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## Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 08/03/21

gan Richard Duggan, BSc (Hons)  
DipTP MRTPI

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 12/4/21

## Appeal Decision

Site visit made on 08/03/21

by Richard Duggan, BSc (Hons) DipTP  
MRTPI

an Inspector appointed by the Welsh Ministers

Date: 12<sup>th</sup> April 2021

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**Appeal Ref: APP/H6955/A/20/3262794**

**Site address: Caretaker House, Lane from Bangor Road to Middle Sontley Road,  
Hafod, Ruabon, LL14 6HF**

**The Welsh Ministers have transferred the authority to decide this appeal to me as the appointed Inspector.**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant consent, agreement or approval to details required by a condition of a planning permission.
  - The appeal is made by Ms Nicola Selvey against the decision of Wrexham County Borough Council.
  - The application Ref: P/2020/0287 dated 19 May 2020, sought approval of details pursuant to conditions Nos. 3, 6 and 7 of a planning permission Ref: P/2019/0898 granted on 9 April 2020.
  - The application was refused by notice dated 7 October 2020.
  - The development proposed is the erection of Stables block including equine solarium and wash box and construction of 40m x 20m riding area illuminated with 4 No. flood lights.
  - The details for which approval is sought are: Discharge of condition 3 (Lighting); condition 6 (Newt Conservation); condition 7 (Landscaping) the wording of which are included in the schedule attached to this decision.
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### Decision

1. The appeal is dismissed, and approval is refused insofar as the details submitted pursuant to condition 6 attached to planning permission P/2019/0898 granted on 09 April 2020. The appeal is allowed insofar as the details submitted pursuant to conditions 3 and 7 attached to planning permission P/2019/0898 granted on 9 April 2020, in accordance with the application Ref: P/2020/0287 dated 19 May 2020, and the information submitted with it are approved.

### Main Issue

2. The main issue in this case is whether the details submitted with the application are acceptable and sufficient to discharge conditions 3, 6 and 7.

### Reasons

#### *Condition 3*

3. Natural Resources Wales (NRW) has not objected to the proposed lighting details for the proposed development, and the Council has confirmed that the details are acceptable to discharge the condition, subject to the lighting being 'bat friendly'
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lighting'. I have not been presented with any evidence to indicate that the details submitted with the application are unacceptable to any other interested parties, including statutory consultees, and I find no reason to reach a different conclusion on this matter.

#### *Condition 6*

4. The appeal site lies on the edge of Johnstown Newt Site Special Area of Conservation (SAC) and Stryt Las a'r Hafod Site of Special Scientific Interest (SSSI) in an area with a high likelihood of encountering Great Crested Newt (GCN) associated with the SAC and neighbouring meta-populations. As the proposed development site is within the range of water bodies known to support amphibian species, NRW advised that the development is predicted to result in the loss of potential terrestrial habitats that may be used for migration, dispersal or genetic exchange purposes. Therefore, the Council attached Condition 6 requiring the submission of a Great Crested Newt Conservation Plan to be agreed by the Local Planning Authority (LPA) before works commence and the condition listed a number of specific details that were required to be part of the Conservation Plan.
5. The Appellant has submitted a Site Development and GCN Conservation Plan<sup>1</sup> which seeks to address the items listed within condition 6 and which draws upon the information contained within the Habitat Suitability Index (HSI) Reports<sup>2</sup> that supported the original planning application for the development of the site (Ref: P/2019/0898). I will deal with each of the details listed within condition 6 below.

#### ***Submission of details concerning amphibian avoidance measures during the construction phase of the proposal***

6. This is dealt with in Section 2 of the Site Development and GCN Conservation Plan as well as the Appellant's HSI Report. The measures being put forward include, amongst other things, a laminated copy of the HSI report prepared by Pearce Environment Ltd. and the Site Development and GCN Conservation Plan shall be kept on site during the works, with all operatives attending the site made aware of these and their content; if any building material has to be stored on the site it must be raised from the ground on pallets, trailers or the like; all vehicles and machinery must remain within the concrete hard standing and gravelled area to the north of the site when not in use.
7. I consider that the measures put forward would adequately protect amphibians during the construction phase of the development and satisfies the requirements of this part of the condition.

#### ***Submission of further details including location plans of habitats to be retained created and/or enhanced specifically for amphibians. Details shall be provided in respect of timescales for implementing habitat schemes***

8. I note that the proposed Site Plan includes a small section of proposed hedgerow along one side of the proposed stable block; part of the pond identified as WB1 which lies under the Appellants control will be enhanced by tree thinning and fenced off; and the grassland immediately bordering the pond is to be maintained by annual cutting. However, very little additional information has been provided to support these measures, such as anticipated timescales for the work or information to reinforce the

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<sup>1</sup> Site Development and GCN Conservation Plan prepared by DMS Architectural Services, dated May 2020

<sup>2</sup> Habitat Suitability Index (HSI) Reports Ref 251119.HSI (Version 002 and Version 004) (December 2019) prepared by Pearce Environment

number of suggested enhancement measures set out within Section 4.2 (page 28) of the Appellant's HSI Report<sup>3</sup>.

