

## Appendix Seven

Response to Arboricultural Comment.

1. My name is Ian Murat. My specialist field is arboriculture. I am a Registered Consultant of the Arboricultural Association. I was instructed by Mr. J. Sadowski to address the arboricultural aspects of the appeal.

***The Decision***

2. The decision notice by the council in terms of the arboreal features of the site cites the reason for refusal as:

*2. The proposals will result in the loss of woodland protected by TPO and will represent and undesirable intrusion of urban development into the rural landscape, a designated Special Landscape Area, therefore conflicting with policies PS2, GDP1(a), EC4 and EC5 of the Wrexham Unitary Development Plan.[sic]*

3. The officer's report in terms of the arboreal features notes the following:

*Despite this, through a process of natural colonisation, the area has seen the emergency of a young vibrant woodland which, when viewed from beyond its boundaries, ensures the site appears as an integral part of the countryside surrounding Penley.[sic]*

*However this fails to take into account the collective value of the tress as a woodland feature within a wider landscape context. Viewed in a broader context, the woodland makes a significant contribution to the character of the landscape. Woodland areas are, as the SLA Study confirms, important features of the proposed Maelor SLA. The trees, as discussed above so also have an ecological value.[sic]*

*The development of the site would result in the extensive clearance of seedlings, saplings, young and semi-mature trees of which all are afforded protection under the TPO. Such clearance would significantly alter the woodland character of the site and indeed with wider area covered by the TPO.[sic]*

*The retention of trees to the north of the site (i.e. outside of the application site) and, as indicated on the indicative site plan, within the curtilage of a dwelling to the south, would not be sufficient to mitigate the harm arising from this intrusion.[sic]*

### ***The Tree Preservation Order***

4. The site is the subject of a Woodland Tree Preservation Order, that through a number of fairly recent legal cases<sup>1</sup> has determined that all trees of whatever age are protected by the Order.
5. However, the Order was vigorously objected to and those objections were never addressed by the council. It is still the case that the trees within the application site and further afield within the site as a whole are considered to be exempt from planning control by virtue of their structural and physiological condition. This is further emphasised by the fact that trees are still collapsing in light wind conditions. The appellant makes frequent Five-Day notifications for the removal of dangerous trees. The council never fully explained the landscape impact and amenity benefits of the existing woodland. The owner is well placed to manage the woodland appropriately without the need for a TPO. It is not necessary to protect trees which are under good arboricultural or silvicultural management.

### ***The Woodland***

6. Broadleaved woodland in Great Britain has vertical woodland structure and a horizontal woodland structure. The vertical woodland structure refers to the differences found at different heights in the woodland. Woodland is usually referred to as having four distinct layers - Ground layer; Field layer; Understorey (or Shrub) layer and the canopy.
7. The horizontal woodland structure refers to the differences found at different points, or stands, of a woodland such as; the depth and moisture level of the soil, fire, presence of rocks, rivers or bodies of water, plant disease and the presence of other plants will also affect which species grow at different stands.
8. The officer's report paints a picture of woodland tranquillity, a woodland whose structure, both vertically and horizontally, is of a first-class condition and increasing, becoming a valuable and viable natural ecosystem resource.

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<sup>1</sup> Palm Developments Ltd v. SSCLG [2009] EWHC 220 (Admin); Distinctive Properties (Ascot) Ltd v SSCLG [2015] EWCA Civ 1250,

9. The officer's report states the woodland has "....seen the emergency of a young vibrant woodland..."
10. A young and vibrant woodland contains the strong indicators of the four vertical woodland criteria and many facets of the horizontal woodland structure.
11. The ground layer refers to plants growing on the woodland floor. The woodland in this case does not have a woodland floor. The application site is detritus over very thick concrete road and pathways, with occasional plants growing through gaps in concrete structures where they have collapsed.
12. The field layer comprises grasses, ferns and flowering plants. The amount of growth at this layer will vary hugely depending on how much light reaches it through the canopy above. The species of plants you find at this layer will also vary but plants such as bramble and nettle are often abundant. At the application site, the field layer does not exist. The extensive areas of concrete pavement and structures prevent the development of a field layer. The layer is predominantly ivy, a genus adapted to growing in very low light conditions on poor growing medium.
13. The understorey (or shrub) layer comprises younger smaller trees and shrubs which have evolved to grow with less light. The young trees in this layer reflect the same genera as the canopy layer. The understorey layer only exists as pockets of regenerative growth that reflect the canopy layer. In the main this is ash (*Fraxinus excelsior*) and sycamore (*Acer pseudoplatanus*). The regenerative growth is in pockets of ground where the concrete has failed due to collapse of the structure or on a thin layer of detritus. The growth is poorly rooted with examples throughout the site of the growth's early collapse. The ability of the regenerative growth to grow to succeed the mature canopy is severely curtailed due to the poor rooting environment.

