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21/07/2021

Dear Sir/Madam,

**BWRIAD / PROPOSAL: APPLICATION FOR OUTLINE PLANNING PERMISSION (WITH SOME MATTERS RESERVED) TO ERECT A SINGLE DWELLING FOR AN AGRICULTURAL WORKER**

**LLEOLIAD / LOCATION: BLACK ROCK FARM, SESSWICK WAY, CROSS LANES, WREXHAM**

Thank you for consulting Cyfoeth Naturiol Cymru / Natural Resources Wales about the above, which we received on 04/06/2021.

**We 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, including information required to inform each of the derogation licensing tests, and protected sites. If this information is not provided, we would object to this planning application. Further details are provided below.**

### **Protected Species**

We note that the ecology report submitted in support of the above application (report: Grey, R. (2021). Proposed Dwelling: Black Rock Farm, Sesswick Way, Wrexham – Preliminary Ecological Appraisal. Etive Ecology Limited. Unpublished) has identified that great crested newt (GCN) are present at the application site.

GCN and their breeding and resting places are protected under the Conservation of Habitats and Species Regulations 2017 (as amended) and harm or disturbance to them would be a material planning consideration. This is clarified if under the provisions of Technical Advice Note 5: Nature Conservation and Planning (TAN5).

Under the Regulations, development that would be likely to result in disturbance or harm to GCN can nevertheless proceed, provided a licence is granted by Natural Resources Wales. We advise that the proposed development is likely to harm or disturb GCN or their breeding sites and resting places at this site. We therefore advise that it is carried out under licence.

For this to happen, NRW must be satisfied that the proposed development: Preserves public health or public safety or that there are other imperative reasons of overriding public interest including those of a social or economic nature, and beneficial consequences of primary importance for the environment. Furthermore, the licence can only be issued by NRW on condition that there is: no satisfactory alternative, and that the development will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range.

Paragraph 6.3.7 of TAN5 states that your Authority should not grant planning permission without having satisfied itself that the proposed development either would not impact adversely on any GCN on the site or that, in its opinion, all three conditions for the eventual grant of a licence are likely to be satisfied.

In order for NRW to be satisfied that the proposed development is not likely to be detrimental to the maintenance of the favourable conservation status of the local population of GCN:

- (a) extant planning and licence compliance issues must be addressed to the satisfaction of the respective regulators (i.e. WCBC as the relevant LPA and NRW);
- (b) An updated and revised conservation plan is required to be submitted for approval by NRW incorporating alternative long-term proposals. Which shall include but not be limited to:
  - Submission of further details and associated plans concerning GCN avoidance and mitigation measures including, but not limited to: fence design, specifications and locations; considerations of access issues; fence monitoring and maintenance requirements; and supervised removal. Submission to include proposed timescales and reporting requirements;
  - Submission of further details concerning on-site compensatory proposals including plans, extent, access, current and proposed changes to freehold tenure. Details shall identify areas of terrestrial and aquatic habitat to be retained, enhanced and created. Submission to include timescales and reporting requirements;
  - Submission of a long term site management (25 years) that includes defined aims and objectives; habitat management prescriptions; contingency measures if fish or invasive non-native species (INNS) are detected; proposals that are capable of being implemented in the event of failure to undertake or to appropriately undertake identified or contingency actions; site liaison and wardening; licensing requirements for undertaking habitat management and surveillance; current and change of tenure to a body approved by the LPA in consultation with NRW before commencement of development; persons or bodies responsible for undertaking management and surveillance together with required skills and competencies; reporting requirements; and proposed dates for updating or revising the management plan;
  - Details of timing, phasing and duration of construction activities and conservation measures;

- Timetable for implementation demonstrating that works are aligned with the proposed development;
- External Ecological Compliance Audit, including key performance indicators (see below);
- Persons responsible for implementing the works;
- Post construction monitoring and record dissemination for a period of not less than 25 years. All ponds to be added to the [Wales Great Crested Newt Monitoring Scheme](#), with individuals/bodies being identified as being responsible for monitoring and reporting works. Methodology shall include annual [abundance counts and Habitat Suitability Index (HSI) assessments. Each water body shall be individually numbered on site;
- Submission of a biosecurity risk assessment.

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

However, NRW is concerned that there appears to be non-compliance with derogation licence (S086710) in respect of planning permission (P/2019/0127), which is connected with this planning application. Given the non-compliance with derogation licence (S086710) we advise that there may be implications on the likelihood of the grant of a further licence. However, it is a matter for your authority to determine what weight should be given to any planning breach in the planning balance.

We suggest that consideration could be given by your Authority to European Commission guidance in respect of Articles 12-16 guidance in respect of these tests (see: [http://ec.europa.eu/environment/nature/conservation/species/guidance/pdf/guidance\\_en.pdf](http://ec.europa.eu/environment/nature/conservation/species/guidance/pdf/guidance_en.pdf)). This guidance identifies considers all three European protected species derogation tests

Consequently, in addition to the test defined as “*demonstration of no detriment to the maintenance of the favourable conservation status of European protected species*”, we advise that any future consent must consider whether the scheme constitutes a valid Article 16 derogation purpose and whether there is no satisfactory alternative to the proposal.

We have not provided detailed comment on each of these two tests in this specific response, though we note the application site is located outside of the settlement boundary and from the preliminary information that you have provided to us there are potential alternatives in terms of the availability of a dwelling house located within this part of Wrexham.

In summary, based on the information provided by the applicant, we consider the current submission fails to demonstrate no satisfactory alternative.

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.

This advice applies to the proposal in its present form. If the plans are changed in ways that may affect the GCN on this site, you would need a revised ecology report that takes account of such changes. Please consult us again if any updated or revised ecology report

concludes that the proposal is more likely to have an adverse impact on the GCN population and/or alters the detail or implementation of mitigation or compensation measures.

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

### **Foul Drainage and Protected Sites**

We note the application site is within the catchment of the River Dee Special Area of Conservation (SAC). As you are aware, on the 21<sup>st</sup> January 2021, we published an evidence package outlining phosphorus levels for all river SACs across Wales. As part of this package, we issued a [Planning Position Statement](#), in which we advised that any proposed development that might increase the amount of phosphate (or phosphorus) within a river SAC catchment could lead to damaging effects to the SAC. Therefore, such proposals should be screened through a Habitats Regulations Assessment (HRA), to determine whether they are likely to have a significant effect on the SAC. We have also issued [Planning Advice](#) (May 2021) which gives specific advice in respect of foul drainage arrangements for new developments.

We note from the information submitted that the development has the potential to increase the amount of phosphorus being discharged from the site. As such, we refer you to our [Planning Advice](#) and advise you to seek further information from the applicant. We advise you to seek further information as identified in the bullet point list given in the section titled 'What does this mean for development proposals involving private sewage treatment systems' of that advice.

Provided this advice is followed and you are able to conclude that the development is not likely to have a significant effect on the SAC, we would have no objection to the proposal. However, should you conclude that the proposed development is likely to have a significant effect on the SAC, please consult us on your Appropriate Assessment under Regulation 63 of the Conservation of Habitats and Species Regulations 2017 (as amended).

### **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

Siôn M. Williams

Cynghorydd - Cynllunio Datblygu / Advisor - Development Planning

Cyfoeth Naturiol Cymru / Natural Resources Wales