



**Cyfoeth
Naturiol
Cymru
Natural
Resources
Wales**

Ein cyf/Our ref: CAS-109224-C7R6
Eich cyf/Your ref: P/2020/0072

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03/03/2020

For the attention of Matthew Phillips

Dear Matthew,

**BWRIAD / PROPOSAL: OUTLINE APPLICATION FOR RESIDENTIAL
DEVELOPMENT FOR UP TO 15 DWELLINGS INCLUDING
SEGREGATED ECOLOGICAL AREA FOR GREAT CRESTED
NEWTS**

LLEOLIAD / LOCATION: Scrap Yard, Llwyneion Road, Legacy, Wrexham

Thank you for consulting Natural Resources Wales (NRW) about the above, which was received on 13/02/2020.

We have significant concerns with the proposed development as submitted. We recommend you should only grant planning permission if the following requirements are met and you attach the following conditions to the permission. Otherwise, we would object to this planning application.

Requirement 1: Foul drainage: Further information is required to demonstrate that either the foul drainage will be discharged to the main sewerage system or that it is not reasonable to connect to the mains.

Requirement 2: Confirmation of drainage: Should sufficient justification be submitted justifying non-mains drainage further information is needed to demonstrate that the proposals are in line with Chapter G Discharge of liquid effluents into the ground in [groundwater protection](#) advice on www.gov.uk, considering the sensitive nature of the site and the Welsh Circular 008/2018 for non mains drainage ([link](#)).

Condition 1: No development shall commence until a scheme to deal with the risks associated with contamination at the site, has been submitted to and approved in writing by the Local Planning Authority.

Condition 2: 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.

Condition 3: No infiltration of surface water drainage into the ground is permitted other than with the express written consent of the local planning authority, which may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk from historic contamination to controlled waters. The development shall be carried out in accordance with the approval details.

Condition 4: No development shall commence until a bat Conservation Plan has been submitted to and approved in writing by the Local Planning Authority.

Condition 5: No development shall commence until a site GCN Conservation Plan has been submitted to and approved in writing by the Local Planning Authority.

Foul Drainage

Requirement 1 – Foul drainage – Further information is required to demonstrate that either the foul drainage will be discharged to the main sewerage system or that it is not reasonable to connect to the mains.

We refer you to Welsh Government Circular 008/2018 on the use of private sewerage in new development, specifically paragraphs 2.3-2.5 which stress the first presumption must be to provide a system of foul drainage discharging into a public sewer. Only where having taken into account the cost and/or practicability it can be shown to the satisfaction of the local planning authority that connection to a public sewer is not feasible, should non-mains foul sewage disposal solutions be considered. We note the proposed development is in a publicly sewered area (a public sewer is located to the south of the site) and as such, we would expect consideration be given to the potential for the site to connect to the mains sewerage system.

We therefore advise that if they haven't already done so, the Applicant should thoroughly investigate the possibility of connecting to the foul sewer by taking the following steps:

- Formally approach the sewerage undertaker regarding a connection under Section 106 or a requisition under Section 98 of the Water Industry Act (WIA) 1991.
- Serve notice for connection under Section 106 of the WIA 1991 if the sewerage undertaker has refused connection.
- Provide details of the reasons given by the sewerage undertaker if it has refused connection under section 98 or section 106 of the WIA 1991 and confirmation that they have appealed against this decision.

- Demonstrate that it is not reasonable to connect to the public foul sewer.
- Where it is not reasonable to connect to the public foul sewer, demonstrate that they have considered requesting that the sewerage undertaker adopt their proposed system.

The Applicant should be aware that should a connection to the mains sewer not be feasible, they will also need to demonstrate that the proposal would not pose an unacceptable risk to the water environment. WG Circular 008/2018 advises that a full and detailed consideration be given to the environmental criteria listed under paragraph 2.6 of the Circular, in order to justify the use of private sewerage.

