



Adroddiad

Report

gan / by R.M.Poppleton DipTP, DMS, MRTPI, JP

**Arolygydd a benodwyd gan y Gweinidog
dros yr Amgylchedd, Gynaliadwyedd a
Thai, un o Weinidogion Cymru**

**an Inspector appointed by the Minister for
Environment, Sustainability and Housing,
one of the Welsh Ministers**

Dyddiad/Date 17/11/08

The Conservation (Natural Habitats) Regulations 1994: Regulation 50

A Review of consents relating to the Welsh Highway Railway between Dinas (south of Caernarfon) and Porthmadog in respect of the Afon Gwyrfaï a Llyn Cwellyn Special Area of Conservation; the Meirionnydd Oakwoods and Bat sites Special Area of Conservation, and the Lleyn Peninsula and Sarnau Special Area of Conservation:

The Welsh Highland Railway

Part 2 report (dealing substantially with the Lleyn Peninsula and Sarnau SAC)

Remit of part 2 report:

1. This report forms a second part to the report that informed the Minister's decision dated 25 April 2008 that confirmed that none of the works and hazards associated with the construction and operation of the Welsh Highland Railway (WHR) being assessed on that occasion, had the potential individually, or in-combination, to adversely affect the integrity of the two SACs or the achievement of conservation objectives. The SACs considered in the part 1 report were the Afon Gwyrfai & Llyn Cwellyn SAC (UK0030046) and the Meirionnydd Oakwoods and bat sites SAC (UK0014789).

2. Paragraph 13 of my part 1 report and which was accepted by the Minister, stated:

The Part 2 Report will deal with the effects on the Llyn Peninsula and Sarnau SAC. Stage 2 will include a review of the work to reinforce and widen the Cob at Porthmadog together with works to Britannia Bridge, including the provision of a widened footpath on its southern side. Although this work does not form part of the TWA Order and deemed permission for the railway and therefore is not part of the consent subject of this Review, it will need to be considered as part of the assessment of in-combination effects.

3. That now sets the remit for this report which substantially deals with any effects of the WHR project upon the Llyn Peninsula and Sarnau SAC (UK 0013117). The submitted documents with the part 1 report and other matters included within that report remain relevant to the consideration of this part.
4. In addition, since the Minister's decision, on 29 August 2008, the Welsh Ministers have submitted changes to the Meirionnydd Oakwoods and bat sites SAC to the European Commission for consideration. The implications of that decision are also considered.

Location and main characteristics of the Llyn Peninsula and the Sarnau Special Areas of Conservation(UK 0013117):

5. The area was made a candidate SAC in January 1996, extended in April 2001 and designated December 2004. It comprises Cardigan Bay to the north of Aberystwyth and extending around the Llyn Peninsula. Of particular relevance is that part in the vicinity of the harbour, Britannia Bridge and the Cob at Porthmadog. The relevant European interests are estuary and otter.

The key works consented and proposed as part of the WHR Project that affect the SAC:

6. The railway track is laid in the surface of the existing carriageway over Britannia Bridge. The railway station at Porthmadog would be expanded to accommodate additional trains. The proposed work would be located on a narrow strip of land within the harbour (the Cob) on space constrained by the A487 road to the north and the existing harbour station buildings to the west. This would involve land reclamation of an area adjacent to the Cob causeway. The existing bank is 4.6m long: the proposal is to extend this to 19 metres using inert materials over clean stone and a layer of geotextile material, with a layer of armour stone deposited on top of the batter sides for protection. Details of the project are included within the FEPA application submitted to the Marine and Fisheries Agency (MFA)

in November 2006 and its record of Appropriate Assessment published by the Marine Environment Team in February 2008¹. It concluded that provided mitigation measures were put in place, there would be no adverse effects on the SAC and a FEPA licence was subsequently issued on 27 August 2008².

7. The scope of the works to the north side of Britannia Bridge includes the rebuilding of the training wall that collapsed in February 2007 prior to the WHR works commencing. All of these works lie outside the SAC boundary and are now substantially complete³.
8. Consents in relation to these works are⁴:

Britannia Bridge (north side)

Consent	Licensing body	reference	Date granted
Listed Building Consent	Cyngor Gwynedd	C07D/0010/44/CR	03.8.07
Flood Defence consent	Environment Agency	NE2007LD015	14.03.07
Food & Environment Protection Act	Marine and Fisheries Agency (MFA)	33740/07/0/8168	13.8.07
S.16 Coast Protection Act	Cyngor Gwynedd	Response awaited	

The Cob

Consent	Licensing body	reference	Date granted
Listed Building Consent	Cyngor Gwynedd	CO6D/0709/44/CR	14.2.08
Food & Environment Protection Act	Marine and Fisheries Agency (MFA)	33510/08/0	22.8.08
S.34 Coast Protection Act	Marine and Fisheries Agency (MFA)	33510/08/0DC/7957	8.8.08
Consent of local harbour authority	Cyngor Gwynedd	BD/SWY/Porthmadog	24.11.06
S.16 Coast Protection Act	Cyngor Gwynedd	33510/08/0	8.8.08

