Llanbrynmair Access route – REBUTTAL EVIDENCE ON DORMOUSE

1.1.1 RES has received a proof of evidence on Dormouse from Elisabeth Halliwell (NRW). Dormouse is also raised repeatedly as an issue in revised DW 8 (an appendix to the second rebuttal of Dominic Woodfield). Dominic Woodfield defers to NRW on the issue of dormice and so this rebuttal evidence concentrates on the issues raised by NRW.

1.1.2 The sole point raised by NRW (and PCC) is that insufficient evidence has been gathered to demonstrate that there will be no detrimental impact to dormice from the proposed works to the existing county road.[1] No issue is raised regarding the site of the proposed wind turbines.

1.1.3 NRW and PCC do not produce any evidence to demonstrate that dormice are in fact present on the site of the access route. No competing assessment is provided which suggests that the impact is unacceptable.

1.1.4 I am concerned that, before writing her evidence, Elisabeth Halliwell (EH) has not visited the site of the proposed access route. Rather, EH appears to rely on assessments by John Messenger, which she has not been able to critically assess and which have not been shared with RES.

1.1.5 I will respond to parts of the proof in turn:

Section 3 - Legislative and Policy Context

1.1.6 Whilst I am familiar with the relevant legislative and policy context, I am neither a lawyer nor a planner. So far as necessary, such issues will be addressed in evidence in session 4 and in the Closing Submissions of RES.

Survey Methodology (NRW at 5.4)

1.1.7 NRW suggest that the survey methodology is not reliable (see e.g. NRW at 5.4). I disagree and this position is not only inconsistent with NRW Guidance, it also inconsistent with NRW's previous position on this application.

[1] NRW proof at 2.2

1.1.8 The proof from NRW has been written in apparent ignorance of the background to the surveys of dormice. Certainly no reference is made to it in the proof of EH. This is relevant to the context in which to assess the adequacy of the surveys which Ecology Matters undertook.

1.1.9 The CCW scoping response of 22nd September 2006 addresses the required surveys for protected species. No reference was made to dormouse and there was no requirement for dormouse surveys to be undertaken.[2] This is not a surprise as there are no records for dormouse in the vicinity of the application site. CCW's starting position was, therefore, that a survey was not even required.

1.1.10 In addition, the first 3km of the access route (from Llanerfyl) has already been proposed as an access to the Mynydd Waun Fawr windfarm in a planning submission in 2007. This required similar works to this section of the county road. No dormice surveys were undertaken along the proposed access route. In response to that application, whilst CCW requested that any hedgerows removed were translocated, CCW did not raise dormouse as an issue (even though they did raise concerns about other protected species).[3] CCW were, therefore, quite content for an application on the access route to be determined without a dormouse survey (consistent with the scoping position).

1.1.11 It was during surveys of the proposed works along the access route that Ecology Matters considered certain areas to be suitable habitat for Dormouse. It was, therefore, considered appropriate for surveys to be undertaken (of our own volition).

1.1.12 A survey of the access route for dormouse habitat was undertaken in August 2010, with a nut search undertaken in December 2010. (see SEI (2) 2011 at 4.1.1 to 4.2.3).

1.1.13 A desk study was undertaken using the National Biodiversity Network (NBN).[4] No dormouse records were found for Cwm Eira at all.

1.1.14 The surveys were undertaken in accordance with the guidance provided in the Dormouse Conservation Handbook which was published by English

[2] See page 16 under "other mammals".
[3] See Annex A at 3.5 - Mick Green rebuttal App 1.
[4] See SEI (2) at 4.3.3

Nature (EN) in 2006. This document remains Natural England's stated guidance on Dormouse assessment. There was not sufficient habitat to survey 10m x 10m plots, so the alternative survey method of collecting at least 100 nuts was employed. These were then examined using a hand lens to ascertain which species had opened the nut.

1.1.15 For those areas considered as possible dormouse habitat an evaluation of the habitat was made and nut searches were undertaken. The results of the nut search were as follows:

- at the first two sites identified in the original survey (SJ 024087 and 012076) very little suitable habitat was found after close inspection, and no hazel nuts found;
- at the third site (SJ004081) the hedge was very open and heavily flailed. No nuts were found;
- at the final site (SJ004079) a total of 148 gnawed nuts were collected. The species responsible were identified as follows: Bank vole – 11; Woodmouse – 5; Squirrel – 103; Bird – 28; Unknown – 1

1.1.16 The habitat was considered to be of low quality and no evidence of dormouse was found. On the basis of this combined evidence the assessment was made that dormice are unlikely to be present along the access route and therefore there is no need to undertake a further detailed survey.

