

Ein cyf/Our ref: CAS-246153-K4W2
Eich cyf/Your ref: P/2023/0876

Wrexham County Borough Council
The Guildhall
Wrexham
LL11 1AY

Dyddiad/Date: 02 February 2024

Annwyl Syr/Madam/Dear Sir/Madam,

BWRIAD/PROPOSAL: Tynnu rhan o'r cored a gwaith cysylltiedig / Partial removal of weir and associated works

LLEOLIAD/LOCATION: Erbistock Weir, Erbistock, Wrexham, LL13 0DR

Thank you for consulting Cyfoeth Naturiol Cymru (CNC)/Natural Resources Wales (NRW) about the above, which we received on 05 January 2024.

We have concerns with the application as submitted. However, we are satisfied that these concerns can be overcome by attaching the following condition to any planning permission granted:

Condition 1: Protected Sites

Please note, without the inclusion of this condition we would object to this planning application. Further details are provided below.

Protected Sites

River Dee and Bala Lake Special Area of Conservation (SAC)

The development site is within the River Dee and Bala Lake Special Area of Conservation (SAC). We consider that the proposal is directly connected with or necessary to the management of the SAC and an assessment of likely significant effects or an appropriate assessment under Regulation 63 of The Conservation of Habitats and Species Regulations 2017 (as amended) is not required. However, notwithstanding this we also note the submission of a 'shadow' HRA (Record of a Habitats Regulations Assessment of a project, by NRW, dated 27/06/2019), which explains that a "*conceivable negative impact on some features of the SAC*" has been identified.

From the information provided, we consider that the proposal may affect the SAC, and have identified the following pathways as potential impact pathways to features of the site.

- direct damage/disturbance to site features through in-river use of machinery;
- pollution;
- introduction of invasive non-native species;
- disruption to migratory fish spawning and migration.

The 'shadow' HRA also includes avoidance and mitigation measures to address the above impact pathways. We also note that the submitted method statement (Erbistock Weir Partial Removal Outline Method Statement, by AECOM, undated) explains that a site Operational Management Plan is to be developed by the contractor. Therefore, to secure appropriate mitigation measures as outlined in the 'shadow' HRA, we advise that the condition set out below should be attached to any planning permission for this development.

Condition 1: No development or phase of development shall commence until a Construction Environmental Management Plan (CEMP) has been submitted to and approved in writing by the Local Planning Authority. The CEMP should include:

- Construction methods: details of materials, how waste generated will be managed;
- General Site Management: details of the construction programme including timetable, details of site clearance; details of site construction drainage, containment areas, appropriately sized buffer zones between storage areas (of spoil, oils, fuels, concrete mixing and washing areas) and any watercourse or surface drain.
- Management of sediment/silt release and run off.
- Biodiversity Management: details of tree and hedgerow protection; invasive species management; species and habitats protection, avoidance and mitigation measures.
- Details of timing of in-channel works to avoid migratory fish embargo dates in line with the 'Salmon and Freshwater Fisheries act 1975' section 2 (4).
- Soil Management: details of topsoil strip, storage and amelioration for re-use.
- CEMP Masterplan: details of the extent and phasing of development; location of landscape and environmental resources; design proposals and objectives for integration and mitigation measures.
- Control of Nuisances: details of restrictions to be applied during construction including timing, duration and frequency of works; details of dust control measures; measures to control light spill and the conservation of dark skies.
- Resource Management: details of fuel and chemical storage and containment; details of waste generation and its management; details of water consumption, wastewater and energy use.
- Traffic Management: details of site deliveries, plant on site, wheel wash facilities.
- Pollution Prevention: demonstrate how relevant Guidelines for Pollution Prevention and best practice will be implemented, including details of emergency spill procedures and incident response plan.
- Details of the persons and bodies responsible for activities associated with the CEMP and emergency contact details.
- Ecological clerk of works to ensure construction compliance with approved plans and environmental regulations.
- Details and associated plans concerning otter reasonable avoidance and mitigation measures (prior to and throughout the duration of any work);
- Details of measures to prevent the accidental capture/killing of otter.
- Details of Pre-commencement surveys for trees T37 and T38 prior to any felling works taking place, to ensure the potential presence of bats is confirmed prior to

construction and where necessary remedial measures are implemented for their protection.

The CEMP shall be implemented as approved during the site preparation and construction phases of the development.

Justification: A CEMP should be submitted to ensure necessary management measures are agreed prior to commencement of development and implemented for the protection of the environment during construction.

Protected Species

Bats and Otter and their breeding and resting places are protected under the Conservation of Habitats and Species Regulations 2017 (as amended). Where European protected species 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”*.

Bats

We note that the ecological report submitted in support of the above application (Life Dee River Restoration of Freshwater Features: Erbistock Weir, Overton – Preliminary Ecological Survey, by AECOM, dated 16/10/2020) (PEA) has identified that bats may be present at the application site.

We also note that the arboricultural report submitted in support of the application (Pre-development Arboricultural Report (revision 2) by Mynydd Timber Services Limited, dated 25/03/2023) recommends that trees T37 and T38 are removed. We therefore advise that details of any pre-commencement surveys and any mitigation measures that may be required should be included within the CEMP, see above suggested condition. This is to ensure the potential presence of bats is confirmed prior to construction and where necessary remedial measures are implemented for their protection.

Otter

We note that the PEA submitted in support of the application states: *“Areas of suitable otter habitat are to be impacted by the Scheme in terms of access to the right bank, vegetation clearance and coppicing, and the drawdown reach upstream of the weir could potentially disturb otter and reduce habitat availability in the short term.”*

Provided that the avoidance/mitigation measures outlined in the suggested CEMP condition above 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.

NRW would refer the Local Authority to the Chief Planning Officer's letter dated 01 March 2018 which advises Local Planning Authorities to attach an informative regarding licence

requirements to all consents and notices where European Protected Species are likely to be present on site.

Great crested newt, Water Vole, White-clawed crayfish, Red Squirrel

We concur with the submitted assessment and conclusions of the PEA with regard to these protected species and have no further comments to make regarding them.

Flood Risk

The planning application proposes less vulnerable development (partial removal of a weir). Our Flood Risk Map confirms the site to be within Zone C2 of the Development Advice Maps (DAM) contained in Technical Advice Note (TAN) 15: Development and Flood Risk (2004). The Flood Map for Planning identifies the application site to be at risk of flooding and falls into Flood Zones 2 and 3 (Rivers).

Given the nature of the proposed development (and in the absence of a flood consequences assessment) we consider the proposals could be acceptable, subject to the works contractor being made aware of the potential flood risks and advised to install flood resistance/resilience measures for the temporary construction site.

Flood Risk Activity Permit

The proposed development is within the River Dee, a designated main river. We note that a Flood Risk Activity Permit (FRAP) was granted for the partial removal of the weir in August 2023 under the terms of the Environmental Permitting (England & Wales) Regulations 2016.

We advise that a FRAP will also be required for the temporary site works. We refer the Applicant to our [website](#) for further advice.

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,

Chris Jones

Uwch Gynghorydd - Cynllunio Datblygu/Senior Advisor - Development Planning
Cyfoeth Naturiol Cymru/Natural Resources Wales

E-bost/E-mail: northplanning@cyfoethnaturiolcymru.gov.uk

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.