



FAO Philip Forster

05/06/2019

Dear Philip,

TOWN AND COUNTRY PLANNING ACT 1990
DEDDF CYNLLUNIO GWLAD A THREF 1990

PROPOSAL: Construction of 10 No. Dwelling Houses, 6 No. Flats and 2 No. Bungalows, with new vehicular and pedestrian access, internal access road and associated development.

LOCATION: Blast Road, Brymbo

Thank you for consulting Natural Resources Wales (NRW) about the above, which was received on 20/05/2019.

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

Summary of Requirements and Conditions

Requirement 1: Further information is submitted to demonstrate that the proposal is not likely to be detrimental to the maintenance of the favourable conservation status of the local population of great crested newts.

Condition 1: Submission and implementation of an approved ecological compliance audit (ECA) scheme to the satisfaction of the LPA.

Protected Species

Great Crested Newts

The application site has been subject to survey and assessment in respect of the great crested newt (Preliminary Ecological Appraisal: Land at Blast Road, Brymbo (2019) Prestwood, W., Arbor Vitae). The survey was submitted in support of the pre-application submission. We understand that the survey has not been submitted in support of this application, however we are not aware of any material changes to the scheme that would render the survey inapplicable. We have provided comments on the basis of the findings of that report.

In our view the survey and assessment has been carried out to a satisfactory standard. The survey was submitted in support of the pre-application submission. We understand that the survey has not been submitted with the application, however we are not aware of any material changes to the scheme that would render the survey inappropriate. We have provided comments on the basis of the findings of that report.

In our view, the overall proposal has the potential to cause disturbance to great crested newts and/or loss or damage to their resting places. Great crested newts (GCN) and their breeding and resting places are protected under the Conservation of Habitats and Species Regulations 2017 (as amended) and they classed as a material consideration for planning under the provisions of Technical Advice Note 5: Nature Conservation and Planning (TAN5).

The Regulations allow the approval of a scheme that would be likely to result in disturbance or harm to GCN, but only if satisfy an appropriate Habitats Directive derogation purpose and two tests before a licence can be issued from Natural Resources Wales.

In the case of development, the applicable derogation purpose is:

“Preserving public health or public safety or 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 the Local Authority should not grant planning permission without having satisfied itself that the proposed scheme 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.

We consider that it is possible that the species utilizes the site for foraging, dispersal or sheltering purposes. In our view, we consider that construction and operational phases of the proposal have the potential to adversely affect GCN. We therefore consider that further information is required for the purposes of ensuring the appropriate implementation and operation of the proposal. Information requirements include details concerning the clearance of individuals from working areas during construction; consideration of incidental capture/killing issues; and compensatory proposals. Without prejudice to the detail of any future submissions, compensatory proposals would normally be the provision of land together with habitat creation and enhancement in the long term. Wrexham supplementary planning guidance may help inform the detail of compensation or other off setting measures

We consider that the proposal does not satisfactorily demonstrate that it is not likely to be detrimental to the maintenance of the favourable conservation status of the local population of great crested newts. To demonstrate to likely detriment to the maintenance of the FCS of the local GCN population, we advise that at least a framework strategy is prepared that identifies how component outstanding issues will be addressed.

Requirement 1: Further information is submitted to demonstrates that the proposal is not likely to be detrimental to the maintenance of the favourable conservation status of the local population of great crested newts.

However, we advise that any subsequent application includes the following:

- The submission and implementation of detailed great crested newt avoidance and mitigation measures. This to include detail of exclusion and barrier fencing;
- The submission and implementation compensatory proposals. This to consider material issues associated with tenure;
- In respect of any compensatory land, a management plan that includes provisions concerning long term management, surveillance and tenure. This submission to include the long term provision of resources;
- Measures to be carried out in order to prevent incidental capture/killing of amphibians following completion of the construction phase of the proposal (eg an amphibian friendly surface water management system);

This advice applies to the proposal in its present form. If the plans are changed in ways that may affect 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.

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.

