

STATEMENT:

The original application P/2019/0898 to undertake this development was received by Wrexham County Borough Council on 09/12/2019, Natural Resources Wales responded to their consultation in their letter of 16/12/2019 suggesting that the report was unsatisfactory in several key areas. This was addressed by Pearce Environment Ltd.'s letter of 16/01/2020. Natural Resources Wales letter dated 05/03/2020, posted on the Council Website, was that they had no objection to the application, a further letter was posted dated 05/03/20 where a single condition should accompany the Planning approval and that was that the HSI Document should be included in the approved documents and drawings. A further letter of 10/03/2020 was posted suggesting that a single condition should be imposed to require a Site GCN Conservation Plan to be submitted and approved. This then became condition 6.

The combined application to discharge condition 3 (external lighting), condition 6 (GCN Conservation Plan) and condition 7 (landscaping scheme) was submitted and validated on 19/05/2020. A Site Development and Conservation Plan was attached incorporating all three conditions. Natural Resources Wales letter of 04/08/2020 acknowledged receipt of the Site Development and GCN Plan and indicated issues with the following;

- 1. Acknowledge the potential for GCN dispersal from water bodies within Johnstown Newts Sites SAC (as referred to in the ecological report submitted in support of the original application)*
- 2. Consider evidence compliance in terms of scheme proposals.*
- 3. Habitat retention, off setting and long term management (provide further details on the enhancement measures referred to in the ecological report submitted in support of the original application) The issue can be addressed by a more detailed plan.*

We recommend the submitted conservation plan be amended to consider the above.

We have no objections to the discharge of condition 3 (lighting) and condition 7 (landscaping) for the above proposal.

The impact upon SAC/SSSI is discussed in the HSI Report 4.1 IMPACTS OF THE PROPOSED DEVELOPMENT and concludes that the development will have "No direct impact upon any conservation features (terrestrial GCN/amphibian terrestrial habitat and/or breeding ponds) upon the SAC/SSSI are anticipated as a result of the proposals". This point had already been addressed in Pearce Environment Ltd.'s letter of 16/01/2020. Points 2 and 3 were addressed and a revised Site Development and Conservation Plan was submitted on 17/08/2020.

Natural Resources Wales arranged for a *Skype* resolution meeting for 10/09/2020 in order to reach an agreement on any outstanding issues and discharge conditions 3,6 and 7.

Natural Resources Wales stated in the meeting that they would like the works to be carried out under a derogation licence. It was pointed out that this point had already been addressed and is in the Site Development and GCN Conservation Plan 1:INTRODUCTION paragraph 5. This was agreed and accepted.

Natural Resources Wales stated in the meeting that they had concerns with the long term

management and enhancement measures with regards to the pond area identified in the HSI Report as WB1. The concerns regarding this pond, which is situated some 140M. away from the development site, had been addressed and is contained within the Site Development and GCN Conservation Plan.

Natural Resources Wales also sought confirmation that hedgerows and fencing within the curtilage of the site will be maintained and improved. This was confirmed as to be an on going improvement to the land carried out as a matter of course in order to maintain the safety and security of the livestock resident there.

A confirmation email of this meeting was sent to the Planning Officer on 10/09/20, as requested, and a request that the conditions now be discharged as we were all in agreement.

Natural resources Wales response in their letter of 14/09/2020 was that they would prefer that works to be carried out under licence but accepted the proposals given in section 3 of the amended document.

The reasonable avoidance measures identified in section 2 were accepted but recommended the use of one way fencing. This does not appear in the HSI report 4.2 RECOMMENDATIONS *mitigation/avoidance*. further the HSI Report also states in the EXECUTIVE SUMMARY, 3.5 HABITAT SUITABILITY INDEX (HSI) SURVEY *Terrestrial Habitat* and 4.1 IMPACTS OF THE PROPOSED DEVELOPMENT *Impacts Upon GCN* -The land within the development footprint is deemed to have "low" potential for GCN to be present, the suitability of the terrestrial habitat for GCN within the development footprint itself is considered sub-optimal overall. The use of one way fencing was mooted in Natural Resources Wales letter of 16/12/2019 and responded to by Pearce Environment Ltd.'s letter of 16/01/2020.