14. The young *Fraxinus* growth is highly susceptible to **Chalara**<sup>2</sup> (*Hymenoscyphus fraxineus*) and thus cannot be the subject of the Tree Preservation Order. Chalara was notified in the local area in 2016 and 2017<sup>3</sup>.
15. The canopy layer is made up of the tallest trees. In this case that is examples of ash and sycamore with occasional horse-chestnut (that is susceptible to *Pseudomonas syringae pathovar aesculi*); oak, goat willow, field maple and hawthorn. All of the canopy trees within the application site are poorly rooted. There is frequent collapse of trees within the application site. The trees are unable to develop fully as would be expected in a vibrant thriving woodland scenario.
16. The horizontal woodland structure is impotent. There are no significant areas of diversity as is found in vibrant woodland. The nature of the site is such that diversity in horizontal woodland structures will not develop. Clearings and openings tend to increase diversity in the horizontal structure. This does not occur at this site despite the opening up of the canopy due to collapse.
17. The woodland is not as stated by the council, young and vibrant. The woodland does not contain the features of a woodland either vertically or horizontally. The removal of saplings would not alter the woodland character. Many of the saplings are ash and subject to disease. Many of the saplings have poor rooting environments and thus are unable to grow and develop fulfilling the role as canopy in a vertical woodland structure.
18. The council makes the point the woodland makes a collective value of the trees as a woodland feature within a wider landscape context. Viewed in a broader context, the woodland makes a significant contribution to the character of the landscape. The woodland is visible from the major public vantage points and no doubt makes some contribution to limited private views. However, the loss of trees in the application site does not impact on the visibility of the woodland as a whole.

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<sup>2</sup> **Chalara** dieback of ash is a serious disease of ash trees caused by a fungus which was previously called *Chalara fraxinea*, now known as *Hymenoscyphus fraxineus*. The disease causes leaf loss and crown dieback in affected trees, and is usually fatal

<sup>3</sup> <http://chalaramap.fera.defra.gov.uk/>

19. The application still retains woodland of the same physical stature. From the major public vantage points, the view of the woodland in the wider visual context remains the same. There is still the same skyline appearance. Indeed, the image shown by the council of a view from the south will remain as shown, as tree removals for development are not planned in this location.

***BS 5837:2012 – Tree Survey***

20. The council accept that, when set against the assessment criteria for trees in relation to construction, the trees are Category U. The council do not dispute this nor, suggest an alternative categorisation.

21. British Standard 5837:2012 Trees in relation to design, demolition and construction – Recommendations gives recommendations and guidance on the relationship between trees and design, demolition and construction processes. It sets out the principles and procedures to be applied to achieve a harmonious and sustainable relationship between trees and structures.

22. As part of that process, it is necessary to undertake a tree survey to record information about the trees on or adjacent to a site. The survey then informs the layout. By any measure, that is not disputed by the council, the trees are Category U.

23. Category U trees are trees that

|                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><b>Category U</b></p> <p>Those in such a condition that they cannot realistically be retained as living trees in the context of the current land use for longer than 10 years.</p> | <ul style="list-style-type: none"> <li>• Trees that have a serious, irremediable, structural defect, such that their early loss is expected due to collapse, including those that will become unviable after removal of other U category trees (i.e. where, for whatever reason, the loss of companion shelter cannot be mitigated by pruning).</li> <li>• Trees that are dead or are showing signs of significant, immediate, and irreversible overall decline.</li> <li>• Trees infected with pathogens of significance to the health and/or safety of other trees nearby, or very low quality trees suppressing adjacent trees of better quality.</li> </ul> <p><i>NOTE Category U trees can have existing or potential conservation value which might be desirable to preserve; see 4.5.7</i></p> |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

**BS5837:2012 extract**

24. The trees fall into the Category U definition. There are trees that have serious, irremediable, structural defect, such that their early loss is expected due to collapse, including those that will become unviable after removal of other U category trees (i.e. where, for whatever reason, the loss of companion shelter cannot be mitigated by pruning). There are trees that are dead or are showing signs of significant, immediate, and irreversible overall decline and, trees infected with pathogens of significance to the health and/or safety of other trees nearby.
25. These specimens are not suitable for inclusion within the Tree Preservation Order. The appellant frequently makes Five-Day notices due to the poor structural condition of the trees at the site and the risk they pose to third parties. The requests are not refused by the council.

