



**Cyfoeth
Naturiol
Cymru
Natural
Resources
Wales**

Ein cyf/Our ref: CAS-17668

Eich cyf/Your ref: 054863

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04/05/2016

I sylw / For the attention of: Mr D G Jones

Dear Sir,

PROPOSAL: Change of use of disused quarry to country park incorporating heritage attraction, recreational uses and visitor centre with associated parking.

LOCATION: Hanson Fagl Lane Quarry, Fagl Lane, Hope

Thank you for consulting Cyfoeth Naturiol Cymru / Natural Resources Wales about the above, which was received on the 8th of April 2016.

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.

We have significant concerns with the proposed development as submitted. NRW recommend that planning permission should only be given if the following requirements can be met. If these requirements are not met then we would object to this application.

Summary of requirements

Requirement 1- Further information on Great crested newts

Requirement 2- Further information on Bats

Requirement 3- Updated Flood consequence assessment

Protected Species

The application is supported by an ecological submission (Reference: Guest, J. (2014). The Former Quarry, Fagl Lane, Near Hope, Flintshire: Extended Phase 1 Habitat Survey and Protected Species Surveys. Enfys Ecology Limited. Report No.: WW/50.10.14/TY. Unpublished.

Great Crested Newts

Surveys carried out by the applicant in 2014 confirmed the presence of the great crested newt throughout the application site. We note that survey methodologies did not include techniques such as eDNA analysis

NRW 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 the scheme satisfies 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 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.

It is likely that this species utilises the site for breeding, foraging, dispersal, sheltering and hibernation purposes. Consequently, both construction and operational phases of the proposal have the potential to adversely affect GCN. NRW therefore consider that further information is required for the purposes of ensuring the appropriate implementation and operation of the proposal. The information required includes:

- (1) The submission of great crested newt avoidance and mitigation measures to be carried out during construction phase(s) and during any subsequent excavation works (including archaeological investigations);
- (2) The submission and implementation of measures to prevent the incidental capture/killing during the operation phase(s) of the proposal;
- (3) The methods of clearance of individuals from working areas during construction,
- (4) Provision of dedicated compensation areas, with appropriate tenure;

(5) Long term management, surveillance; and wardening,

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.

Bats

We note that the ecological report submitted in support of the above application provided limited information in respect of bats.

Bats and their breeding sites and resting places are protected under the Conservation of Habitats and Species Regulations 2010 (as amended). Any development that would contravene the protection afforded to bats 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 bats on the site or that, in its opinion, all three conditions for the eventual grant of a licence are likely to be satisfied.

Although an ecological survey report has been submitted, we are uncertain in respect of :

- (i) whether any trees are to be felled; and
- (ii) Whether external lighting or internal light spillage is proposed that could have an adverse impact on bat foraging or dispersal

In these circumstances, we consider that there is currently insufficient information to demonstrate that the proposal is not likely to be detrimental to the maintenance of the favourable conservation status of any local populations of bat. We advise that the following additional information is therefore needed for the purposes of informing the public decision making process:

- Clarifying whether any trees are to be felled together with their potential to support bat roosts;
- Confirmation of any external lighting proposals together with consideration of issues associated with internal light spillage

We therefore advise that the development as currently proposed, is not subject to any future approval until it can be demonstrated that the proposed development will either not have an adverse effect on bats or all 3 conditions for the eventual grant of a licence under the Conservation of Habitats and Species Regulations are likely to be satisfied.

Birds

Birds are protected under the provisions of the Wildlife and Countryside Act 1981 and the Conservation of Wild Birds Directive 2009. The Conservation of Habitats and Species Regulations (Amendments) 2012 transposes specific provisions of Article 3 of this Directive in respect of up-keep, creation and management of wild bird habitats.

In our view Regulations 9(3) and 9A (3) of the Regulations will in this case be material to the local planning authorities public decision making process.

No survey or assessment was provided in respect of the use of the site by over-wintering birds. We consider this information to be material to informing the public decision making process as proposals for utilizing the larger waterbodies for boating/sailing, model boats, wind surfing and scuba diving have the potential likely to cause disturbance or displacement to wildfowl and water fowl.

