing use of the Common once the proposed works are complete and to deregister the area under section 16 of the Commons Act 2006 would cause a greater impact than necessary.

Protection of the interests of Commoners and Rightsholders

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

Recreational users of the Common will only be affected during installation of the cables and the Applicant's contractors will have due regard to the presence and safety of people and animals using the Commons whilst undertaking the proposed works.

The proposed works will not impede access to the Common by commoners, rightsholders or recreational users and once the proposed works are complete, the surface of the Common will be reinstated.

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 Parts 3 and 4, and Appendix 4 of the Common Land Report. The DNS application will be consulted on prior to submission as part of the DNS regime's statutory pre-application consultation procedure and the statutory consultees for a common land application will be consulted as part of that process. Details of their responses will be presented in the Pre-Application Consultation Report to be submitted with the DNS application.

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 only be used on a temporary rolling basis when the surface of the Common is trenched to lay the cables to protect public health and safety and animal welfare. As the fencing will be erected around active works only, it is anticipated that an area of approximately 100-200m long by approximately 30m wide may be fenced at any time.

(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 the health and safety of people and livestock that may be on the Common when the proposed works are taking place.

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?

Temporary construction fencing has the advantage of being easily removed and causing negligible detriment to the surface of the Common, whilst also being secure. Other measures of demarcating where active works are being undertaken, such as flags or tape, are not practicable on the Common as they do not ensure the safety of livestock, although they could be sufficient for the public and will be employed where safe and appropriate to do so. To minimise the amount of fencing, banksmen may 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 the fencing will only be in place for a short period of time and will be visually unintrusive as the works will be carried out during the construction of the Proposed Development, such that any visual impacts for the proposed works will be minimal when considered in the context of the wider Proposed Development. Visual impacts of the Proposed Development have been assessed in Chapter 5 (Landscape and Visual) of the ES.

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 active working areas with the remainder of the Common being available to the public and others with rights of access, such as the registered commoners. Once the works are complete, all fencing will be removed such that access to and over this area of the Common will be unimpeded.

(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

No application has been made as no stile, gate, cattle grid or bypass is required.

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	Quarter 3 2025
Reference Number	DNS CAS-03009-N5D9K8
Planning Authority Contact:	Name Welsh Ministers Tel E-mail PEDW.Infrastructure@gov.wales

Details of Application and stage reached

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

(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:

The restricted works form part of a larger project to which the DNS application relates and for which EIA is required. Therefore, these works have been included in the EIA for the DNS 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.

The most south-western border of the Common is near the River Wye (Tributaries) SSSI/SAC, as shown on the CL46 – Section 38 Application Plan with Designations. However, the proposed works do not extend into this area. The impact of the Proposed Development on these designated sites is assessed in Chapter 7: Ecology of the ES. Natural Resources Wales will be consulted as part of the DNS pre-application consultation process.

(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**).

There are several Scheduled Monuments on the Common, as shown on the CL46 – Section 38 Application Plan with Designations; however, these will not be affected by the proposed works. The impact of the Proposed Development generally on these assets is assessed in Chapter 6: Archaeology and Cultural Heritage of the ES. Cadw will be consulted as part of the DNS pre-application consultation process.

(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 are existing agricultural tracks traversing the Common as shown on the CL46 - Section 38 Application Plan. There are no buildings or other structures on the Common, save for an existing fence and gate on the border between the Common and Hungry Green Common (CL46).

(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 Common adjoins Hungry Green Common (CL56) as shown on the Registered Common Land – CL46 and CL56 plan.

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

To be provided on submission of the DNS 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

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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.