The Applicant should also be aware that should a connection to the mains sewer not be feasible, they will need to apply for an environmental permit or register an exemption with us. As stated above, we expect developers discharging domestic sewage to connect to the public foul sewer where it is reasonable to do so. We will not normally grant a discharge permit for a private sewage treatment system where it is reasonable to connect to the public foul sewer. We also expect discharges of trade effluent to connect to the public foul sewer where it is reasonable to do so and subject to the sewerage undertaker granting a trade effluent consent or entering into a trade effluent agreement.

Septic tanks and small sewage treatment works may be registered as exempt from the requirement to obtain an environmental permit if certain criteria are met. Please note, should a permit be required, further information may be required as part of that application and the Applicant is therefore advised to hold pre-application discussions with our Permitting Team on 0300 065 3000, at the earliest opportunity, to try to ensure that there is no conflict between any planning permission granted and the permit requirements. It is important to note that a grant of planning permission does not guarantee that a permit will be granted, should a proposal be deemed to be unacceptable (either because of environmental risk or because upon further investigation, a connection to mains sewer was feasible). The Applicant should ensure that they have all the required permissions, consents, permits and any other approvals in place prior to commencement of works on the site.

More information, including a step by step guide to registering and the relevant application forms are available on our [website](#). Where private sewage treatment/disposal facilities are utilised, they must be installed and maintained in accordance with British Standards 6297 and Approved Document H of the Building Regulations. We also refer the Applicant to Guidance for Pollution Prevention 4 on the [NetRegs website](#), which provides further information.

Please note, lack of capacity or plans to improve capacity in the sewer is not a valid reason for a sewerage undertaker to refuse connection under Section 106 of the Water Industry Act 1991 and we may refuse to issue an environmental permit for private treatment facilities in such circumstances.

Foul Drainage and Contaminated Land

The site is situated within a groundwater Source Protection Zone and proposes non mains foul/surface water drainage. Should sufficient justification be submitted to

support the use of non mains foul drainage we require additional information with regards to the system to be used:

Requirement 2: Confirmation of drainage: Should sufficient justification be submitted justifying non-mains drainage further information is needed to demonstrate that the proposals are in line with Chapter G Discharge of liquid effluents into the ground in groundwater protection advice on www.gov.uk, considering the sensitive nature of the site and the Welsh Circular 008/2018 for non mains drainage ([link](#)).

There are significant concerns about the proposals for foul drainage. At present there is insufficient information to understand whether the proposal is acceptable. The drainage field is located within a highly sensitive location with regards to groundwater as it is located within a Source Protection Zone (SPZ), and also within Llwyneinion Old Refuse Tip No 1 – neither of which are considered with regards to the siting of the infiltration.

Welsh Circular 008/2018 for non mains drainage ([link](#)) states that developers should make a full assessment of the suitability of any proposals for non-mains sewerage at project design stage. There is not information submitted to demonstrate this has taken place. The factors which should be considered are set out in Section 2.0 of the circular.

Section 2.12 states that if the developer submits insufficient information about the private sewerage proposals for the planning authority to give proper consideration that the authority may ask the applicant to produce further information, including any test results, to enable it to decide whether the relevant factors contained in this Circular are demonstrated.

The applicant should also be advised that a non-mains foul drainage system will require a permit. NRW will also seek to control any risk to controlled waters through permitting. This is in addition to the planning permission.

It is recognised that a report reference R2499-R01-v1 Stage 1 and 2 Supplementary Contamination Investigation and Assessment has been submitted in support of this application. However, the report only considers part of the redline boundary and does not include the southern area of the site which includes Llwyneinion Old Refuse Tip No 1, and there are several significant omissions including (but not limited to), limited assessment of controlled waters – only one groundwater sample has been taken, Section 9.7.3 states that there are no local abstractions – this is incorrect there is a licenced abstraction for public water supply 20 meters away from this site. As such contaminated land conditions are required to control the risk to controlled waters.

The following conditions relating to land contamination should also be attached to any permission.

Condition 1: No development shall commence until the following components of a scheme to deal with the risks associated with contamination at the site, has been submitted to and approved in writing by the Local Planning Authority.

