

Ein cyf/Our ref: CAS-264451-C1C4
Eich cyf/Your ref: P/2024/0247

Wrexham County Borough Council
The Guildhall
Wrexham
LL11 1AY

Dyddiad/Date: 02 October 2024

Annwyl Syr/Madam/Dear Sir/Madam,

BWRIAD/PROPOSAL: Estyn adeilad storio oer, addasur parcio ar tirlunio / extension of cold storage building, alterations to parking and landscaping.

LLEOLIAD/LOCATION: Norish Food Care, Ash Road South, Wrexham Industrial Estate, Wrexham, LL13 9UG

Thank you for consulting Cyfoeth Naturiol Cymru (CNC)/Natural Resources Wales (NRW) about the additional information regarding the above, which we received on 16 September 2024.

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

- **Condition 1: Protected Species**
- **Condition 2: Land Contamination**

We also advise that the document identified below should be included in the approved plans and documents condition on the decision notice.

- **Preliminary Ecological Appraisal, February 2024, Ref. JM1124, Version 2, Just Mammals Ltd**

Without the inclusion of these conditions and this document we would object to this planning application. We also advise that further consideration is required regarding foul drainage. Further details are provided below.

Protected Species

We have reviewed the following information which has been submitted in support of the application:

- **Just Mammals Limited Ecological Consultancy, February 2024, Preliminary Ecological Appraisal, Ref: JM1124, Version 2**

- Dennis, B. (2024). Norish Limited, Wrexham Industrial Estate: Great Crested Newt Survey Report . Tetra Tech. (Unpublished Report No 784-B067397)
- Dennis, B. (2024). Norish Limited, Wrexham Industrial Estate: Biodiversity Mitigation Strategy. Tetra Tech. (Unpublished Report No 784-B067397)
- Email from Tetra Tech dated 13/09/2024 in response to our original letter dated 05/09/2024

Our updated advice regarding protected species is detailed below.

We acknowledge the points raised in the Tetra Tech email, dated 13/09/24, and have provided a detailed response to each of these in Annex 1 (included at the end of this letter). In summary, we continue to advise that the mitigation area should accord with the extents of the proposed development and should be on a 'like for like' basis. We also advise that the proposed 10-year management plan and associated 3 monitoring years are insufficient to provide long-term site management and ensure favourable conservation status. We note the response in relation to the transfer of freehold tenure and have amended our advice accordingly.

Great Crested Newts (GCN)

The ecological report (Just Mammals, February 2024) submitted in support of the application identified GCN to be material to the application site. Section 10.3 of the report recommended further survey to be carried out. We note submission of the additional information as listed above.

Wrexham Industrial Estate supports a nationally important population of Great Crested Newts.

The proposal has the potential to kill, injure and disturb GCN, or damage or destroy their breeding sites and resting places. 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 Protected Species is present.

Please note, for the purposes of providing advice at the planning application stage, our comments are limited to compliance with 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.

Whilst we consider that the above survey report provides an adequate basis upon which to consider the potential impacts of the scheme on this species, we advise that the current management plan (Dennis, B. (2024). Norish Limited, Wrexham Industrial Estate: Biodiversity Mitigation Strategy. Tetra Tech.) is unsatisfactory in respect of:

- a) Habitat creation/enhancement to offset habitat loss (the extents should accord with the extent of the proposed development).
- b) Biosecurity measures.
- c) Long-term monitoring. Owing to the importance of the Wrexham Industrial Estate for GCN we advise that surveys should be completed annually. Future conservation management will require subsequent licensing.

The further information could be provided via a suitably worded condition, included on the decision notice. We therefore advise that the submitted proposals could demonstrate that they are not likely to be detrimental to the maintenance of the favourable conservation status of GCN, provided any subsequent consent is subject to the provisions of a planning condition and planning obligation as noted below.

