

Background

The former Gilfach Iago Opencast Coal Site covered an area of approximately 134 hectares between the villages of Saron, Blaenau and Penygroes. The site was operational between 1988 and 1998. Ownership of the site was initially held by the NCB and British Coal Opencast but transferred to Celtic Energy Ltd in 1994 with the privatisation of the coal industry. Unfortunately, the Government did not provide for Bonds to Local Authorities to guarantee restoration on the sites transferred to the private company which placed the Local Authorities concerned in a very weak position.

By October 1998 Celtic Energy Ltd had largely restored the physical profiles of the site to an undulating landform, broadly similar to that which existed before the site was excavated, although the restoration scheme was not approved until March 1999.

Prior to the opencast working the site was crossed by several rural roads and connecting public footpaths. These served local needs as well as serving properties which were demolished as part of the opencast operations.

Apart from the road between Saron and Cwmbach Cottage, which had been effectively replaced by the new link road between Blaenau and Saron, these roads and public paths were to be re-instated following completion of restoration under the provisions of Condition 5 attached to the original planning permission for the Opencast Coal Workings (Ref: C6/190).

‘On completion of the restoration proposals the Board shall reinstate Pantyblodau Road and the link to the southern end of Saron Road’

Condition 26 also stated that

‘Public Rights of Way affected by site operations shall be restored to their original alignment on completion of the sites restoration and aftercare period’

Completion of the restoration of the physical profiles of the site was achieved by 2000 but the reinstatement of the roads and public footpaths as required by Condition 5 was not undertaken.

Following the restoration of the physical profiles of the land in 2000 Celtic Energy split the land up into 17 lots and sold 16 off at auction, Celtic Energy retained Lot 10 in the centre of the site. This fragmentation of ownership is one of the primary reasons why the Local Authority has been unable to resolve the issue of the road reinstatement. Despite the expenditure of substantial effort, time and resources, reinstatement is still outstanding 20 years on.

Present Road Conditions



Explanation of Issues

Following the sale of the majority of the land, Celtic Energy Ltd applied for planning permission in January 2001 to amend Condition 5 on the original planning permission. In their view the roads were no longer necessary, and it would be beneficial to replace them with footpaths and/or bridleways. The application was refused in October 2001 and the subsequent Appeal was dismissed in October 2002.

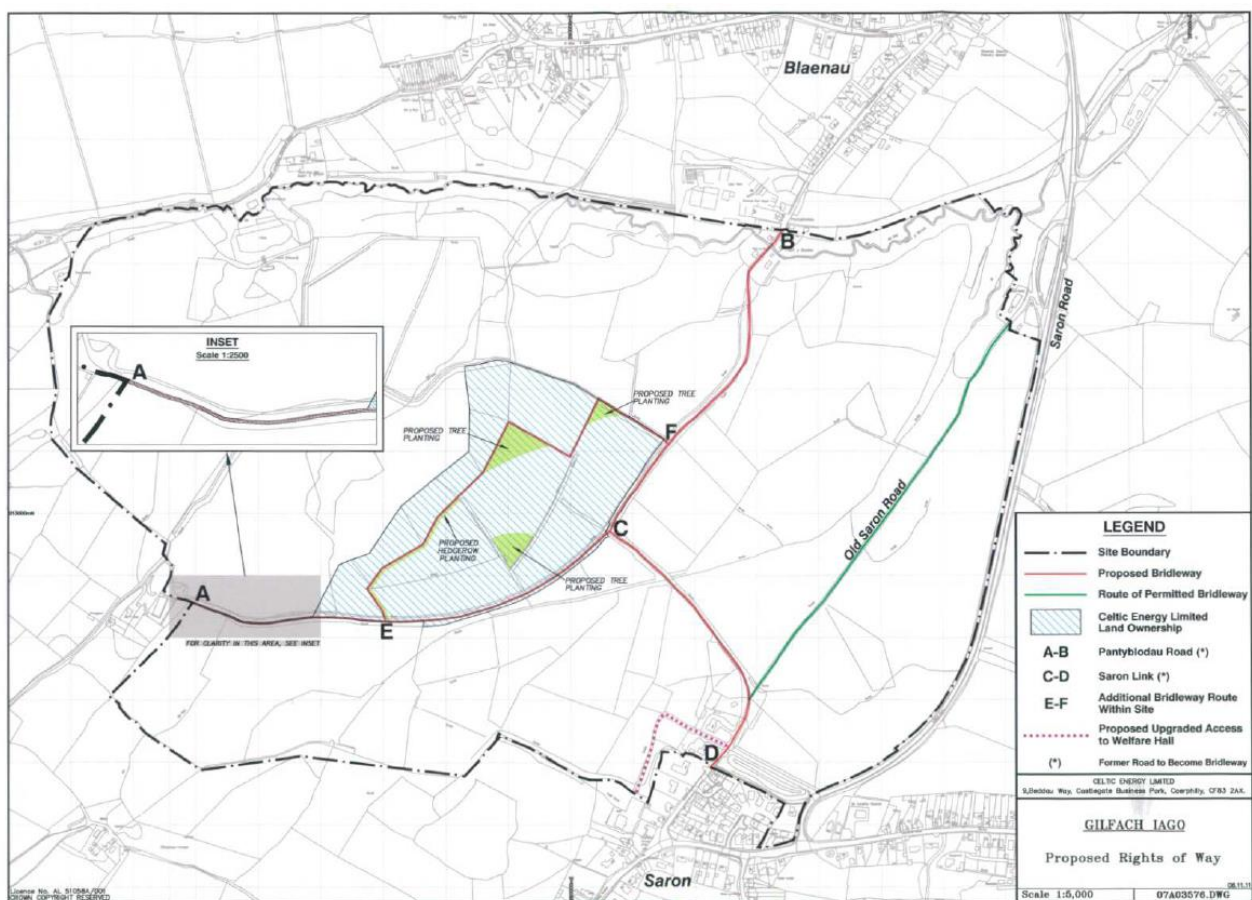
Subsequent to this it became apparent that the fragmentation of land ownership was a significant barrier to the reinstatement of the roads. The approved restoration scheme for the site approved the reinstated roads along a slightly different alignment to the original roads. At the time of the approval of the restoration scheme this was not considered to be an issue as Celtic Energy Ltd were proposing the scheme and owned all the land. However, once the ownership was fragmented the consent of landowners was required to amend the road layout and not all landowners were agreeable.