1. A preliminary risk assessment which has identified:
 - all previous uses
 - potential contaminants associated with those uses
 - a conceptual model of the site indicating sources, pathways and receptors
 - potentially unacceptable risks arising from contamination at the site
2. A site investigation scheme, based on (1) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.
3. The results of the site investigation and the detailed risk assessment referred to in (2) and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.
4. A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation strategy in (3) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

The remediation strategy and its relevant components shall be carried out in accordance with the approved details.

Justification: To ensure the risks associated with contamination at the site have been fully considered prior to commencement of development as controlled waters are of high environmental sensitivity (site situated within a groundwater source protection zone); and where necessary remediation measures and long-term monitoring are implemented to prevent unacceptable risks from contamination.

Condition 2: 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.

Condition 3: No infiltration of surface water drainage into the ground is permitted other than with the express written consent of the local planning authority, which may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk from historic contamination to controlled waters. The development shall be carried out in accordance with the approval details.

Justification: To prevent both new and existing development from contributing to or being put at unacceptable risk from or being adversely affected by unacceptable levels of water pollution.

Protected Species

We note the following protected species assessments submitted in support of the application;

- Proposed Residential Development at Former Legacy Scarp Yard, Esclusham Mill, Llwyneinion, Wrexham, Preliminary Ecological Appraisal with Dusk Results (Bats), Tyrer Ecological Consultants, 03/09/2019),
- Proposed Residential Development at Former Legacy Scarp Yard, Esclusham Mill, Llwyneinion, Wrexham, Great Crested Newt Mitigation Strategy, Marches Ecology, 15/10/19

In our view these reports are satisfactory for the purposes of informing the planning decision making process.

Bats

We note that the bat report submitted in support of the above application (Proposed Residential Development at Former Legacy Scarp Yard, Esclusham Mill, Llwyneinion, Wrexham, Preliminary Ecological Appraisal with Dusk Results (Bats), Tyrer Ecological Consultants, 03/09/2019) has identified that bats are present at the application site. 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.

We advise that the proposed development is likely to harm or disturb the bats or their breeding sites and resting places at this site. Consequently we advise that implementation is subject to the provisions of a derogation licence.

We advise that the below condition should be attached to any planning permission for this scheme to ensure the implementation of an overall conservation scheme that includes appropriate mitigation and compensation measures. 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. We advise that outstanding issues are addressed by the imposition of planning conditions or obligations

Condition 4: No development shall commence until a bat Conservation Plan has been submitted to and approved in writing by the Local Planning Authority. The Conservation Plan shall include, but not necessarily be limited to:

Build upon the principles outlined in the ecological report (reference Pritchard, M. (2019). Preliminary Ecological Appraisal with Dusk Results (Bats). Tyrer Ecological Consultants. Unpublished.)

- 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
- Actions to be taken in event previously unidentified species of bat are found

- 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 5 years
- Details concerning external lighting scheme including evidence that it complies with Institution of Lighting Professionals and Bat Conservation Trust: Guidance Note 08/18: Bats and Artificial Lighting in the UK; together with plans illustrating current or projected bat emergence points and dispersal corridors

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

NRW would refer the Planning Authority to the letter from the Welsh Government to Chief Planning Officer's dated 01 March 2018 which advises Local Planning Authorities to attach an informative regarding licence requirements to all consents and notices

Please consult us again if any further information shows that this is no longer a lower risk case.

Great Crested Newts

We note that the ecology report submitted in support of the above application has identified that great crested newts (GCN's) are present at application site.

Great crested newts and their breeding sites and resting places are protected under the Conservation of Habitats and Species Regulations 2017. Any development that would contravene the protection afforded to GCN's under the Regulations would require a derogation licence from Natural Resources Wales. A licence may only be authorised if:

- i. There is no satisfactory alternative and
- ii. 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. In addition,
- iii. the development works to be authorised must be for the purposes 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.

Paragraph 6.3.7 of Technical Advice Note 5: Nature Conservation and Planning (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's on the site or that, in its opinion, all three conditions for the eventual grant of a licence are likely to be satisfied.

In our view the proposal is likely to harm or disturb the GCN or their breeding sites and resting places at this site and consequently implementation will therefore require a licence.

