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17/06/2021

Dear Sir/Madam,

PLANNING APPEAL

**BWRIAD / PROPOSAL: GLASS HOUSE WITH PACKING FACILITY AND OFFICES,
ENERGY CENTRE, RECOVERY PLANT AND RESERVOIRS**

LLEOLIAD / LOCATION: SESSWICK WAY, MARCHWIEL, WRECSAM

Thank you for consulting Cyfoeth Naturiol Cymru / Natural Resources Wales about the above, which we received on 9/6/2021.

We have concerns with the application as submitted. However, we are satisfied that these concerns can be overcome by attaching the following conditions to any planning permission granted, and by including the documents identified below in the approved plans and documents condition on the decision notice:

Condition 1 (Protected Species – Great crested newts): Species Conservation Plan

Condition 2 (Protected Species – Bats): Lighting plan

Condition 3 (Biosecurity): Biosecurity risk assessment.

Condition 4 – 8: Land contamination

Documents and plan for inclusion in the condition identifying approved plans and documents:

- Ecological Mitigation Site Layout plan (revised 16/3/2021, drawing no. SC/FFG/006G)
- GCN Mitigation Strategy (Scales Consultancy Ltd, dated 22/3/2021)
- Otter Avoidance, Mitigation & Compensation Strategy (Scales Consultancy Ltd, dated 7/9/2020).

Please note, without the inclusion of these conditions, and without the inclusion of the above documents in the approved plans and documents condition, we would object to this planning application. Further details are provided below.

Protected Species

Great crested newts (GCN)

In our advice to the Local Planning Authority on 21/9/2021 (CAS-125549-H0P0) we advised that like for like habitat provision was required with respect to GCNs in order to demonstrate that the proposed development would not be likely to be detrimental to the maintenance of the favourable conservation status of the GCN population at this site. In our response to the LPA we confirmed that the Ecological Mitigation Site Layout plan (revision date 18/9/2020, drawing no. SC/FFG/006A) demonstrated that like for like habitat provision would be delivered.

We note from the Appeal submission that the Ecological Mitigation Site Layout (APP66, (revised 16/3/2021, drawing no. SC/FFG/006G), including the habitats losses and gains table within the plan, has been revised. However, we are satisfied that the revised proposal still includes like for like habitat provision with respect to GCNs. We also consider that the revised layout provides better connectivity for GCNs.

In view of the above, we advise that the updated Ecological Mitigation Site Layout plan should be included on the condition identifying approved plans and documents.

We consider that further details will need to be agreed with respect to detailed mitigation and site management proposed, which build on the information already provided. We advise that the below condition should be attached to any planning permission for this scheme to ensure appropriate avoidance and mitigation measures are implemented.

Condition 1 – Species Conservation Plan

No development shall commence until a Great Crested Newt 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 reports/plans (see list detailed in the list of approved plans and documents at the start of this letter)
- Submission of further details and associated plans concerning GCN avoidance and mitigation measures including, but not limited to: fence design, specifications and locations; considerations of access issues (including PROW if applicable); monitoring and maintenance requirements; and supervised removal. Submission to include proposed timescales and reporting requirements;
- Submission of further details concerning compensatory proposals including plans, extent, access, current and proposed tenure. Details shall identify areas of terrestrial and aquatic habitat to be retained, enhanced and created. Submission to include timescales and reporting requirements;
- Submission of a long term site management (not less than 25 years) that includes defined aims and objectives; habitat management prescriptions; contingency measures if fish or invasive non-native species (INNS) are detected; proposals that are capable of being implemented in the event of failure to undertake or to

appropriately undertake identified or contingency actions; site liaison and wardening; licensing requirements for undertaking habitat management and surveillance; current and any proposed changes to tenure of the compensation area; persons or bodies responsible for undertaking management and surveillance together with required skills and competencies; reporting requirements; and proposed dates for updating or revising the management plan

- Submission of measures designed to prevent the accidental capture/killing of newts (amphibians) during operational (and decommissioning) phases of the scheme (i.e. post construction). This is essentially the installation and maintenance of an amphibian friendly surface water management system that does not include gully pots (or other similar features);
- Details of timing, phasing and duration of construction activities and conservation measures
- Timetable for implementation demonstrating that works are aligned with the proposed development
- Ecological Compliance Audit, including key performance indicators
- 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 added to the Wales Great Crested Newt Monitoring Scheme, (see <https://www.cofnod.org.uk/LinkInfo?ID=7> with individuals/bodies being identified as being responsible for monitoring and reporting works. Methodology shall include annual [or *biennial*] abundance counts and Habitat Suitability Index (HSI) assessments. Each water body shall be individually numbered on site. *In respect of biennial surveillance*, frequency of monitoring visits shall be increased in the event of fish and or aquatic invasive non-native species are detected;

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

Justification: To ensure that an approved Species Conservation Plan is implemented, which protects species affected by the development.