Condition: No development or phase of development, including site clearance shall commence until a Great Crested Newt Conservation Plan has been submitted to and approved in writing by the Local Planning Authority. The Conservation Plan shall build upon the principles outlined in the submitted ecological reports (Dennis, B. 2024. Norish Limited, Wrexham Industrial Estate: Biodiversity Mitigation Strategy. Tetra Tech. and Dennis, B. 2024. Norish Limited, Wrexham Industrial Estate: Great Crested Newt Survey Report. Tetra Tech. Report No 784-B067397) and include, but not necessarily be limited to:

- a) The submission (to include proposed timescales and reporting requirements) of further details and associated plans concerning GCN avoidance and mitigation measures including, but not limited to:
 - fence specifications, locations, construction and maintenance.
 - monitoring and maintenance requirements and supervised removal.
- b) The submission of habitat creation and enhancement proposals.
- c) The submission of a long-term site management plan (not less than 25 years) that includes:
 - Details of habitats and ecological features present or to be created, both in written form and shown on appropriate drawings, including planting plans
 - Defined aims and objectives (including defined key performance indicators for long term monitoring indicators)
 - Details of the desired condition for each habitat and criteria to determine when habitats have achieved this
 - Details of short and long-term habitat management prescriptions to both achieve and maintain the desired condition
 - Details of monitoring methodologies for habitat(s) and species
 - Details of scheduling and timings of activities
 - Contingency measures if fish or invasive non-native species (INNS) are detected

- Current and any proposed changes to the freehold tenure of the compensation area (tenure of the ecology to be approved by the Local Planning Authority).
 - Persons or bodies responsible for undertaking management and surveillance together with required skills and competencies
 - Site liaison and wardening
 - Licensing requirements
 - Biosecurity measures which consider invasive non-native species and specific diseases (e.g. Chytrid) to prevent the introduction and where present control, removal or the long term management of invasive species both during construction and operation.
 - Details of reporting, review and update of the plan (informed by monitoring) at specific intervals as agreed.
- d) The submission of detailed measures including plans designed to prevent the accidental capture/killing of GCN during operational phases of the scheme (including the installation and maintenance of an amphibian-friendly surface water management system that does not include gully pots or other similar features).
- e) Details of timing, phasing and duration of construction activities and conservation measures
- f) Post-construction monitoring and record dissemination for a period of not less than 25 years. Methodology shall include annual GCN abundance counts and Habitat Suitability Index (HSI) assessments. All ponds (including SuDS water bodies) to be added to the Wales GCN Monitoring Scheme, with individuals/bodies being identified as being responsible for monitoring and reporting works

The Conservation Plan shall be carried out in accordance with the approved details.

Justification: To ensure that GCN are protected by the development.

Planning Obligation: We consider that a Planning Obligation (Unilateral Undertaking) will be required. We advise that in respect of any such undertaking, provisions relating to ecology should include:

- Long term funding proposals
- Identification of relevant land to be subject to the planning obligation and managed for biodiversity
- Delivery of management
- Regular liaison meetings
- Management plan review (every 5 years is advised)
- Any proposed changes to tenure shall be carried out to the satisfaction of the LPA in consultation with NRW

We would welcome the transfer of freehold ownership of the defined Ecology Area to a body that accords with the definition of “responsible” under Part 7 of the Environment Act 2021 [e.g., an appropriate body that is approved by the Local Planning Authority] before occupation of the unit.

We also advise that the works are carried out under licence. We refer you to the Chief Planning Officer’s letter dated 1 March 2018 which advises Local Planning Authorities to attach an informative regarding licence requirements to all consents and notices where Protected Species are likely to be present on site.

Please note that any changes to proposals between planning consent and the licence application may affect the outcome of a licence application.

Bats

We note the ecological report identifies that neither the buildings or trees onsite have potential to support roosting bats, no evidence of roosting bats was identified and no further survey is advised. We are satisfied with the findings and have no further comment to make regarding bats.

Otter

The ecology report states there to be no evidence of otter onsite. However, the presence of waterbodies and wet ditches on and within close proximity to the site indicate the potential use of the site by otters for feeding and commuting. We note the precautionary measures outlined in section 10.4 of the report and advise that these should be secured as part of any planning permission granted for this proposal.

Land Contamination

We note the submission of an updated Combined Phase 1 and Phase 2 Ground Investigation Report (June 2024, Reference 23284-JCE-XX-XX-RP-GCA-001 P2, Jubb Consulting Engineers Ltd) and are in broad agreement with the conclusions.

We also advise that the following condition should be attached to any permission granted by your authority for the above application:

Condition: 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.

Protected Sites and Foul Drainage

We note the application site is within the catchment of the River Dee and Bala Lake Special Area of Conservation (SAC). In line with our [*Advice to Planning Authorities for Planning Applications Affecting Nutrient Sensitive River Special Areas of Conservation \(28 June 2024\)*](#), under the Habitats Regulations, Planning Authorities must consider the impact of proposed developments on water quality within SAC river catchments.

