



**Cyfoeth
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Wales**

Ein cyf/Our ref: CAS-12857-B5K2
Eich cyf/Your ref: P/2014/0843

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09/12/2015

Er sylw / For the attention of: Janet Sutherberry

Annwyl / Dear Janet Sutherberry,

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

BWRIAD / PROPOSAL:

Erection of industrial units class B2 comprising two storey office and warehouse accommodation and single storey dust extraction building and associated car parking and storage area

LLEOLIAD / LOCATION:

Land off Ash Road South, Wrexham Industrial Estate (SJ381498)

Thank you for consulting Natural Resources Wales (letter dated 11/11/2015) regarding the above.

Natural Resources Wales brings together the work of the Countryside Council for Wales, Environment Agency Wales and Forestry Commission Wales, as well as some functions of Welsh Government. Our purpose is to ensure that the natural resources of Wales are sustainably maintained, used and enhanced, now and in the future.

NRW would object to issue of consent for this proposal unless additional information can show it would not have adverse effects on the following interests:

- *Flood risk*
- *Great crested newt*

We wish to express the following further comments and observations:

Flood Risk

The application area lies entirely within Zone A as defined by Welsh Government's Development Advice Map referred to in TAN15: Development & Flood Risk. Our Flood Map information shows the application site to lie wholly in Flood Zone 1, which is land considered to have a low annual probability of flooding from rivers and the sea.

Having reviewed the details of the latest planning application (we note that previous application made under reference P/2015/0351 was refused), we have some concerns that the proposed scale of development may present risks of flooding on-site and/or off-site if surface water runoff is not effectively managed. We would therefore request that prior to the grant of any planning approval that a Flood Consequences Assessment / Surface Water Drainage Strategy be produced to detail how surface water will be managed as part of the development proposals.

In their planning application form, the Applicant has indicated their intention to dispose of surface water using Sustainable Drainage Systems. Unfortunately, there is no information within the application submission to demonstrate that such techniques are feasible on site. We also note that the developer intends on constructing a surface water attenuation "pool" and underground attenuation tank, presumably to deal with surface water volumes generated by the development. However, there is no information available in the planning submission to identify where the attenuated volumes of surface water within the pond & tank will ultimately discharge to e.g. soakaway, public sewer or watercourse and it is unclear as to whether any of these options are feasible or viable.

As the management of surface water is a material planning consideration, we would strongly advise that this be addressed prior to the grant of any planning permissions. Section 8.3 of TAN15 states that "Development in one part of a catchment may increase run-off and hence flood risk elsewhere, therefore, the aim should be for new development not to create additional run-off when compared with the undeveloped situation" For developments of this scale a Flood Consequences Assessment / Surface Water Drainage Strategy should include an estimate of the run-off likely to be generated from the development, identify a suitable method of disposal, and discuss the means and manner of attenuation proposed where necessary. This will ensure that an appropriate scheme of surface water management is achievable on site prior to the granting of planning permission and that potential on-site and off-site flood risk impacts are minimised.

Protected Species

- **Great Crested Newts**

The great crested newt is considered to be present within this part of the Wrexham Industrial Estate. We therefore consider 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 2010 (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 tests¹ before a licence can be issued from Natural Resources Wales. [*Please note Regional Species Advice only concerns the 'FCS test'.*]

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 your 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 clearance of individuals from working areas during construction; and the detail of habitat management and tenure within the dedicated compensatory area.

We consider that the applicant has failed to demonstrate that the proposed development is not be likely to be detrimental to the maintenance of the favourable conservation status of the GCN population at this site.

Any appropriate scheme will need to include, but not be restricted to the submission of the following further information:

¹ Recent caselaw, eg 'Morge' and Regina (On application of Christopher Prideaux) v Buckinghamshire Country Council and FCC Environment UK Limited identified SNCO's material role in commenting the provisions of Article 16 of the Habitats Directive.

These judgements effectively mean that SNCO consultation responses will be presumed by an LPA to have effectively assessed whether a proposal is in accordance with an appropriate derogation purpose and the following two tests:

- (i) No satisfactory alternative; and
- (ii) The proposal is likely to be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range [The FCS Test].

Species Officer comments only relate to the 'FCS' Test. Consequently the above does not consider any advice in respect of whether a proposal satisfies an appropriate derogation purpose or whether there are satisfactory alternatives to a submitted proposal. Further internal advice may therefore be required. Failure to consider this may have subsequent implications for NRW.

- The submission and implementation of detailed great crested newt avoidance and mitigation measures;
- The submission and implementation of long term compensatory proposals including, appropriate sized compensation area (based on 'like for like') and appropriate tenure;
- The submission and implementation of long term management, surveillance and wardening proposals;
- The submission of proposals that evidence the long term provision of resources for future management, wardening and surveillance;
- The inclusion of a planning condition to any planning permission that prevents the commencement of development works until your authority has been provided with a licence that has been issued to the applicant by Natural Resources Wales pursuant to Regulation 53 of the Conservation of Habitats and Species Regulations (2010) authorizing the specified activity/development to proceed, or Natural Resources Wales has informed the applicant that such a licence is not required.

Therefore, we object to the development as currently proposed, and recommend planning permission is refused until it can be demonstrated that the proposed development satisfies derogation provisions under the Habitats Directive and the Conservation of Habitats and Species Regulations.

Biosecurity

We consider biosecurity to be a material consideration owing to the nature and location of the proposal. In this case, biosecurity issues concern invasive non native species (INNS) and diseases. We therefore advise that any future consent includes the imposition of a condition requiring the submission and implementation of a Biosecurity Risk Assessment to the satisfaction of the LPA.

We consider that this assessment must include

- (i) appropriate measures to control any INNS on site; and
- (ii) Measures or actions that aim to prevent INNS being introduced to the site for the duration of construction and operational phases of the scheme.

The Natural Environment and Rural Communities (NERC) Act (2006)

Please note that we have not considered possible effects on all species and habitats listed in section 42 of the Natural Environment and Rural Communities (NERC) Act 2006, or on the Local Biodiversity Action Plan or other local natural heritage interests. To comply with your authority's duty under section 40 of the NERC Act, to have regard to conserving biodiversity, your decision should take account of possible adverse effects on such interests. We recommend that you seek further advice from your authority's internal ecological adviser and/or nature conservation organisations such as the local Wildlife Trust, RSPB, etc. The

Wales Biodiversity Partnership's web site has guidance for assessing proposals that have implications for section 42 habitats and species (www.biodiversitywales.org.uk).

To conclude, we can give further views when provided with the information indicated above in relation to Flood Risk and Great Crested Newts. NRW would object to issue of consent for this proposal in the meantime.

Yn gywir / Yours sincerely

A handwritten signature in blue ink, appearing to read 'Bryn Jones', with a long horizontal flourish extending to the right.

Bryn Jones
Casework Officer
Casework Team