Natural Resources Wales further suggested that all species of amphibians are relocated away from the working areas of the proposed project. The HSI Report and on site survey has deemed that the development footprint is deemed to have "low" potential for GCN to be present and to attempt to purge the development footprint would require a derogation licence and appointment of a suitable qualified ecological contractor. This issue was touched upon in Natural Resources Wales letter of 16/12/2019 and responded to at item 6 of Pearce Environment Ltd.'s letter of 16/01/2020.

Natural Resources Wales letter goes on to acknowledge section 5:COMPENSATION/MITIGATION and section 8:ENHANCEMENT yet still request long term management when section 5:COMPENSATION/MITIGATION, which they have acknowledged, states that as there is no loss of any water bodies or terrestrial habitat then there is no requirement to provide any enhancement or compensation, nevertheless as some enhancement is suggested in the HSI Report enhancement as suggested in the HSI Report has been included in section 8:ENHANCEMENT which Natural Resources Wales has acknowledged. Natural Resources Wales go on to list seven *outstanding issues* relating to enhancement and compensation. The subject of long term habitat compensatory proposals was also brought up by Natural Resources Wales in their letter of 16/12/19 which was addresses by Pearce Environment Ltd. in their letter of 16/01/20 item 5 confirming that the measures given in their report are ample considering the low-value of the site.

Natural Resources Wales state that they have no objection to section 6:BIOSECURITY

PROTOCOL of the amended document.

Natural Resources Wales go on to restate **We have no objection to the discharge of condition 3 and 7.**

The decision notice to refuse to discharge the conditions was issued and dated 07/10/2020.

Item 1 refers to a plan required to show areas surrounding the pond (WB1 of the HSI Report) as a dedicated area. The HSI Report 4.2 RECOMMENDATIONS have been included in the Site Development and GCN Conservation Plan, the HSI Report being the document condition 6 refers to for guidance states that the prescribed mitigation and enhancement strategy is deemed sufficient to ensure the favourable long-term conservation status of GCN and other, widespread amphibian populations which form features of the Johnstown Newt Sites SAC/Bonc-Yr-Hafod Country Park SSSI, and mitigate against adverse impacts upon individual GCN/amphibians. This is further explained at item 5 in Pearce Environment Ltd.'s letter of 16/01/2020.

Item 2 refers to enhancement measures in particular pond WB1 situated 140 metres from the application site. It has been repeatedly pointed out to Natural Resources Wales that as there is no loss of any water bodies or terrestrial habitat then there is no requirement to provide any enhancement or compensation, nevertheless as some enhancement is suggested in the HSI Report enhancement as suggested in the HSI Report has been included in section 8:ENHANCEMENT which Natural Resources Wales has acknowledged.

Item 3 requires details of habitat creation measures. This is a compensation measure for the loss of any terrestrial habitat or water bodies as a result of the development. There is no loss of terrestrial habitat or water body that will occur as a result of this development and thus is not required in the HSI Report to which condition 6 refers.

Item 4 refers to the long term management of terrestrial and aquatic habitats. There are no terrestrial or aquatic habitats on the site or within control of the applicant. There is no reference to any terrestrial or aquatic habitats in the HSI Report which would require any monitoring.

Item 5 refers to the need for a derogation licence. This is dealt with in Site Development and GCN Conservation Plan 1:INTRODUCTION paragraph 5. This was agreed and accepted in the resolution meeting of 10/09/2020 and in their letter of 14/09/2020.

Item 6 Monitoring. This is dealt with within Site Development and GCN Conservation Plan 3:COMPLIANCE.

Item 7 Reporting. This is dealt with within Site Development and GCN Conservation Plan 3:COMPLIANCE.

A note at the end of the item list refers to condition 3 lighting. Natural Resources Wales have stated in their letters of 04/08/2020 and 14/09/2020 that they have no objection to the discharge of condition 3 and condition 7. The specification given in the Site Development and GCN Conservation Plan is for low level lighting columns to allow for dark corridors around the site and limit intensity. Asymmetric lighting has been specified to limit sky glow and concentrate lighting in a downward direction. The use of lighting has also been restricted so that lights will not be used when human activity is low and consequential bat activity potentially higher.

Natural Resources Wales are continually revisiting areas that have previously been addressed and agreed in order to have additional works carried out which are not pertinent to the application site and are therefore ultra vires, in so doing they are attempting to withhold the discharge of condition 6 until these ulterior works are agreed to. The Town and Country Planning Act 1990 and paragraph 206 of the National Policy Framework is quite clear in this respect and therefore I believe the Planning Officer should have discharged condition 3, 6 and 7 as requested.