We consider the proposal satisfactorily demonstrates that it is not likely to be detrimental to the maintenance of the favourable conservation status of the local populations of GCN's. However, we advise that, in this case, any subsequent consent is subject to the imposition of planning conditions and obligations

Condition 5: 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 reports (reference Ellson, M. (2019) Proposed Residential Development at Former Legacy Scarp Yard, Esclusham Mill, Llwyneinion, Wrexham, LI14 4ET- Great Crested Newt Mitigation Strategy. Unpublished
- Submission of details concerning GCN mitigation and compensation measures including plans during and post construction. Details and timescales to be provided in respect of:
 - Mitigation land to be managed by a body approved by the LPA . All management and monitoring funded through index linked annual service charge commencing immediately after the occupation of first constructed dwelling. This to be based on management, wardening and annual surveillance;
 - 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 phasing of the development
- Ecological Compliance Audit, including key performance indicators. We advise that in this case the ECA is undertaken by an external body
- 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 monitored in accordance with the methodology of and results reported through the Wales Great Crested Newt Monitoring Scheme. Methodology shall include annual abundance counts and Habitat Suitability Index (HSI) assessments. Each water body shall be individually numbered on site.
- Submission of a long-term site management plan (for a period of not less than 25 years. Provisions of the plan to include contingency measures that will be actioned if adverse factors (eg fish or invasive non- native species are identified). The management plan shall also identify required competencies and licences required for to the purposes of carrying out identified operations).
- Submission of a biosecurity risk assessment

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

In respect of proposed changes to tenure and proposed long term funding arrangements, we advise that these are included within the provisions of any subsequent planning obligation/agreement.

This advice applies to the proposal in its present form. If the plans are changed in ways that may harm or disturb GCN's or their breeding sites and resting places at this site, you would need a revised ecology report that took account of such changes.

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

NRW would refer the Planning Authority to the letter from the Welsh Government to Chief Planning Officer's 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.

Other Matters

Please note, if further information is prepared to support an application, it may be necessary for us to change our advice in line with the new information.

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.

In addition to planning permission, you are advised to ensure all other permits/consents/licences relevant to the development are secured. Please refer to our [website](#) for further details.

Advice for the Applicant / Developer:

Pollution Prevention

Due to the proximity of the site to watercourses, all works at the site must be carried out in accordance with GPP5 and PPG6: 'Works in, near or over watercourses' and 'Working at construction and demolition sites' which are available on the following website: <http://www.netregs.org.uk/environmental-topics/pollution-prevention-guidelines-ppgs-and-replacement-series/guidance-for-pollution-prevention-gpps-full-list/>

Waste Regulation and Contaminated Land

Natural Resources Wales recommends that developers should:

1. Follow the risk management framework provided in CLR11, Model Procedures for the Management of Land Contamination, when dealing with land affected by contamination.
1. Refer to the Environment Agency's 'Guiding Principles for Land Contamination' for the type of information that we require in order to assess risks to controlled waters from the site. The Local Authority can advise on risk to other receptors, such as human health.
2. Refer to the Environment Agency's (2017) 'Approach to Groundwater Protection'

The treatment and disposal of contaminated soils and groundwater is regulated by waste legislation and requires an environmental permit.

Excavated materials that are recovered via a treatment operation can be re-used on-site under the CL:AIRE Definition of Waste: Development Industry Code of Practice. This voluntary Code of Practice provides a framework for determining whether or not excavated material arising from site during remediation and/or land development works are waste.

Developers should ensure that all contaminated materials are adequately characterised both chemically and physically, and that the permitting status of any proposed on site operations are clear. If in doubt, Natural Resources Wales should be contacted for advice at an early stage to avoid any delays.

Ordinary Watercourse Consent

Any works affecting the ordinary watercourse may require an Ordinary Watercourse Consent from the relevant Lead Local Flood Authority, in this case Wrexham County Borough Council.

Yn gywir / Yours faithfully,

Daniel Davies

Daniel Davies

Cynghorydd, Cynllunio Datblygu / Advisor, Development Planning

Cyfoeth Naturiol Cymru / Natural Resources Wales