### ***Conclusions***

26. The council have protected trees that by their very condition are exempt from planning control. The council never fully explained the landscape impact and amenity benefits of the existing woodland or addressed the objections. The owner is well placed to manage the woodland appropriately without the need for a TPO. It is not necessary to protect trees which are under good arboricultural or silvicultural management.
27. The woodland is not “*young vibrant woodland*” as stated by the council. The woodland does not accord with the features that one typically associates with a young vibrant woodland. It has no vertical structure attributable to vibrant woodland. It is principally colonised by a genus subject to a virulent disease.
28. The woodland has no horizontal structure as would be expected in young and vibrant woodland.

29. The council agree the tree quality assessment as required by BS 5837 2012. The trees are category U specimens. They are specimens that are considered to be exempt from planning control by virtue of their condition which is not disputed by the council in their report to the committee or in their reason for refusal. The trees are not to be considered such a constraint that they should influence the development proposals.
30. The development would have no material impact on the character of the area as viewed from surrounding view points. From the major public vantage points, the view of the woodland in the wider visual context remains the same. There is still the same skyline appearance. Indeed, the image shown by the council of a view from the south will remain as shown, as tree removals for development are not planned in this location.
31. For the above reasons it is concluded that there is no basis for the arboricultural reasons for refusal. Notwithstanding the TPO, the trees on the site are of no significant value and are in rapid decline, no evidence from the LPA has suggested otherwise. It is clear that the proposed development on the site would have no significant impact on views from surrounding public view points and, as a consequence the development would have no material impact on the character of the Special Landscape Area, nor would the other policies referred to by the LPA be offended. The arboricultural reason for refusal is, therefore, unjustified.

*I Murat*

**I Murat M.Sc, F. Arbor.A, MCIEEM, CEnv, RC. Arb.**

**April 2021**

## Appendix Eight

### Right of Way Map.



Appendix Nine  
Correspondence Regarding Ecological  
Objection.

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**From:** Emma Broad <Emma.Broad@wrexham.gov.uk>  
**Date:** Monday, 19 April 2021 at 09:53  
**To:** Rebecca Sambrook <rebecca.sambrook@sambrookassociates.co.uk>  
**Subject:** RE: P/2020/0748

Hi Rebecca,

The issues on this site are that it is LWS and protected species (great crested newt, badger and bats).

Regards  
Emma

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**From:** Rebecca Sambrook <rebecca.sambrook@sambrookassociates.co.uk>  
**Sent:** 16 April 2021 10:28  
**To:** Emma Broad <Emma.Broad@wrexham.gov.uk>  
**Subject:** P/2020/0748

Dear Emma

I have been asked to give Mr Sadowski some advice in relation to the ecological issues in his recent planning refusal (P/2020/0748). I have obviously seen a copy of your consultation response in which you have listed your various concerns, however, can I just query your final paragraph? You say that you would expand on your comments if there was an appeal, can I be clear that you mean that you would expand on the points you have already made in terms of their explanation, rather than that you would be looking to add additional ecological concerns that have not yet been highlighted?

If you are able to confirm the above within the next week, I would be grateful, as I have promised to respond within the next two weeks to my Client and I want to be sure that I am addressing all the issues that might arise in an appeal situation.

Kind regards  
Rebecca

## Appendix Ten

### Response to Ecological Comment.



# **REBUTTAL STATEMENT: ECOLOGY**

**REBECCA SAMBROOK MCIEEM BSC.(Hons) on behalf of the  
Appellant, Mr J Sadowski**

**PROPOSAL: Outline application for up to 17 dwellings with all  
matters except access reserved**

**LOCATION: Land off Tudor Drive, Wrexham**

**PLANNING REF: P/2020/0748**

## **Sambrook Associates Ltd**

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|                  |                          |
|------------------|--------------------------|
| Prepared by      | Rebecca Sambrook         |
| Date             | 21/05/2021               |
| Report Reference | PEN_01R                  |
| Version          | V1                       |
| Status           | Draft for Client Comment |

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## 1 INTRODUCTION

### 1.1 Background Information

- 1.1.2 Regarding the planning appeal following refusal of planning permission of the proposal; the following statement is provided in response to the reasons for refusal on ecology grounds. The comments provided by Emma Broad (Ecology and Biodiversity Officer) and John Brewin (Tree Officer) have been reviewed as well as the consultation response received from Natural Resources Wales (Ref: CAS-131366-G3M8 and dated 10/12/2020).
- 1.1.3 Comments and responses are dealt with in Section 2, 3 & 4 below. Each succinct consultee comment is copied in **black bold** text for clarity and then a response is provided in black normal text. A conclusion is provided in Section 5.