1.1.17 As no evidence of dormouse was found, SEI (2) therefore concluded that there were no signs of dormouse on the sections of potentially suitable habitat, which was to be impacted.

1.1.18 In their consultation response of 6th July 2012 (SEI (3) App 2.1), no mention is made of dormice by CCW/NRW. There is no criticism of the assessment methodology, which was (after all) in accordance with NE guidance. If the methodology was somehow considered to be inadequate, I would have expected CCW/NRW to have pointed this out at that time.

1.1.19 The final access route proposals involve work of a similar magnitude to that assessed in SEI 2 and with which CCW expressed no dissatisfaction.

The Guidance

1.1.20 At 5.5, EH states that NRW (and CCW before it) have not produced guidance on best practice for dormouse surveys. This is correct.

1.1.21 In undertaking the dormouse surveys, I therefore relied on guidance provided in the Dormouse Conservation Handbook which was published by English Nature in 2006 and remains Natural England's publication and advice on the subject.

1.1.22 The Introduction to the document explains that it is intended to be a practical guide for specialists and its purpose includes providing guidance for developers whose activities may impinge on dormouse habitat (p9).

1.1.23 The Handbook explains that the "best way to establish dormouse presence at a site is to look for gnawed hazel nuts...Although this is obviously impractical where hazel is absent, it is worth searching any adjacent areas with hazel to see if dormice are nearby and thus likely to be present on the site under investigation" (p 23 para 3.2.2).

1.1.24 The Guidance explains that: "casual searching for nuts is often sufficient"[5] but a systematic search makes it easier to be confident that an absence of shells is due to absence of animals rather than an accidental failure to find gnawed nuts. Conducting a systematic search involves selecting an area of heavily fruiting hazel and to search 10m x 10m blocks for 20 minutes. This method has an 80% probability of detecting dormouse if present. As explained above, there was simply not sufficient potentially suitable habitat for this method to be employed.

1.1.25 In such circumstances, the Guidance specifically advises that:

"*An alternative way of achieving an adequate sampling intensity ... is to collect 100 hazel nuts that have been opened by small rodents (voles and mice...).* ***If this sample contains no nuts that have been opened by dormice, it is highly probably [sic] that dormice are not present***." (My emphasis).

[5] 3.2.2

1.1.26 I therefore consider that the dormouse survey was not only an adequate survey methodology but actually the "best way" to establish the presence or absence of dormouse, applying NE guidance.

1.1.27 Section 3.3 of the Handbook addresses “Dormouse surveys – good practice recommendations”. It states “if the presence of dormouse is possible, carry out a survey using a recommended method”. It advises that, for environmental assessments, survey proposals should be based on the recommendations in Table 6. The recommended approach for a survey involves the following:

(i) Check whether the site falls within or close to the known range of dormouse (set out in fig 1);

(ii) Check for dormouse records;

(iii) If the presence of dormouse is possible, carry out a survey methodology using a recommended method in Table 6 at an appropriate intensity.

1.1.28 The assessment was undertaken in accordance with this methodology (as the SEI states). Table 6 identifies searching for gnawed hazel nuts to be the first survey method and that it is “the most efficient” method. Inspection for gnawed hazelnuts is seen as being "the normal survey method".

1.1.29 In the light of this Guidance, I consider that there can be no doubt that the surveys were undertaken in accordance with not only an appropriate methodology but also the most appropriate survey methodology.

1.1.30 Elisabeth Halliwell makes no mention of the Dormouse Conservation Handbook (second Edition) in her proof of evidence. Rather, NRW refer to an Interim Advice Note from Natural England.

1.1.31 This Advice note is "interim" only and has not been formally adopted by NE. It has certainly not been adopted by NRW, whose web-site continues to refer readers to the Dormouse Conservation Handbook, as the authoritative guidance on dormouse surveys.

1.1.32 Indeed, the Interim Advice note specifically states:

It is not designed as a comprehensive guide to dormouse surveying, although we hope to produce more detailed guidance on surveys in the near future. This advice note should be read in conjunction with the Dormouse Conservation Handbook (second edition), which explains the actual survey techniques employed in more detail.

1.1.33 The Interim Advice note therefore endorses the Dormouse Conservation Handbook. This presents any ecologist with an issue because (on the face of it) the Interim Guidance appears to be inconsistent with guidance contained in the Dormouse Conservation Handbook, to which it expressly refers. This is a matter which Natural England may have to resolve in future guidance which is anticipated.