To conclude, provided the above measures are implemented, we do not consider that the proposed development is likely to be detrimental to the maintenance of the population of great crested newts at a favourable conservation status in its natural range.

Bats

The ecological submission (Bat Activity Survey, Sessick Way, Wrexham (Gritstone Ecology, dated 27/8/2020) identifies that five species of bats were recorded foraging/commuting on site during the transect surveys: soprano pipistrelle, common pipistrelle, Myotis sp. (including Daubenton's bats), noctule, and brown long eared bats. Bats and their breeding and resting places are protected under the Conservation of Habitats and Species Regulations 2017.

We note the submission of the Lighting Impact Assessment. We advise that further details with regard to avoiding lighting impacts on bats should be agreed as a condition of any planning permission. 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 condition below is attached.

Condition 2 – Lighting Plan

Prior to its installation, full details of lighting shall be submitted to and agreed in writing by the Local Planning Authority. The Lighting Plan should include:

- Details of the siting and type of external lighting to be used
- Drawings setting out light spillage in key sensitive areas (bat foraging/commuting routes)
- Details of lighting to be used both during construction and operation
- Measures to monitor light spillage once development is operational

The lighting shall be installed and retained as approved during construction and operation.

Justification: A lighting plan should be submitted to ensure lighting details are agreed prior to installation and to reduce the impacts of lighting in the interest of protected species.

Provided these avoidance measures are implemented, we consider that the proposed 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:

Otter

Otters may be using the Afon Clywedog on site. Otters and their breeding and resting places are protected under the Conservation of Habitats and Species Regulations 2017(as amended).

The ecological report (Otter Avoidance, Mitigation & Compensation Strategy (Scales Consultancy Ltd, dated 7/9/2020)) specifies a number of mitigation measures with respect to otters. We advise that the proposed development is not likely to harm or disturb otters or their breeding sites/resting places, provided the avoidance measures described in the report are implemented.

The report must be included in the 'approved list of plans / documents' condition within the decision notice should consent for the project be granted.

Habitat Directive European Protected Species Derogation

The application site is located on land adjacent to an extant long term great crested newt derogation site associated with the Wrexham Industrial Estate Road Improvement Scheme. In addition, further long-term derogation compensation sites are located within 1km of the application.

Please note our response above specifically concerns the Habitats Directive Article 16 test “*demonstration of no detriment to the maintenance of the favourable conservation status of European protected species*”. As highlighted above, provided the measures advised are implemented, we do not consider that the proposed development is likely to be detrimental to the maintenance of the population of great crested newts at a favourable conservation status in its natural range.

We advise that before any consent is given, the determining authority must satisfy itself as to whether the scheme satisfies all three derogation tests including whether it (a) constitutes a valid Article 16 derogation purpose; and (b) whether there is no satisfactory alternative to the proposal.

We wish to reiterate that we have not considered these tests as part of our response. We therefore direct the LPA to published EC Articles 12-16 guidance in respect of these tests (see: http://ec.europa.eu/environment/nature/conservation/species/guidance/pdf/guidance_en.pdf).

Invasive Non-Native Species

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.

Condition 3: The submission and implementation of a biosecurity risk assessment. Provisions of this assessment must include consideration of and inform proposed landscaping schemes.

Justification: To ensure that an approved Biosecurity Risk Assessment is implemented to secure measures to control the spread and effective management, and avoid the introduction, of any invasive non-native species at the site

Protected Sites

Aerial emissions

The proposal involves the installation of four gas-fired Combined Heat and Power (CHP) units at the site. As detailed in our previous response to the LPA, as a medium combustion plant, we consider the screening distance for assessing ecological receptors is 5km for European sites (Special Areas of Conservation (SAC), Special Protection Areas (SPA) and Ramsar sites) and 2km for Sites of Special Scientific Interest (SSSI).

The Air Quality Assessment (Syntegra, July 2020) report assessed the following protected sites:

- River Dee and Bala Lake Special Area of Conservation (SAC)
- Johnstown Newt Sites SAC
- Berwyn and South Clwyd Mountains SAC

As detailed in our response to the LPA, and based on the submitted information, we advise that the proposal is unlikely to have significant effects alone or in-combination on any protected site as a result of air quality impacts.