¹ See Doc 29

² See Doc 36

³ See Document 31

⁴ See Document 31

Other Projects

9. Three other projects have been identified whose effects on the SAC in combination with the WHR project must be considered.
10. The first of these is associated with the Britannia Bridge. WHR Construction Ltd have, as agents for the Welsh Assembly Government Highways Directorate, sought consent to allow the widening of a footway in the interests of pedestrian safety associated with the road usage, on the south side of the Britannia Bridge, outside the limits of the deviation and outside the scope of the WHR project. Relevant consents are -

Britannia Bridge (south side)

Consent	Licensing body	reference	Date granted
Listed Building Consent	Cyngor Gwynedd	C07D/0664/44/CR	awaited
Flood Defence consent	Environment Agency	NE2007LD0288	12.02.08
Food & Environment Protection Act	Marine and Fisheries Agency (MFA)	33909/071218	13.8.07
Consent of local harbour authority	Cyngor Gwynedd	BD/SWY/Porthmadgog	17.3.08

11. By letter dated 1 May 2008⁵, the Britannia Bridge footway project was handed over to the NWTRA to progress instead of WHR Construction Ltd who would have no further involvement and interest with this project. By email dated 21 August 2008⁶, it was confirmed by DE & T – RNM Colwyn Bay that an Environmental Impact Assessment and an Appropriate Assessment of this project would be carried out, if necessary, but not before August 2009.
12. The second project that needs to be assessed for its in-combination effects is the Porthmadog to Tremodog A487 by-pass. This road scheme involves the construction of a viaduct and the diversion of the Cambrian Coast mainline railway east of the Afon Glaslyn, south of Minffordd Quarry. A statement to inform its Appropriate Assessment was published on 28 August 2008⁷. It concluded that provided mitigation measures were put in place, there would be no adverse effects upon the SAC.
13. Reference was made to the third project in the Part 1 report⁸, the Pwllheli Marina. The Gwynedd Council now confirm by email dated 29 October 2008⁹ that the proposal is 2-3 years away from being at a stage when consents and

⁵ Included within Doc 32

⁶ Doc 33

⁷ Docs 39 & 40

⁸ Para 30 part 1 report

⁹ Doc 42

permissions could be pursued as the project's economic viability is being investigated. The marina and extensions lie outside the SAC boundary and impacts could be addressed through mitigation measures. It would be open to the Council to seek environmental information and an Appropriate Assessment if it considers this necessary in the event of the project proceeding to an application stage.

14. The February 2008 record of the Appropriate Assessment for the works to the Cob¹⁰ also considered the in-combination effects of the slipway at Porthmadog within the harbour, the works to the sluice associated with the A487 Porthmadog by-pass road scheme and the replacement of the wooden railway bridge at Pont Briwet also included in the A487 road scheme. It was concluded that provided mitigation measures were put in place, there would be no adverse effects on the SAC.

Consultation responses

15. By email dated 12 August 2008¹¹ and as clarified in the email dated 22 August 2008¹², the Countryside Council for Wales (CCW) confirmed that they agreed with the MFA's conclusions in respect of the appropriate assessments relating to the Cob, which enabled consents and licences to be granted. This addressed the matters relating to any loss of the inter-tidal habitat and the effects on otters raised in December 2007 by the Environment Agency¹³. Also the CCW confirmed that the Britannia Bridge (footway) works would not affect the SAC and that the A487 by-pass would not give rise to adverse effects, either alone or in-combination with the WHR Cob widening project, provided mitigation measures were put in place.
16. By email dated 29 August¹⁴, CCW re-confirmed that the Britannia Bridge widening (footway) works would not be likely to have a likely significant effect on the Pen Llyn a'r Sarnau SAC, provided the project incorporated measures to avoid broken concrete being dumped in the estuary and there would be no night time working so as to avoid disturbing the otters. Subject to these measures, in CCW's view the project would pass the initial test of likely significant effect and would not need an Appropriate Assessment under Regulation 48 of the 1994 Habitats Regulations.
17. CCW have also been contacted by the Planning Inspectorate enquiring whether the changes to the Meirionnydd Oakwoods and bat sites SAC, alter their advice included within the Part 1 report¹⁵. By email dated 30 October 2008¹⁶, CCW have confirmed that the changes to the Meirionnydd Oakwoods and bat sites SAC do

¹⁰ Doc 29

¹¹ Doc 30

¹² Doc 34

¹³ Para 26 part 1 report

¹⁴ Doc 38

¹⁵ Doc 41

¹⁶ Doc 43

not alter their conclusions reached in respect of the aspects covered in the part 1 report.