### 1.2 Ecology Baseline

- 1.2.1 The ecology baseline is provided in report Sambrook, R and Smith, M. (2020). Ecological Appraisal: Polish Hospital Penley, Land off Tudor Drive, Penley, LL13 0JN. Sambrook Associates.

## 2 ECOLOGY AND BIODIVERSITY OFFICER RESPONSE

### 2.1 Biodiversity Officer (Emma Broad) comments extracted from email dated 07/01/2021

- 2.1.1 *The proposed development site forms part of Local Wildlife Site W420 Llanerch-Panna and Penley Bank. The site is described as woodland and associated grassland areas, with the majority of the site being woodland within the grounds of an old hospital. There are some ancient woodland indicators, such as field maple, bluebell, wood melick and dog's mercury. I observed the same habitats still exist during my site visit earlier in the year. Planning Policy Wales and those Policies within the existing UDP and emerging LDP clearly provide sufficient policy reasons for refusal of this application.*
- 2.1.2 The application site does not qualify as Ancient Woodland under any of the sub-categories; Ancient Semi Natural Woodland (ASNW), Plantation on Ancient Woodland Site (PAWS), Restored Ancient Woodland Site (RAWS) or Ancient Woodland Site of Unknown Category (AWSU).
- 2.1.3 Having reviewed various online historical mapping resources, the site does not appear to have supported woodland in the last at least 300 years. A review of mapping through the ages, the map entitled 'An Actual survey of Salop' by John Rocque in 1752 ([oldmapsonline.org](http://oldmapsonline.org)) shows that the area where the application site is located was not under tree cover at the time of the survey. Detailed Old Victorian Ordnance Survey 6 inch to 1 mile Old Map (1888-1913) of Penley, Wrexham ([archiuk.com](http://archiuk.com)) shows the site as being parkland associated with the Llanerch Panna estate.
- 2.1.4 The Ancient Woodland Inventory 2021 ([lle.gov.wales](http://lle.gov.wales)) published in March 2021 was reviewed in April 2021. The inventory map shows an Ancient Woodland (ancient semi-natural woodland) shapefile along the track that runs from Tudor Drive to the Llanerch Panna Estate house. The boundary of the shapefile is arbitrary and does not appear to encompass any part of the woodland site to any substantiated degree. It is not understood why the track has been designated ancient woodland since it has not supported qualifying habitats in the last 400 years. It is presumed the designation arises from the potential for the track to have been mistakenly identified as wooded. Historical mapping does not show this track to be densely tree lined, instead there are sporadic trees along the length and only seen on maps from the late 1800s/early 1900s.
- 2.1.5 The wider woodland does indeed support species that are ancient woodland indicator species. The application site itself does not appear to support these species in significant numbers but the occasional dog's mercury can be found. The presence of indicator species does not necessarily mean that the woodland itself is ancient and this concept is particularly pertinent when assessing brownfield sites. The site was green fields for hundreds of years until the 1930/40's when it became a building site with construction of hospital buildings and associated infrastructure of concrete tracks and parking areas; the site was developed into an aesthetically pleasing place to recuperate and live. There are two possible reasons why the habitats we record on site today are present; importation of materials and ornamental landscaping. It is known that thousands of tons of red shale were imported into the site and it is entirely possible that other materials such as unscreened soils were also imported. It is also entirely possible that the entire woodland seedbank was introduced during the importation of materials to build the hospital. The aesthetic ornamental landscaping of the site would also have introduced species that were not native to

the site. Online resources include the daughter of a nurse who was stationed at Penley hospital and describes the 'beautiful gardens' (britishpoles.uk), and photographs of the ground of the hospitals certainly show 'beautiful gardens' with plant, shrub and tree planting. A simple search on google shows the extent of gardens at the three hospitals in the Penley area. In consideration of these historical mapping, known importation of materials and ornamental landscaping, it is concluded that the presence of species recorded today occurred as a result of the development of the site in the 1930/40s and not as a result of historical presence of woodland habitat. The application site does not qualify as Ancient Woodland.