9. The level of information provided does not, therefore, satisfy the requirements of this part of the condition.

***Submission of a long-term management plan for the amphibian habitats, details to include management prescriptions, person responsible for undertaking habitat management works, licensing requirements, monitoring and reporting of management actions***

10. Section 5.2 'Reasonable Avoidance Measures (RAMs)' of the Appellant's HSI Report recommends a number of sensitive working methodologies to ensure impacts upon GCN (and other species of amphibian) are avoided during the period of the proposed work. Section 4.2 of the Appellant's HSI Report also states under the 'Mitigation/Avoidance' section that regular (monthly) monitoring visits by an Ecological Clerk of Works (ECW) are required to ensure all RAM's are being adhered to; a compliance report should be submitted to the LPA once works are complete in order to demonstrate this; and in the event GCN are discovered at any time during the development, works will immediately halt and Pearce Environment Ltd. will be contacted for advice.
11. Although Section 2 of the Site Development and GCN Conservation Plan provides some details of the RAMs, no further information has been provided in relation to the sensitive working methodologies referred to above or the long-term management of the habitat. The long-term management plan should include details of proposed monitoring, surveillance and reporting which will inform site management, as well as informing whether licences may also be required for the purposes of undertaking future habitat management.
12. The information provided with this appeal does not, therefore, satisfy the requirements of this part of the condition.

***Details of timing, phasing and duration of construction activities and conservation measures;***

***Timetable for implementation demonstrating that works are aligned with the proposed phasing of the development;***

***Ecological Compliance Audit, including key performance indicators***

13. I fully appreciate that a detailed timetable for the development cannot be confirmed before contracts are agreed for constructing the development. Nevertheless, it would be reasonable to expect that a draft timetable could be prepared by the Appellant in association with professional advice setting out the anticipated timescales for the phasing and duration of construction activities on the site; the anticipated timings for the RAMs; and the sensitive working methodologies could be worked into the draft timetable. This would aid in setting out the compliance audit and key performance indicators, all of which would assist the long-term monitoring and management of the site and habitat.
14. Whilst I have noted the information put forward within the Site Development and GCN Conservation Plan, the detail provided does not go far enough to satisfy the requirements of the condition.

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<sup>3</sup> Habitat Suitability Index (HSI) Report Ref 251119.HSI (Version 004) (December 2019) prepared by Pearce Environment

***Persons responsible for implementing the works; Biosecurity Risk Assessment***

15. NRW has confirmed that it has no objection to the submitted Biosecurity protocol under Section 6 of the Site Development and GCN Conservation Plan, and I have no reason to disagree with this assessment.

***Condition 7***

16. The Council has confirmed that the details submitted in relation to Condition 7 are acceptable. I have not been presented with any evidence to indicate that the details submitted with the application are unacceptable to any other interested parties, including statutory consultees, and I find no reason to reach a different conclusion.

**Conclusions**

17. For the reasons that I have set out above, I conclude that the details submitted with the application are acceptable to discharge conditions 3 and 7, but those details submitted pursuant to Condition 6 are unacceptable and insufficient to discharge the condition. Therefore, the appeal should be dismissed in part and allowed in part.
18. In reaching my decision, I have taken into account the requirements of sections 3 and 5 of the Well Being of Future Generations (Wales) Act 2015. I consider that this decision is in accordance with the Act's sustainable development principle through its contribution towards the Welsh Ministers' well-being objective of supporting safe, cohesive, resilient, healthier and equal communities.

*Richard Duggan*

INSPECTOR

## **Schedule to Appeal Ref: APP/H6955/A/20/3262794**

### *Condition 3*

Notwithstanding the submitted details, within 3 months of commencement of development a scheme of external lighting including retractable poles, illumination levels and times/days of use shall be submitted to and approved in writing by the Local Planning Authority. The lighting as is approved shall be installed in strict accordance with the scheme prior to first use of the development and shall thereafter be permanently retained in a fully operational condition.

### *Condition 6*

No development shall commence until a site GCN Conservation Plan has been submitted to and approved in writing by the Local Planning Authority. The Conservation Plan should:

- Build upon the principles outlined in the ecological report (reference Molesworth, J. (2020). Habitat Suitability Index (HSI) Report. Pearce Environment Ltd. Unpublished);
- Submission of details concerning amphibian avoidance measures during the construction phase of the proposal;
- Submission of further details including location plans of habitats to be retained created and/or enhanced specifically for amphibians. Details shall be provided in respect of timescales for implementing habitat schemes;
- Submission of a long-term management plan for the amphibian habitats, details to include management prescriptions, person responsible for undertaking habitat management works, licensing requirements, monitoring and reporting of management actions;
- Details of timing, phasing and duration of construction activities and conservation measures;
- Timetable for implementation demonstrating that works are aligned with the proposed phasing of the development;
- Ecological Compliance Audit, including key performance indicators;
- Persons responsible for implementing the works;
- Biosecurity Risk Assessment.

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

### *Condition 7*

Within six months of the first use of the development, trees and shrubs shall be planted on the site in accordance with a scheme which has been submitted to and approved in writing by the Local Planning Authority.