Otter as a feature of the River Dee and Bala Lake SAC / Afon Dyfrdwy (River Dee) SSSI

The features of the River Dee and Bala Lake SAC and the Afon Dyfrdwy (River Dee) SSSI include mobile species such as otter. As advised above (Protected Species), the Otter Avoidance, Mitigation & Compensation Strategy (Scales Consultancy Ltd, dated 7/9/2020). specifies a number of mitigation measures with respect to otters. As long as the mitigation is implemented (through including the report in the condition identifying approved plans and documents) we advise that the proposal is unlikely to have significant effects on the otter feature of the River Dee and Bala Lake SAC / Afon Dyfrdwy (River Dee) SSSI.

Land Contamination

We note that the land subject to the application was previously used in connection with the sewage farm. The site is also within close proximity to River Clywedog and has an underlying Secondary A aquifer.

The planning application does not include information with respect to possible land contamination at the site. We advise that the conditions listed below must be secured in any planning consent to address the risk of land contamination.

Condition 4 (Land affected by contamination)

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; and where necessary remediation measures and long-term monitoring are implemented to prevent unacceptable risks from contamination.

Condition 5 (Contamination verification report)

Prior to the operation of the development a verification report demonstrating completion of works set out in the approved remediation strategy and the effectiveness of the remediation shall be submitted to and approved in writing by the Local Planning Authority. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met. It shall also include a long-term monitoring and maintenance plan for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action, as identified in the verification plan. The long-term monitoring and maintenance plan shall be carried out in accordance with the approved details.

Justification: To ensure the methods identified in the verification plan have been implemented and completed and the risk associated with the contamination at the site has been remediated prior to occupation or operation, to prevent both future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.

Condition 6 (Long term monitoring plan)

Prior to the operation of the development, a long term monitoring plan for land contamination shall be submitted and approved in writing by the Local Planning Authority. The long term monitoring plan should include:

- Details of the methods and triggers for action to be undertaken
- Timescales for the long term monitoring and curtailment mechanisms e.g. a scheme of monitoring for 3 years unless the monitoring reports indicate that subsequent monitoring is or is not required (for x years)
- Timescales for submission of monitoring reports to the LPA e.g. annually
- Details of any necessary contingency and remedial actions and timescales for actions
- Details confirming that the contingency and remedial actions have been carried out

The monitoring plan shall be carried out in accordance with the approved details, within the agreed timescales.

Justification: A land contamination long term monitoring plan should be submitted prior to occupation or operation, to ensure necessary monitoring measures are approved to manage any potential adverse impacts as a result of development on water quality.

Condition 7 (Unsuspected contamination)

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 8 (Piling)

No development shall commence until details of piling or any other foundation designs using penetrative methods sufficient to demonstrate that there is no unacceptable risk to groundwater have been submitted to and approved in writing by the Local Planning Authority. The piling/foundation designs shall be implemented in accordance with the approved details.

Justification: Piling/foundation details should be submitted to ensure there is no unacceptable risk to groundwater during construction and methods/design are agreed prior to the commencement of development or phase of development.

The applicant will also need to refer to and adhere to the following guidance:

- Follow the risk management framework provided in CLR11, Model Procedures for the Management of Land Contamination, when dealing with land affected by contamination.
- 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.
- Refer to the [Environment Agency's \(2017\) 'Approach to Groundwater Protection'](#)

Flood Risk

The site lies partially within Zone C2 as defined by the Development Advice Map (DAM) referred to under Technical Advice Note (TAN) 15 Development and Flood Risk (July 2004).

Our Flood Map confirms the site to be located partially within the 1% (1 in 100) and 0.1% (1 in 1,000) annual exceedance probability (AEP) event flood outlines.

The development proposal is for industrial/commercial land use, including a commercial glasshouse with packing facility, office space, energy centre and carbon dioxide recovery plant. A Flood Consequences Assessment (FCA) has been submitted in support of the application (ref: 23380, July 2020, The Civil Engineering Practice).

As outlined above, the site lies partially within Zone C2, with the flood extent limited to the northern areas of the site. The FCA outlines that the operational area of the site lies outside the flood zone; this is supported by the proposed development plan, which shows all new development to be located outside the 0.1% AEP event flood outline. The development platform is therefore raised above the expected flood extent.

On the basis that all new development will be located outside the 0.1% AEP event flood outline, we raise no objection to this development proposal.

Protected Landscape

Our advice relates to the potential impacts on the Clwydian Range and Dee Valley Area of Outstanding Natural Beauty (AONB).

The proposal lies approximately 8km from the AONB at its closest point at Bronwylfa, to the west. Footpaths on higher ground within the AONB, on the slopes of Ruabon Mountain are approximately 9-10km from the site.