2.1.6 With that in mind, the woodland is therefore considered in its status as a non-ancient woodland and a locally designated site. The woodland itself likely originated from a few planted trees as part of the landscaping of the hospital grounds and possibly the important of unscreened soils. These trees have self-seeded and spread across the site due to lack of management since the 1950s. Due to the fragile nature of the ground conditions, longevity of the woodland is not anticipated. Since the submission of the application, a number of trees have been removed by Scottish Power as part of their overhead line protection operations, and a number of wind damaged (and dangerous) trees have been removed under a 5-day order and in consultation (on the ground) with Tree Officer Jon Brewin. The woodland within the application site has become more sparse and offers little value to the wider woodland and designation. There is no commercial incentive to pro-actively manage the woodland; current management practices within the woodland comprise reactive management of trees that cause risk of potential harm to illegal trespassers. This will not change without commercial incentive and the woodland will therefore continue to deteriorate and not meet the objectives of the designation.

2.1.7 ***Policy EC6 Development either within or close to sites of biodiversity interest will only be permitted where it can be clearly demonstrated that the need for the development outweighs the need to safeguard the intrinsic nature conservation value of the site.***

2.1.8 The intrinsic nature conservation value of the designated site lies within the woodland areas to the north and west of the proposed development site and the grassland fields to the south. The woodland within the application site is not valuable and therefore adds very little to the intrinsic nature conservation value of the site. The need for the development clearly outweighs the need to protect this part of the woodland/designated site and therefore it is clearly demonstrated that the development will not cause harm to the intrinsic nature conservation value of the designated site.

2.1.9 ***Policy EC4 Development proposals should provide for the conservation and management of hedgerows, trees, orchards, woodland, wildlife and other natural landscape and water features, and include new planting in order to enhance the character of the landscape and townscape. Development which results in the loss or significant damage to valuable trees, important hedgerows or ancient woodland sites will not be permitted.***

2.1.10 ***PPW states that Planning Authorities must***

- ***support the conservation of biodiversity, in particular the conservation of wildlife and habitats;***
- ***ensure action in Wales contributes to meeting international responsibilities and obligations for biodiversity and habitats;***

- ***ensure statutorily and non-statutorily designated sites are properly protected and managed;***
- ***safeguard protected and priority species and existing biodiversity assets from impacts which directly affect their nature conservation.***

2.1.11 In response to the bullets above:

- this is proposed in the application, namely the long-term management plan for woodland and amphibians.
- the protection of internationally protected species is accepted in this proposal; bats and great crested newts. There are no internationally protected habitats within the application site
- see below, no statutorily protected sites will be harmed. The non-statutorily designated site of which the application site is part of is discussed below.
- See below for protection of habitats and species of nature conservation value.

2.1.12 ***There are great crested newt recorded from areas around the site and given that the habitat is highly suitable within the disturbed area it is likely that an offence may have already have been committed.***

2.1.13 The 'disturbed area' is not within the application site and so should not be considered in your consultation response. The development has clearly not commenced and so no offence had been committed in relation to this application. The statement that 'an offence may have already been committed' has the potential to unjustly prejudice an application that must be considered on its own merits. To clarify, with regards to the potential for offences against great crested newts, North Wales police attended the woodland in December 2019 and spoke with Mr James Sadowski (the Appellant) regarding his woodland management practices and the potential for harm to great crested newts. No further action was taken. There is no clear evidence whatsoever to suggest an offence has been committed and to suggest otherwise, particularly in relation to a sequestered application for planning permission, is unreasonable and incorrect.

2.1.14 Natural Resources Wales, in their consultation response state: *'Provided those measures [Amphibian Management Plan] 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.'*

2.1.15 ***Although it is usually possible to mitigate the impacts of a development on GCN, no details of any proposed mitigation scheme and long-term management have been submitted. In these circumstances the LPA can not grant permission as the Appellant has not demonstrated that requirements of the '3 tests' can be met.***

2.1.16 Natural Resources Wales in their consultation response have requested that a Condition be imposed to secure an Amphibian Conservation Plan as follows:

*'Condition 1: Great Crested Newts: No development or phase of development, including site clearance, shall commence until an Amphibian Conservation Plan has been*

*submitted to and approved in writing by the Local Planning Authority. The Amphibian Conservation Plan should include:*