Recent caselaw

18. Attention is drawn to *Hart DC v Secretary of State for Communities and Local Government & Others* [2008] EWHC 1204 (Admin)¹⁷ that confirmed that there is no legal requirement that a screening assessment under Regulation 48(1) must be carried out in the absence of any mitigation measures that form part of a plan or project. It was stated that the competent authority is required to consider whether the project, as a whole, including such measures if they are part of the project, is likely to have a significant effect on the special protection area.

Assessment of the likely significant effects

Figures thus [] are the paragraph sources in the earlier part of this report

19. The comments included in paragraphs 36-41 of the part 1 report remain relevant and set the context for the following comments.
20. The works included under the banner of the WHR project that potentially impact on the Lleyn Peninsula and Sarnau SAC comprise the works to the Cob and to the north of the Britannia Bridge.[6,7] CCW have confirmed that they agree with the MFA's conclusions in respect of the appropriate assessments relating to these works, for which FEPA licences have been granted. [8,15] It can therefore be concluded that the WHR project has no adverse effect upon the integrity of the Lleyn Peninsula and Sarnau SAC.
21. CCW has also confirmed that the addition of the footway to the Britannia Bridge would not be likely to have a significant effect upon the SAC provided certain mitigation measures are taken as part of the project.[15] The *Hart* judgement confirms that mitigation measures may be taken into account.[18] This project will itself be subject of an Appropriate Assessment [11], which will establish what mitigation works are necessary as part of that project to protect the integrity of the SAC.
22. CCW also support the conclusions of the statement to inform the Appropriate Assessment of the A487 by-pass road project, which concluded there would be no adverse effects on the SAC subject to appropriate mitigation measures.[12] CCW has confirmed that in its view neither the Britannia Bridge footway nor the A487 road scheme, alone or in-combination with the WHR project, would give rise to adverse effects provided mitigation measures are put in place. [14,15]
23. As those projects for which an Appropriate Assessment has been carried out have concluded that each project individually would not have any adverse effect upon the integrity of the SAC, subject to mitigation, it follows that those projects in-combination would also have no adverse effects. The mitigation measures that would be taken as part of each project to ensure they would not individually have any adverse effect on the SAC would ensure there would also be no adverse in-combination effects. There is no known cumulative or in-combination effect on the SAC that would not be addressed by the mitigation measures for the individual projects. Whilst it is a matter of law, I consider that the

¹⁷ Doc 44

consultees' comments and the other Appropriate Assessments have been consistent with the terms of the judgement in *Hart* noted above.

24. Therefore based upon the best available evidence, none of the hazards associated with the construction and operation of the WHR have the potential to adversely affect the integrity of the Llyn Peninsula and Sarnau SAC or the achievement of its conservation objectives. Also, having regard to the features of interest identified in this SAC, there is no evidence that there are any in-combination effects with other projects that would be harmful to its integrity.
25. CCW have confirmed that the proposed changes to the Meirionnydd Oakwoods and bat sites SAC do not alter their conclusions in respect of the impact of the WHR project on that SAC.[17] The conclusions in the Part 1 Report therefore remain valid.

Recommendation

26. As this assessment leads me to conclude that the approved and consented WHR project addressed in this report would not adversely affect the integrity of the Llyn Peninsula and Sarnau SAC, or the achievement of its conservation objectives, and there has been no change in circumstances leading to any requirement to change the conclusions in the Part 1 report, I recommend that the deemed planning permission in respect of the WHR, as considered under the Transport and Works Act, be affirmed.

R.M. Poppleton

Inspector

DOCUMENTS (as a continuation of the part 1 report)

- 29 Record of Appropriate Assessment: Feb 2008 - The Cob, Porthmadog
- 30 CCW (R Ninnes) email 12 August 2008
- 31 WHR letter dated 13 August 2008
- 32 WHR letter dated 15 August 2008 and enclosures
- 33 DE & T – RNM Colwyn Bay (A V Williams) email 21 August 2008
- 34 CCW (R Ninnes) email 22 August 2008
- 35 ESH-ECN (Sharon Davies) email 27 August 2008
- 36 MFA licences and consents relating to the Cob reclamation
- 37 Festrail (D High) email 28 August 2008
- 38 CCW (R Ninnes) email 29 August 2008
- 39 DE & T – RNM Colwyn Bay (C Tollitt) email 28 August 2008 and Statement to inform an Appropriate Assessment addendum 1, August 2008 relating to A487 by-pass
- 40 Statement to inform an Appropriate Assessment, February 2008 relating to A487 by-pass
- 41 Correspondence relating to changes to Meirionnydd Oakwoods and Bat sites SAC
- 42 Correspondence with Gwynedd Council relating to Pwllheli Marina
- 43 CCW confirmation relating to changes to Meirionnydd Oakwoods and Bat sites SAC
- 44 Judgement in *Hart DC v SSCLG & Others* [2008] EWHC 1204 (Admin)