

Ein cyf/Our ref: CAS-255652-K5L9
Eich cyf/Your ref: P/2023/0674

Wrexham County Borough Council
The Guildhall
Wrexham
LL11 1AY

Dyddiad/Date: 22 May 2024

Annwyl Syr/Madam/Dear Sir/Madam,

BWRIAD/PROPOSAL: Codi 2 estyniad I ddarparu cyfleusterau I ymwelwyr / Erection of 2 no. extensions to provide visitor facilities

LLEOLIAD/LOCATION: Brymbo Iron and Steelworks, Heritage Centre, New High Street, Brymbo, Wrexham, LL11 5AX

Thank you for consulting Cyfoeth Naturiol Cymru (CNC)/Natural Resources Wales (NRW) about the additional information for the above, which we received on 09 May 2024.

We continue to have concerns with the application as submitted because inadequate information has been provided in support of the proposal. To overcome these concerns, you should seek further information from the applicant regarding protected species.

We also advise that based on the information submitted to date, a condition regarding contaminated land should be attached to any planning permission granted, and the documents identified below should be included in the approved plans and documents condition on the decision notice. Without the inclusion of this condition and documents we would object to this planning application.

- **Document 1: Enfys Ecology, April 2024. Conservation Plan for Great Crested Newts. V1**
- **Document 2: Enfys Ecology, April 2024. Lighting Plan Review V1**

Further consideration is also required regarding foul drainage. Further details are provided below.

Protected Species

Bats

We note that the bat report submitted in support of the above application (Cutts, R. (2023). Brymbo Heritage Area: Machine Shop, Pattern Shop and Foundry Area. Preliminary Roost Assessment, Emergence Surveys and Bird Survey. Enfys Ecology. Reference No EE.672b.LB) has identified that bats are present at the application site. From the information

submitted, we consider that the proposed development represents a higher risk for bats, as defined in our guidance document '*Natural Resources Wales Approach to Bats and Planning* (2015)'.

Bats and their breeding and resting places are protected under the Conservation of Habitats and Species Regulations 2017 (as amended). Where bats are present and a development proposal is likely to contravene the legal protection they are afforded, the development may only proceed under licence issued by Natural Resources Wales, having satisfied the three tests set out in the Regulations (please also refer to Paragraph 6.3.7 of Technical Advice Note 5: Nature Conservation and Planning). Please note, for the purposes of providing advice at the planning application stage, our comments are limited to the test relating to "*demonstration of no detriment to the maintenance of the favourable conservation status of European protected species*".

We advise that the proposed development is likely to harm or disturb the bats or their breeding sites and resting places at this site.

We note that a Bat Conservation Plan (Enfys Ecology, May 2024. Conservation Plan for Bats. V1) has been submitted to address some of the comments raised in our previous response (dated 10th November, 2023). However, the Conservation Plan has not fully addressed our concerns. We therefore advise that the Conservation Plan is updated to include the following:

- Build upon the principles outlined in the ecological report (Enfys Ecology, May 2024. Conservation Plan for Bats. V1)
- Submission of further details (including plans) of all bat roost retention, compensation and enhancement measures including identified roost access points (retained or proposed)
- Actions to be taken in the event that previously unidentified species of bat are found
- A detailed scheme to audit the implementation of ecological measures, including key performance indicators
- Post construction monitoring and record dissemination for a period of not less than 5 years
- A bat long-term site management and maintenance plan

Alternatively, we would have no objection to the above information and updated Bat Conservation Plan being secured by an appropriate condition attached to any planning permission for this scheme to ensure appropriate avoidance and mitigation measures. Provided those measures are implemented, we do not consider that the proposed development is likely to be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in its natural range.

Barn Owl

We note that the ecological report (Cutts, R. (2023). Brymbo Heritage Area: Machine Shop, Pattern Shop and Foundry Area. Preliminary Roost Assessment, Emergence Surveys and Bird Survey. Enfys Ecology. Reference No EE.672b.LB) identified evidence of barn owls (*Tyto alba*) within the application site. Barn owls are listed on Schedule 1 of the Wildlife and Countryside Act 1981 (as amended); the birds, their nests, eggs and young are fully protected at all times throughout the UK. It is also an offence to intentionally or recklessly disturb barn owls at an active nest site with eggs or young or before eggs are laid, or to disturb the dependent young.

Section 8.2.2 of the report confirms nesting barn owls in the wall to the west of the site. Any works within 100m of an active barn owl nest would require appropriate and effective mitigation to be implemented.

We note the submission of a Barn Owl Conservation Plan (Enfys Ecology, May 2024. Conservation Plan for Barn Owls. V1). Although generally we are satisfied with the content of the conservation plan, we have some concerns and advise that you seek further information as advised below.