Bats

We consider the assessment in respect of bats to be satisfactory. We therefore concur with the conclusions and recommendations in respect of bats.

Dormouse

We consider the assessment in respect of bats to be satisfactory. We therefore concur with the conclusions.

Ecological Compliance Audit

We advise that any future subsequent consent includes the imposition of a condition that requires the submission and implementation of an approved ecological compliance audit (ECA) scheme to the satisfaction of the LPA. In this case, ECA will need to consider assessment of all identified ecological features. Guidance on ecological compliance audit can be obtained from NRW's website.

Condition 1: Submission and implementation of an approved ecological compliance audit (ECA) scheme to the satisfaction of the LPA.

The purpose of the Ecological Compliance Audit is to evidence compliant implementation of all ecological avoidance, mitigation and compensation works, either proposed or subject to the provisions of reserved matters conditions. The Audit shall identify Key Performance Indicators (KPI's) that are to be used for the purposes of assessing and evidence compliance.

Protected Sites

We note that Brymbo Fossil Forest SSSI is located approximately 250m away. Based on the information provided we do not consider that this proposal would impact upon the site.

Please do not hesitate to contact us if we can be of any further assistance to you.

Our comments above only relate specifically to matters that are listed in our 'Consultation Topics' document (September 2018) which is published on our website: (<https://cdn.naturalresources.wales/media/686847/dpas-consultation-topics-august-2018-eng.pdf?mode=pad&rnd=131819256840000000>). We have not considered potential effects on other matters and do not rule out the potential for the proposed development to affect other interests, including environmental interests of local importance.

Yn gywir / Yours sincerely,

Advice for the Applicant / Developer:

Pollution Prevention

Any work which is to take place should be done so with pollution prevention in mind. Pollution prevention advice and guidance can be found via this link:

<http://www.netregs.org.uk/environmental-topics/pollution-prevention-guidelines-ppgs-and-replacement-series/guidance-for-pollution-prevention-gpps-full-list/>

Should any pollution occur during the operational phase, Natural Resources Wales should be notified via the incident hotline – 03000 65 3000.

Waste Regulation

Waste produced during the construction phase of your development must be dealt with appropriately, and be in line with all relevant waste legislation including Duty of Care Regulations and Hazardous Waste Regulations. As part of your waste duty of care you must classify the waste produced:

- before it is collected, disposed of or recovered
- to identify the controls that apply to the movement of the waste
- to complete waste documents and records
- to identify suitably authorised waste management options
- to prevent harm to people and the environment.

Any waste removed from site will be subject to waste management controls. The links below provided information on how to classify waste and register as a waste carrier or hazardous waste producer:

<http://naturalresources.wales/waste/how-to-classify-and-assess-waste/?lang=en>

<http://naturalresources.wales/apply-for-a-permit/waste/?lang=en>

Further guidance can be found on the GOV website here:

<https://www.gov.uk/managing-your-waste-an-overview/duty-of-care>

Surface Water Drainage

We refer the developer to the Environment Agency (2017) 'Approach to groundwater protection' position statements which have been adopted by Natural Resources Wales. In particular the developer should be aware of the advice under Position Statement G13 (Sustainable drainage systems) which applies to this development.

Landfill

According to our records the proposed development site is located near to land that is, or has been, used for the deposition of waste material. We would therefore advise you to consult with the local authority's Environmental Health and Building Control Departments, as they may hold detailed records, and may wish to make appropriate recommendations in respect of landfill gas investigation/remedial work. The developers should be made aware of the existence of the landfill site(s) so that they can decide whether or not to make their own investigations into the presence of landfill gas. It should also be noted that Waste Management Paper 27 states "It has been found that many sites which have taken only supposedly 'inert' waste have produced gas".

The applicant should be advised that, in addition to planning permission, it is their responsibility to ensure that they secure all other permits/consents relevant to their development.

Yn gywir / yours faithfully,

Daniel Davies

Daniel Davies

Ymgynghorydd Cynllunio Datblygu / Development Planning Advisor

Cyfoeth Naturiol Cymru / Natural Resources Wales