Given the distances from the site, the proposal is unlikely to have an adverse effect on the AONB. Although a large scale proposal, the undulating landform, together with intervening trees and woodlands and the sewage works to the west mean that, although the development may be visible from the AONB, views are likely to be intermittent and partially screened. In addition, the proposal would be seen in the context of the adjacent sewage works and nearby industrial estate. It would increase views of industrial development to a very minor extent. Any potential glint and glare from the glasshouses is unlikely to have a substantial impact at these distances.

Other Matters

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.

We advise the applicant that, in addition to planning permission, it is their responsibility to ensure they secure all other permits/consents/licences relevant to their development. Please refer to our [website](#) for further details.

Advice for the Developer

Flood Risk Activity Permit

The Afon Clywedog is designated as 'Main River' adjacent to the site. A bespoke Flood Risk Activity Permit (Environmental Permitting Regulations England & Wales, 2016) may be required for any works in, over, under or near a main river or within a flood plain. Further advice and guidance is available on our website at: <http://www.naturalresources.wales/permits-and-permissions/flood-risk-activities/>

Surface Water Drainage

We note that a surface water drainage strategy and plan is included within the FCA. We would advise that Wrexham County Borough Council, in its duty as the Suds Approving Body (SAB) and Lead Local Flood Authority (LLFA), is consulted in order to advise on the suitability of the drainage design, including techniques available to calculate surface water rates of discharge and infiltration rates, and to ensure that off-site risks are not increased due to this development proposal. We do not provide advice in this regard.

As highlighted above (protected species) we advise that surface water drainage schemes consider great crested newts. Gullypots are known to cause the incidental capture of amphibians.

Pollution Prevention

The proposed development lies within the Dee Water Protection Zone (DWPZ) and it may require a DWPZ consent in order to operate in this area if the operator is planning to hold on site controlled substances above certain thresholds. Please visit our website for further information and contact the local environment officer if you have any queries. <https://naturalresources.wales/guidance-and-advice/environmental-topics/water-management-and-quality/water-quality/dee-water-protection-zone/?lang=en>

Should the developer envisage use of pest control products then it should note that there are legal waste requirements in connection to the disposal of pesticide washings, which might need the registration of a waste exemption or the application for a waste permit. Please contact the local NRW team for further advice.

During the construction phase the developer should take any precaution to prevent contamination of any surface water drain and the River Clywedog. Oils and chemicals should be stored in bunded areas and spill kits should be readily available in case of accidental spillages. For further guidance please visit "Working at construction and Demolition Sites, Pollution Prevention Guidance 6" <https://www.netregs.org.uk/media/1672/ppg-6.pdf>

If waste material is to be used for construction purposes, the activity must be registered with Natural Resources Wales. For further information please visit the website <https://www.gov.uk/government/collections/waste-exemptions-using-waste> and contact the local Environment team.

Any movement of waste material must be accompanied by Duty of care waste transfer notes in order to comply with the Waste duty of Care regulations.

The car park serving commuting vehicles and HGVs will require an adequately sized oil interceptor. Use of detergents for vehicle washings in this area should be avoided or confined within a dedicated area served by a sealed sump.

Permitting

We note that the proposal involves the installation of four gas-fired Combined Heat and Power (CHP) units at the site and would be considered to be a Medium Combustion Plant. We recommend that you liaise with NRW's Permitting Service with regard to any Environmental Permit that may be required.

Insufficient information has been provided in the supporting documents to enable NRW to determine if the activities exceed any of the relevant thresholds for installations under Schedule 1 of the EPR 2016. In particular, more in depth information on the CO2 recovery plant with regards to throughput and scale, and also any volume likely to be emitted to atmosphere.

It is the applicant's responsibility to review their activities against the relevant sections of Schedule 1 of the EPR 2016 <https://www.legislation.gov.uk/ukxi/2016/1154/contents/made> and NRW's guidance in RGN 2 <https://www.gov.uk/government/publications/rgn-2-understanding-the-meaning-of-regulated-facility> to determine if a permit may be required.

Please note that a limit of 2 hours free pre-application advice may be provided free of charge, please see our webpage for information on how to request pre-application advice <https://naturalresources.wales/permits-and-permissions/environmental-permits/pre-application-advice-for-environmental-permits/?lang=en>

If you have any queries on the above, please do not hesitate to contact us.

Yn gywir / Yours faithfully

Bryn Griffiths

Uwch-gynghorydd - Cynllunio Datblygu / Senior Advisor - Development Planning
Cyfoeth Naturiol Cymru / Natural Resources Wales