Barn owls can be sensitive to disturbance at the nest site, particularly early in the nesting cycle. We advise that licenced surveyors should take special care to avoid disturbance during pre-laying through to hatching. We advise that the sensitivities of breeding barn owls are referenced in the Conservation Plan.

Section 4.1.5 of the plan states that temporary fencing will be erected at a distance of 30m from the nest, and in various places (sections 4.2.2; 4.2.7; 5.2; 7.4) it states a buffer of 50m around active nests, and in occupied nest boxes this will be reduced to 30m (section 5.2). However, we advise that a 100m disturbance-free buffer zone around all active barn owl nest sites, including nest boxes, should be applied.

In addition, we advise that the mitigation strategy should outline a protocol in the unlikely event that an active barn owl nest is deserted as a consequence of disturbance.

We would have no objection to the above information and updated Barn Owl Conservation Plan being secured by an appropriate condition attached to any planning permission for this scheme to ensure appropriate avoidance and mitigation measures.

We advise the Applicant that as currently proposed, the works could cause disturbance to barn owl. We advise that as barn owl is listed as a Schedule 1 species in the Wildlife and Countryside Act 1981 (as amended), disturbance to barn owl nests, eggs or dependent young is not permissible unless licenced by NRW through a Schedule 1 disturbance licence.

We note the submission of a Lighting Plan (Enfys Ecology, April 2024. Lighting Plan Review V1) submitted following concerns raised in our previous response (10th of November, 2023). We are satisfied with the content of the Lighting Plan, and therefore advise that the plan is included in the 'approved list of plans / documents' condition within the decision notice should consent for the project be granted.

Great Crested Newts

We note that the ecological report submitted in support of the above application (Cutts, R. (2022). Brymbo Heritage Area: Preliminary Ecological Appraisal. Enfys Ecology. Reference EE/373/LB) has identified that Great Crested Newts (*Triturus cristatus*) have been found within the application site.

Section 6.5.1 of the report confirms the presence of Great Crested Newts (GCN) through bottle trapping/torching surveys. A summary method statement is included within the report and reference is made to a detailed method statement for GCN being submitted within the European Protected Species licence application.

We note that an additional GCN Conservation Plan (Enfys Ecology, April 2024. Conservation Plan for Great Crested Newts. V1) has been submitted to support the application. The plan appropriately considers the advice articulated in our letter dated 10 November 2023, and therefore we consider the GCN Conservation Plan to be satisfactory. We advise that the plan should be included within the approved documents condition, should planning permission be granted.

Great Crested Newts (GCN) and their breeding sites and resting places are protected under the Conservation of Habitats and Species Regulations 2017 (as amended) and Schedule 5 of the Wildlife and Countryside Act 1981. Where GCN are present and a development proposal is likely to contravene the legal protection, they are afforded, the development may only proceed under licence issued by Natural Resources Wales, having satisfied the three requirements set out in the legislation. A licence may only be authorised if:

- i. The development works to be authorised are for the purpose of preserving public health or safety, or for other imperative reasons of overriding public interest, including those of a social or economic nature and beneficial consequences of primary importance for the environment;
- ii. There is no satisfactory alternative; and,
- iii. The action authorised will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in its natural range.

To avoid developments with planning permission subsequently not being granted a licence, the Local Planning Authority should take Planning Policy Wales and Technical Advice Note 5 into account when considering development proposals where a European Protected Species is present.

Please note, for the purposes of providing advice at the planning application stage, our comments are limited to the third test “demonstration of no detriment to the maintenance of the favourable conservation status of European protected species”. We advise that before any consent is given, as informed by the provisions of Regulation 9 of the Conservation of Habitats and Species Regulations 2017 (as amended) the LPA satisfy itself as to whether the scheme satisfies the other two tests, namely a relevant Habitats Regulations purpose and whether there is no satisfactory alternative to the proposal.

Contaminated Land

We have reviewed the following submitted reports relating to the ground conditions within the development site:

- Brymbo Steelworks Heritage Area: Land Contamination Review for Brymbo Heritage Trust. Smith Grant LLP, Report Reference number: R2762-R01-v2-Final, November 2019.
- Drainage Strategy – Proposed Development of Brymbo Heritage Project. Bingham Rawlings Partnership, Document Ref: 4866-BRP-XX-XX-RP-C-0001, August 2023.

We note that there is a low risk to controlled waters with no remedial actions proposed.

However, due to the previous use of the application site, we advise that the following condition regarding unsuspected contamination should be included within any permission granted for this application.