- *Building upon the principles outlined in Sambrook, R and Smith, M. (2020). Ecological Appraisal: Polish Hospital Penley, Land off Tudor Drive, Penley, LL13 0JN. Sambrook Associates. Unpublished.*
- *Submission of details concerning GCN avoidance and mitigation measures including fence construction and maintenance. Submission to include timescales and reporting requirements;*
- *Submission of long-term conservation site management plan that includes aims and objectives, habitat creation and enhancement, tenure; and management prescriptions.*
- *Submission of details concerning the installation and maintenance of an amphibian friendly surface water management system that does not include gully pots;*
- *Details of timing, phasing and duration of construction activities and conservation measures*
- *Timetable for implementation demonstrating that works are aligned with the proposed development*
- *Persons responsible for implementing the works*
- *Post construction monitoring scheme. All ponds proposed to be monitored to be added to the Wales Great Crested Newt Monitoring Scheme, (see <https://www.cofnod.org.uk/LinkInfo?ID=70>)*
- *Ecological Compliance Audit, including key performance indicators*

*The Amphibian Conservation Plan shall be carried out in accordance with the approved Details. 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.'*

2.1.17 The Appellant is happy to provide this information in accordance with the timescales set out by Natural Resources Wales. Adequate data (including baseline data and details of the proposed development hence appraisal of effects has been undertaken) has been submitted by the Appellant, furthermore, the potential impacts can be addressed by the conditioning of an Amphibian Conservation plan, as advised by Natural Resources Wales. Therefore, in regards to the third of the three tests, the favourable conservation status of great crested newts can be demonstrated. In terms of the two other tests; 'need' and 'no satisfactory alternative', the application also demonstrates these are met.

**2.1.18 *If we go to appeal I can expand on this, but now I think that this is sufficient.***

**2.1.19** An email was sent to the Biodiversity Officer on 16 April in relation to the above comment as follows; *'I have been asked to give Mr Sadowski some advice in relation to the ecological issues in his recent planning refusal (P/2020/0748). I have obviously seen a copy of your consultation response in which you have listed your various concerns, however, can I just query your final paragraph? You say that you would expand on your comments if there was an appeal, can I be clear that you mean that you would expand on the points you have already made in terms of their explanation, rather than that you would be looking to add additional ecological concerns that have not yet been highlighted?'*

**2.1.20** *If you are able to confirm the above within the next week, I would be grateful, as I have promised to respond within the next two weeks to my Client and I want to be sure that I am addressing all the issues that might arise in an appeal situation.'*

**2.1.21** The Officer responded with; *'The issues on this site are that it is LWS and protected species (great crested newt, badger and bats).'*

**2.1.22** In response to this, the LWS is dealt with adequately above. The presence of great crested newts is also addressed above and the Appellant accepts the approach set out by Natural Resources Wales in regards to implementation of suggested Condition 1 and Condition 2 (see below). Similarly, in regards to bats, the Appellant accepts the approach taken by NRW (see below) and will implement the avoidance measures described in the submitted Ecological Appraisal. There is a badger sett present in the woodland but this is in excess of 30m from the edge of the proposed development site. There was no evidence in the form of feeding remains, prints or latrines within the application site which suggests the application site is of lower value to badgers and they seem to prefer foraging elsewhere. The proposed development will not affect badger setts, the proposed development will not isolate setts and foraging areas since physical boundaries will be permeable to mammals, and proposed development will not result in a loss of high value foraging areas; instead, the potential foraging habitat will be modified (to gardens), not lost. The submitted Ecological Appraisal adequately addresses effects on badgers.

### 3 TREE OFFICER

#### 3.1 Tree Officer (Jon Brewin) comments extract from an email dated 12/01/2021

- 3.1.1 **This proposed development stands to cause untold damage to an established young woodland subject to TPO 287/2019. Through natural colonisation and re-wilding over the past 60 years the woodland now provides many indicators of not only historical values – for example with the presence of indicator species as identified within the accompanying ecological report – but also in the potential benefits and values it may provide in the future if managed in an appropriate fashion to promotes and enhance ecological and arboricultural features of existing and potential worth.**
- 3.1.2 **See above for commentary on the inference of the presence of indicator species within this woodland.**
- 3.1.3 **Without development, there is no commercial incentive to manage this woodland in an appropriate fashion to promote and enhance ecological features. The proposed development gives rise to the opportunity to exploit pro-active management options for the wider woodland so that the objectives of the designation, local and national planning policies can be met.**
- 3.1.4 **This woodland has substantial and increasing amenity value not only to nearby residential properties but also within the immediate and surrounding landscape.**
- 3.1.5 **No comment – not ecology related.**
- 3.1.6 **Allowing development within this woodland would be contrary to both PPW10(2018) sections 6.2 and 6.4, WCBC UDP EC4 'Hedgerows, Trees and Woodlands' and finally, to allow development requiring the removal of a section of this protected woodland would also be contrary to the TPO system which seeks to preserves trees of amenity value.**
- 3.1.7 **See above in relation to ecology and biodiversity. In regards to TPOs – no comment.**