Following the failure of concerted efforts to find a voluntary solution the Local Authority served a Breach of Condition Notice on Celtic Energy Ltd in April 2007. The Notice required Celtic Energy Ltd to complete the restoration of the roads and public rights of way by January 2008. Celtic Energy Ltd did not comply with the Notice.

A number of meetings were held subsequent to the failure to comply with the Notice where Celtic Energy Ltd claimed that they were not liable as they were not the landowner. Legal arguments continued for some time and with no sign of any progress being made the Local Authority sought to proceed to prosecution. However, Celtic Energy Ltd changed their position before the matter was heard by the Courts and indicated that they accepted liability but wished to make another planning application to vary condition 5 of the original planning permission, supported by an updated justification. That planning application was submitted in November 2011.

Celtic Energy submitted that the roads were unnecessary as the communities are well served by existing highway infrastructure and believe that increased amenity value would result from the construction of bridleways and footpaths in their place. The application proposed to provide 1.8km of bridleways instead of roads, 772m of additional bridleways around the perimeter of Lot 10 and the dedication of Lot 10 to the County Council or Community Council for use as public open space by the local community, should they want it. They also indicated that they would be prepared to provide an upgraded access to Saron Hall.

Plan of Proposed Bridleways



Unfortunately, the application was held in abeyance due to an objection from Llandybïe Community Council. The objection by the Community Council essentially prevented a positive determination as their consent would be required to the subsequent Order required via the Magistrates Court. The objection was eventually withdrawn and allowed permission to be granted in June 2018. The permission required Celtic Energy Ltd to commence operations by January 2019. Unfortunately, Celtic Energy Ltd were unable to make a start as the necessary Orders could not be sought, due to landowner objections, and the planning permission lapsed.

Options/Considerations

1. Celtic Energy Ltd comply with the terms of Condition 5 of the original permission and reinstate all roads and public footpaths. It is important to note that the Authority do not want the roads back and neither do the majority of residents living along the truncated ends of these roads.
2. Celtic Energy Ltd be requested to reapply for planning permission to amend Condition 5 of the original planning permission and deliver the resulting public rights of way. There are substantial benefits in providing traffic free public rights of way for informal recreation and active travel opportunities instead of the former roads. This does involve some risk in that an objection from the Community Council would effectively become a veto as arose following the 2011 application.
3. In recognition of the potential recreational and active travel value, the Local Authority seek to downgrade the existing legal highway routes, along their original alignments, to bridleways as we agree that the roads are no longer required. This should be linked into an Agreement with Celtic Energy Ltd as in isolation it provides them with a planning condition 'get out clause'. The Local Authority subsequently seek to divert the downgraded bridleways to the routes approved under the restoration plan approval and deliver the reinstatement works under the terms of the agreement with Celtic Energy Ltd.
4. The Council seek to prosecute Celtic Energy Ltd for non-compliance with the Breach of Condition Notice. Not likely to be acceptable due to the passage of time.
5. Explore further alternatives in conjunction with Celtic Energy Ltd. Discussions have been ongoing for over 2 years so identifying another solution agreeable to both parties is unlikely.

Recommended solution

Celtic Energy Ltd enter into an agreement with the Council to provide an agreed contribution of £320,000 towards the implementation of a scheme similar the planning proposal approved in 2018.

The Local Authority seek to downgrade the existing legal highway routes to bridleways through the Magistrate's Court. Once added to the Definitive Map and Statement by way of a Legal Event Modification Order, the Local Authority seek to divert the downgraded bridleways to the routes approved under the restoration plan approval.

The Local Authority undertake the necessary works to provide the bridleways to an appropriate specification. Works to reinstate the public footpath network will also be undertaken. The works have been costed at £450,000, the difference to be made up from reserves.

In effect this is the most deliverable and achievable option available to resolve a longstanding issue. Whilst the network of roads and public footpaths remain in their present condition the Authority is at risk of claim or legal challenge for not maintaining or enforcing the network.

The proposed solution is a defensible management decision that will deliver beneficial outcomes for the community and the Council will obtain a substantial contribution to the costs of delivering access reinstatement.

It is unclear whether Celtic Energy's current offer is time bound but essentially if the offer is withdrawn the Council would be faced with footing the entire cost of restoring access across the site or the community end up with nothing.