1.1.34 However, I do not consider that the interim guidance overrides the existing guidance because it states it should be read "in conjunction with" it. I consider the Dormouse Conservation Handbook to remain authoritative and I consider that the survey technique in the SEI remains compliant with a guidance document which remains the document to which you are referred by NRW. The surveys should therefore be considered robust and adequate.

Sections of Hedgerow

1.1.35 NRW have raised a concern over specific sections of hedgerow (at 4.4). NRW have not, however, provided any assessment of them or provided any evidence of dormouse.

1.1.36 At sections 1.8 (Drawing D – 003 rev G, CSEI Vol 2c 2013), 1.9 and 1.12 (Drawing D-004 Rev G) NRW consider that the hedges have the potential to be used by Dormouse. However, at these locations no substantial works are required with the proposal being for the hedges to be trimmed back if necessary. Potential impact on any species is therefore considered unlikely as the works proposed are minor. Cutting back will not be of much greater impact than the regular annual flailing that already occurs here. Any works will be carried out using techniques to mitigate any possible impacts (as set out below)

1.1.37 At Sections 1.14 Darawing 005 – D, Rev G) and 1.15 (Drawing 006, Rev

G) we agree that these sections are potential dormouse habitat and they have been surveyed. No signs of dormouse were found. In addition, the works proposed do not entail the complete loss of these habitats and re-planting of additional hazel is proposed.

1.1.38 Whilst there is (now) disagreement over the surveys undertaken (even though CCW never asked for any to be undertaken), a precautionary approach will be taken to the proposed works. The hedgerow works are proposed to be undertaken as follows:

(i) Where possible hedgerows will be translocated. Sections where this is considered possible have been identified in the CSEI, Appendix 5.3.

(ii) Where hedgerow removal and replacement is required existing hedgerows are down to approximately 30 -50cm from ground level during November to the end of February. Clearance of the stumps can then be undertaken from mid to late May.

(iii) Hedgerow vegetation will be removed using hand tools/machinery. Cut vegetation will be moved away from the hedge and left overnight and some of the brash will be retained on site to be used as dead hedging.

(iv) Once the work is done, any gaps in the translocated hedgerow or the new hedge line will be planted with local provenance hedge plants to include and range of species to reflect the removed hedge but also where possible to include hazel and species that can provide food quickly. A hazel may take 5 years or more before fruiting, so species such as bramble, dog rose, hawthorn, which can grow quickly and provide early-season food for all wildlife, and a range of species for later in the year including blackthorn, elder and crab apple will be included in the species mix. Dead-hedge material will be included amongst the new whips to help provide quick and continuous cover so that there is an immediate corridor connecting the hedge sections. This dead material can be any branches which have been cut recently from nearby, and placed horizontally along the hedge line, woven around interspersed 1m-long 'pegs' of branches to keep this material upright.

(v) Subject to landowner agreement, hedgerow management will be undertaken under a long term management agreement to maintain hedge

structure and limiting flailing to ensure maximum food availability for wildlife.

1.1.39 If this method (to be secured by condition) is followed, I do not consider that there is any potential for impact to dormice.

1.1.40 NRW raised concerns over possible breaches on the Habitat regulations, namely: Regulation 41 of the Habitat Regs which state that:

(1) A person who—

(a) deliberately captures, injures or kills any wild animal of a European protected species,

(b) deliberately disturbs wild animals of any such species,

(c) deliberately takes or destroys the eggs of such an animal, or

(d) damages or destroys a breeding site or resting place of such an animal,

is guilty of an offence.

(2) For the purposes of paragraph (1)(b), disturbance of animals includes in particular any disturbance which is likely—

(a) to impair their ability—

(i) to survive, to breed or reproduce, or to rear or nurture their young, or

(ii) in the case of animals of a hibernating or migratory species, to hibernate or migrate;

or (b) to affect significantly the local distribution or abundance of the species to which they belong.

1.1.41 Not withstanding the fact that surveys using recommended methods have shown the absence of dormouse, it is considered that, by employing the methods given above, there is no possibility of deliberately killing or disturbing dormouse even if they were to be present. The methods for removing and relocating hedges mean that there is no potential for impact on any potential animals ability to breed, hibernate or migrate. There is a great deal of similar habitat available in the area and only a very small proportion will be impacted. Even during the period that works are being undertaken there cannot be a significant adverse impact on any populations of any species overall. Following hedge restoration there will be more hedgerow present, with greater connectivity to other habitat features and therefore there is no mechanism to affect the local distribution or abundance of any species.

1.1.42 It is concluded that, despite surveys showing no signs of dormouse, the proposed works cannot adversely affect the favourable conservation status of dormouse if they were present in this area.