## **4 NATURAL RESOURCES WALES**

### **4.1 Natural Resources Wales Consultation Response dated 10/12/2020**

- 4.1.1 Condition 1: Great Crested Newts: No development or phase of development, including site clearance, shall commence until an Amphibian Conservation Plan has been submitted to and approved in writing by the Local Planning Authority.**
- 4.1.2 The Appellant is happy to provide this.**
- 4.1.3 Condition 2: Biosecurity: No development, including site clearance, with the potential to impact on invasive species, shall commence until a site wide Biosecurity Risk Assessment has been submitted to and approved in writing by the Local Planning Authority.**
- 4.1.4 The Appellant is happy to provide this.**
- 4.1.5 Bats:**
- 4.1.6 We note that the bat report submitted in support of the above application (Sambrook, R and Smith, M. (2020). Ecological Appraisal: Polish Hospital Penley, Land off Tudor Drive, Penley, LL13 0JN. Sambrook Associates.) has identified that bats are present at the application site.**
- 4.1.7 From the information submitted, we consider that the proposed development represents a lower 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 this is a lower risk case for bats, we consider that the development is not likely to be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in its natural range. Furthermore, we advise that the proposed development is not likely to harm or disturb the bats or their breeding sites and resting places at this site, provided the avoidance measures described in the bat report are implemented**
- 4.1.8 The Appellant is committed to the measures described in the report.**