Condition 1: If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the Local Planning Authority) shall be carried out until a remediation strategy detailing how this unsuspected contamination shall be dealt with has been submitted to and approved in writing by the Local Planning Authority. The remediation strategy shall be carried out as approved.

Justification: To ensure the risks associated with previously unsuspected contamination at the site are dealt with through a remediation strategy, to minimise the risk to both future users of the land and neighbouring land, and to ensure that the development can be carried out safely without unacceptable risks.

Drainage

We note that the site is located within an area serviced by a mains sewer network – we therefore understand that a connection to mains sewer would be sought for foul water disposal. We would wish to be reconsulted if this is not the case.

The drainage strategy states that infiltration to ground (SuDS) methods are not viable due to the presence of historical contamination around the site from the last 200 years and therefore all drainage features would be lined with impermeable material to prevent surface water runoff entering the ground. Provided this is adhered to we have no further comment on site drainage from a land contamination perspective.

The SuDS Approval Body (SAB) within the Lead Local Flood Authority (as cited in the Flood and Water Management Act 2010) is the appropriate body to provide advice on the management of surface water drainage from new developments.

We also have the following advice for the Applicant:

The treatment and disposal of contaminated soils and groundwater is regulated by waste legislation and requires an environmental permit. Environmental permits from NRW may be required (during construction and operation) and we recommend early consultation with the relevant NRW permitting teams to ensure all permits are in place prior to commencement of development.

Excavated materials that are recovered via a treatment operation can be re-used on-site under the [CL:AIRE Definition of Waste: Development Industry Code of Practice](#). This voluntary Code of Practice provides a framework for determining whether or not excavated material arising from site during remediation and/or land development works are waste.

Developers should ensure that all contaminated materials are adequately characterised both chemically and physically, and that the permitting status of any proposed on-site operations are clear. If in doubt, NRW should be contacted for advice at an early stage.

Protected Sites

Special Area of Conservation (SAC)

We note the application site is within the catchment of the River Dee and Bala Lake Special Area of Conservation (SAC). As you are aware, on the 21st January 2021, we published an evidence package outlining phosphorus levels for all river SACs across Wales. In line with

our [Planning Advice](#) (August 2023), under the Habitats Regulations, Planning Authorities must consider the phosphorus impact of proposed developments on water quality within SAC river catchments. We therefore advise you to consider whether the proposals, as submitted, would increase the volume of foul discharge from the site in planning terms.

This application for extensions to provide visitor facilities proposes connection of foul water to the mains sewer. We note the consultation response letter from DC/WW dated the 19th of February, 2024. If your Authority deems that the proposal would increase the volume of foul discharge from the site, we advise that further confirmation is sought from DC/WW with regards to the bullet point relating to hydraulic capacity set out in the section 'What this means for development proposals involving connection to public wastewater treatment works?' of our Planning Advice: [Natural Resources Wales / Advice to planning authorities for planning applications affecting phosphorus sensitive river Special Areas of Conservation](#).

Your Authority will need to take the above into account in your determination of whether the development is likely to have a significant effect on the SAC. Should you determine that an Appropriate Assessment is required, the Applicant will then need to submit whatever evidence they deem appropriate (seeking advice from consultants as may be necessary) to demonstrate no adverse effect on site integrity. You should then consult us on your Appropriate Assessment under Regulation 63 of the Conservation of Habitats and Species Regulations 2017 (as amended).

Ultimately, the suitability of foul drainage arrangements for the proposed development is a matter for your Authority to determine.

Site of Special Scientific Interest (SSSI)

We have considered the ecology report (Cutts, R. (2022). Brymbo Heritage Area: Preliminary Ecological Appraisal. Enfys Ecology. Reference EE/373/LB) submitted in support of the above application. Based on the information submitted, we consider that the proposed development is not likely to damage the features for which Coedwig Ffossil Brymbo Fossil Forest SSSI is of special interest.

Other Matters

Our comments above only relate specifically to matters included on our checklist, *Development Planning Advisory Service: Consultation Topics* (September 2018), which is published on our [website](#). We have not considered potential effects on other matters and do not rule out the potential for the proposed development to affect other interests.

We advise the applicant that, in addition to planning permission, it is their responsibility to ensure they secure all other permits/consents/licences relevant to their development. Please refer to our [website](#) for further details.

If you have any queries on the above, please do not hesitate to contact us.

Yn gywir / Yours faithfully,

Garmon Lewis

Cynghorydd - Cynllunio Datblygu/Advisor - Development Planning
Cyfoeth Naturiol Cymru/Natural Resources Wales

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Croesewir gohebiaeth yn Gymraeg a byddwn yn ymateb yn Gymraeg, heb i hynny arwain at oedi./Correspondence in Welsh is welcomed, and we will respond in Welsh without it leading to a delay.