This application for the extension of an existing cold storage facility building and associated works proposes connection of foul water to the mains sewer. Ultimately, the suitability of foul drainage arrangements for the proposed development is a matter for your Authority to determine. However, we are satisfied that our concerns can be overcome by your Authority

following our [Advice](#) specifically the section titled '*What does this mean for development proposals involving connection to public wastewater treatment works?*'

We therefore advise you 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.

Flood Risk

The application proposes less vulnerable development (extension of existing cold storage facility building and all associated works). Our Flood Risk Map confirms that a small area to the west of the site is within Zone C2 of the Development Advice Map (DAM) contained in Technical Advice Note (TAN) 15: Development and Flood Risk (2004). The Flood Map for Planning identifies the access to the application site to be at risk of flooding and falls into Flood Zone 2 (Rivers).

At this location the Flood Map for Planning (FMfP) is the best available information on flood risk. The FMfP identifies that the proposed building within the application site is located in Flood Zone 1, meaning there is less than a 0.1% chance of flooding in a given year.

We have reviewed the submitted information and understand there will be nominal work to the access/car parking arrangements. The updated Flood Risk Technical Note (Reference 23284, TN01-P03, Jubb Consulting Engineers Ltd) confirms that the service road is to be as close to the existing ground levels as possible and would not compromise the flood storage of the Redwither Brook.

Based on the above, we would have no objection to the proposed development on flood risk grounds.

Access to Flood Risk Management Assets

NRW carries out routine flood risk management maintenance along the Redwither Brook, a Main River adjacent to the proposed development site. Our access route spans from the crest of the watercourse to the existing site boundary fence, along the entire length of the site boundary.

On the basis that the proposed changes are confined to within the existing boundary fence, except for the altered site access, and that no works are planned between the boundary fence and the watercourse we have no concerns in relation to our access to the Redwither Brook.

Flood Risk Activity Permit

Please note that the Environmental Permitting Regulations (2016) require a bespoke Flood Risk Activity Permit to be obtained for any works or structures located in, under, over or within 8 metres of the bank top of the Redwither Brook, a designated "main river". Further advice and guidance is available on our website:

<http://www.naturalresources.wales/permits-and-permissions/flood-risk-activities/flood-risk-activity-permits-information/?lang=en>

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,

Rachael Burke

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.

Annex 1

Protected Species

Further to the email received from Tetra Tech (dated 13/09/24), please see our full response to each point raised below.

NRW comments (reference CAS-262991-N8C4, dated 05/09/24)	Response on behalf of applicant (email dated 13/09/24)	NRW Response
1) Habitat creation/enhancement to offset habitat loss. We advise that proposals include the construction of an additional water feature	Given the loss of terrestrial habitat due to the proposed development, it is suggested that the current waterbodies 1A and 1B, are restored and reprofiled to create two distinct waterbodies, which would increase the net number of ponds on site. This would avoid additional loss of terrestrial habitats i.e. woodland/ grassland habitats and provide enhancements to features already present. The waterbodies would be designed, reshaped and reprofiled in accordance with the Amphibian Habitat Management Handbook from Amphibian and Reptile Conservation (Baker et al., 2011).	NRW welcomes the principle of the submitted ecology scheme regarding waterbodies 1A and 1B. In terms of total habitat creation/enhancement area, we advise that the area should accord with the extent of the proposed development. Consequently, we advise the inclusion of a losses and gains table to evidence “like for like” provision in accordance with Section 6.7 of the Supplementary Planning Guidance (Local Planning Guidance Note 29: Employment Development and Nature Conservation April 2009) published by Wrexham County Borough Council.

2) The submission of a long-term site management plan (not less than 25 years)	The applicant would be happy to commit to a management plan of 10 years, given the low population recorded and the low impacts predicted, 25 years is disproportionate in terms of duration and finance.	Please note Section 6.4.36 of Planning Policy Wales (Edition 12) and its relevance to the planning decision process, including derogation criteria. This includes the requirement to demonstrate that the proposal will not be detrimental to the maintenance of the favourable conservation status of the species concerned in its natural range. Please note the differentiation between Current Conservation Status (CCS) and Favourable Conservation Status (FCS). We consider the GCN population present within and in the environs of Wrexham Industrial Estate to be of national importance but “unfavourable” in terms of conservation status. Our advice aims to ensure that the proposal is capable of demonstrating no detriment to a favourable population. The definition of conservation status requires consideration over multiple generations of GCN. Given the longevity of the species (12-15 years), we do not consider the 25 year duration to be disproportionate in this instance. For reference, all EPS licences granted with dedicated compensation areas include requirements for long-term management and surveillance for at least 25 years. These include sites with “small” GCN populations.
Transfer freehold ownership of the defined Ecology Area to a body that accords with the definition of responsible under Part 7 of the Environment Act 2021	Respectfully, the applicant is not agreeable to the transfer of freehold ownership of the Ecology Area. Subject to an appropriately worded planning condition(s) it is not considered to meet the relevant tests insofar as it is not necessary (to make the development acceptable) nor fairly and reasonably related in scale and kind (WG Development Management Manual (pp	We acknowledge submissions by the applicant and have removed our advice regarding the transfer of freehold ownership. Please note, research has highlighted significant failure rates of GCN mitigation schemes following development (Lewis, B., Griffiths, R/A., Wilkinson, J.W. and Arnell, A. (2016) Examining the Fate of Local Great