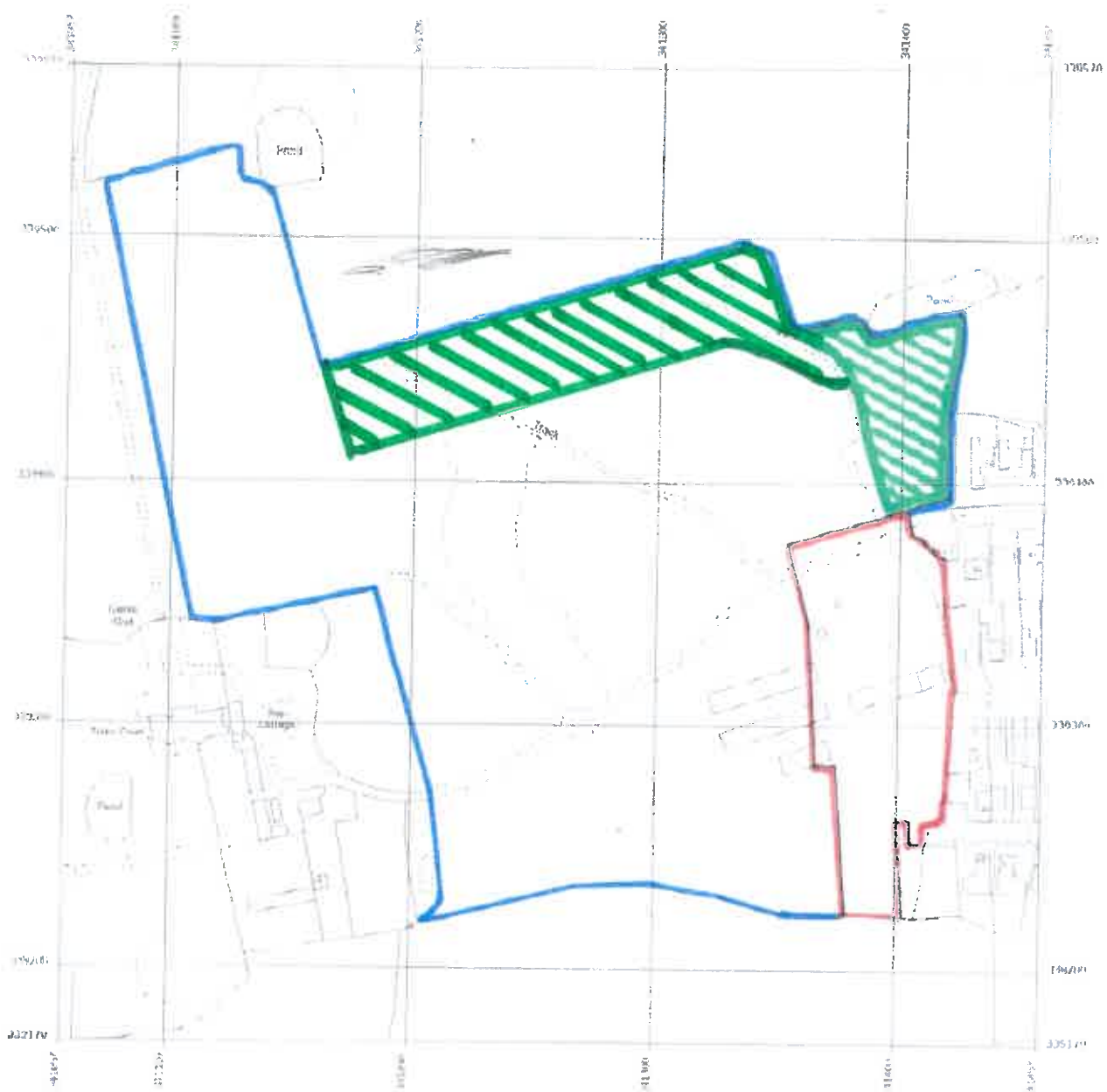
## 5 CONCLUSION

- 5.1.1 The site has been the subject of suitable and recent baseline surveys which has established, with confidence, the ecological status of the application site. The Ecological Appraisal submission detailed thorough surveys of the site and surroundings. Natural Resources Wales provided a constructive and supportive response and advised that avoidance measures provided in the Ecological Appraisal can be attached as a condition to planning permission to ensure they are implemented. The Biodiversity Officer has not challenged the Appraisal's findings in any substantive fashion. On this basis, the objection from the Biodiversity Officer is not justified.
- 5.1.2 In consideration of the responses provided above, the trees collectively within the application site are assessed in ecological terms as not valuable and their lifespan is short lived. There are no important hedgerows or ancient woodlands within the application site. The development will not result in the loss or significant damage to valuable trees, important hedgerows or ancient woodland. The proposal accepts loss of a small area of woodland which is not valuable in either the immediate or long term and does not add intrinsic value to the wider woodland or designation. With regards to development proposals providing conservation and management of hedgerows, trees, orchards, woodland, wildlife and other natural landscape and water features, the proposed development includes proposals to devise a woodland management strategy.
- 5.1.3 The designated site is not currently managed for the benefit of biodiversity. However, the proposals give rise to the commercial incentive to manage and enhance the valuable areas of woodland which can be secured through a condition imposing the implementation of a management plan.
- 5.1.4 The woodland management plan described in the application focussed on a small area to the north-east of the application site. The Appellant has now proposed to increase the size of this woodland management area to encompass all of the woodland to the north of the timber compound which is a significant increase in area and includes some of the more mature and valuable trees and woodland habitats.
- 5.1.5 With regards to wildlife, the following measures will be incorporated into the proposals to provide for the conservation and management of species using the site:
- Great crested newts and other amphibians; request by NRW to provide an Amphibian Management Plan is accepted and will be provided.
  - Bats; no bat roosts have been identified; low numbers of bats were recorded within the woodland, commuting through or around the application site. NRW state: *'the development is not likely to be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in its natural range'*. The proposals include the improvement in roosting opportunities through the installation of appropriately sited bat roost boxes.
  - Birds; protecting breeding/nesting birds from harm and promoting improvement in nesting opportunities through the installation of appropriately sited nest boxes.

- 5.1.6 The appraisal of the proposed development does not predict, nor has it demonstrated significant harm to ecological interests given the site is not ancient woodland and no there is no evidence to support the suggestion of harm to GCN, bats or badgers. The need for the development is also demonstrated and this accords with Policy EC6.**
- 5.1.7 Consequently, it is clear from ecological perspective that permission can be granted subject to conditions.**

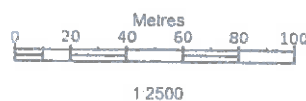
## **Appendix Eleven**

### **Extended Ecological Enhancement Area**



Produced 15 Sep 2020 from the Ordnance Survey MasterMap (Topography) Database and incorporating surveyed revision available at this date

The representation of a road, track or path is no evidence of a right of way. The representation of features as lines is no evidence of a property boundary



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LL13 0JN

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