10.3.8). Indeed, this reflects the legal tests (s.122 of CIL Regs 2010) which have primacy over policy. It is a matter of law that anything required in a s106 must be necessary and fairly related in scale and kind.

A land transfer is unduly onerous, costly and entirely avoidable.

The Development Management Manual (Wales) is clear that:

*“Local planning authorities should seek to overcome planning objections, where appropriate, or secure mitigation by condition rather than by a planning obligation. Legal agreements can take considerable time to draw up and it is important to avoid burdening applicants with unnecessary costs and delay. Also, the imposition of restrictions through a planning obligation limits the ability of developers to seek to have restrictions varied or removed by an application or appeal. Further, **conditions can be enforced using a breach of condition notice and this is likely to offer a simpler and less costly way to remedy a breach than recourse to the Courts for breach of an agreement.** Matters required by condition should not be duplicated in a planning obligation.” (para 4.21).*

The appropriate planning condition coupled with the relevant environmental license requirements

Crested Newt Populations Following Development, Durrell Institute of Conservation Ecology/Amphibian and Reptile Conservation. (Report to Defra))

One of the conclusions of the report states that commitments to long-term monitoring and management need to be strengthened in order to maintain favourable conservation status.

In respect of the private sector, our experience is that significantly more public sector resources are required to ensure the appropriate and compliant implementation of long term GCN conservation measures and for the purposes of maintaining or restoring GCN populations to their favourable conservation status. If subject to public sector regulation alone, given limited public sector resources, alternative proposals such as bonds may be required to ensure the appropriate implementation of management and monitoring. In respect of bonds, these would need to be determined by full cost recovery.

To ensure the site is appropriately managed, we would therefore welcome in this instance a body that accords with the definition of “responsible” under Part 7 of the Environment Act (2021) being granted either a long-term lease, licence or long-term management agreement.

	are precise, unambiguous and enforceable and provide two tiers of control and recourse to safeguard the protection and ongoing management of the habitat. The applicant is mindful of the ecological sensitivity of the site and the clear need to balance habitat protection without prejudicing the future commercial operations of the site, which is an important local employer appropriately located at a protected Industrial Estate employment site (under LDP Policy EM1). The applicant also wanted to confirm the extent of the "defined Ecology Area", please see attached figure.	
Post-construction monitoring and record dissemination for a period of not less than 25 years. Methodology shall include annual GCN abundance counts and Habitat Suitability Index (HSI) assessments. All ponds (including SuDS water bodies) to be added to the Wales GCN Monitoring Scheme, with individuals/bodies being identified as being responsible for monitoring and reporting works	The applicant would be comfortable with 3 monitoring years i.e. years 2, 6 and 10 post construction, based on the predicted low-level impact of the proposed development and no net loss of water bodies on site. Could you also please provide clarification on the methodology used for the annual abundance counts.	We note the inclusion of the Mitigation and Enhancement Area (Figure 3, Revision A dated 13/09/2024) and advise that the extents should accord with the extent of the proposed development. We consider this monitoring proposal to be unsatisfactory for the purposes of informing the demonstration of no detriment to the maintenance of the favourable conservation status of the local population of GCN. As highlighted above, the definition of Favourable Conservation Status requires consideration over multiple generations. Considering a GCN life span of 12-15 years, we consider 25 years to be proportionate in terms of monitoring duration. Long-term surveillance is required for informing both the CCS of a population and the detail of management works. Given the nature of the proposals, we would have no objection to biennial surveys based on 2-3 torch counts

		with results uploaded into the Wales GCN Monitoring Scheme. However, in the event of fish or invasive non-native species being recorded, we would advise that surveys are then carried out annually.
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