Furthermore these impacts do not appear to accord with the ecological submission which states that the site 'will become a haven for wildlife'.

The ecological submission cites a number of species of bird listed under the Conservation of Wild Birds Directive 2009. (see below list) . Of these *Alecco atthis* (Kingfisher) is listed under the provisions of Annex 1 of this Directive.

Article 4 of the Directive, requires 'special conservation measures' concerning the habitat of Annex I species. Paragraph 4 states that outside of protected areas, member states shall strive to avoid the pollution or deterioration of habitats utilized by bird species listed in the Directive.

Owing to presence of kingfisher, we advise the LPA considers the provisions of Article 4 as a material components of its public decision making process

Birds Directive Species include:

(*Alecco atthis*);Kingfisher *
(*Anser anser*)Greylag Goose
(*Bucephala clangula*)Goldeneye
(*Melanitta nigra*)Common Scoter
(*Numenius arquata*) Curlew
(*Vanellus vanellus*);Northern lapwing
(*Turdus iliacus*)Redwing
(*Turdus pilaris*)Fieldfare

NRW consider that there is currently insufficient information to demonstrate that the proposal is not likely to be detrimental to over wintering populations of bird at this site. Furthermore any approval that does not consider impacts on over wintering or breeding birds or their habitat may not accord

with the provisions of the Conservation of Wild Birds Directive 2009.

We advocate that further guidance on this issue should be sought from the LPA's own internal ecological advisors.

Otter

The assessment is considered to be satisfactory for the purposes of informing the public decision making process.

Based on the content of the submission, we considered the proposal is not likely to be detrimental to the maintenance of the favourable conservation status of the local population of otters.

Water Vole

NRW consider the survey and assessment to be satisfactory in respect of water vole.

NRW concurs with the conclusions,

Invertebrates

We understand that no detailed invertebrate surveys or assessments have been carried out by the applicant.

Sand and gravel quarries in north east Wales have been shown to support nationally important assemblages of invertebrate species associated with sand and gravel exposures. Since cessation of mineral extraction and subsequent colonization of sand and gravel exposures by vegetation, potential ecological interest of the site may have declined.

We therefore advise that consideration should be given by the LPA to the potential conservation interest of sand and gravel exposures for its invertebrates. This would accord with aims of the proposal to improve the overall nature conservation interest of the site. We therefore advise that provisions of the management plan are amended to incorporate specific management and monitoring prescriptions in respect of invertebrates. The inclusion of this specific prescription is consistent and evidences compliance with the provisions of Section 6 of the Environment (Wales) Act 2016.

Further advice and guidance in respect of this issue should be obtained from the LPA's own internal advisors.

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 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.

Ecological compliance audit

We advise that any consent includes the imposition of a condition that requires the submission and implementation of an approved ecological compliance audit scheme to the satisfaction of the local planning authority in consultation with Natural Resources Wales

Flood Risk

We note that while the submitted flood consequences assessment (FCA) describes the application as 'outline', the information on your Authority's website indicates the Application Type is for Full planning permission. The submitted planning application form does not explicitly mention any new bridges over the River Alyn, and no design drawings are included on your Authority's planning website. However, as at least one new bridge is mentioned in various documents included in the submission and two are shown on the Proposed Planning Layout in Appendix C of the FCA, this response is given on the basis that the bridges form part of the proposal. Similarly, no detail is given with regard to the number, size and precise location of any of the proposed buildings, therefore this response is based on the indicative areas and locations for the Visitor Centre complex, car and coach park and Roman fort and farm given in the Proposed Planning Layout in Appendix C of the FCA.

The FCA describes the development as 'less vulnerable', however, the submitted Planning and Access Statement indicates the intention to develop the Visitor Centre complex to include residential accommodation. It is not clear whether this use is included in the current planning application, however we would draw to your attention that this would be 'highly vulnerable' development in accordance with TAN 15.

The submitted FCA has not given sufficient consideration to the flood risks which could affect the proposed development. Therefore we require an updated FCA which addresses the concerns detailed below and demonstrates that the flood risks to and from the development can be acceptably managed, in line with TAN 15 Development & Flood Risk (2004).

Additional Flood Risk Considerations

The FCA indicates that no structures or car parking facilities will be located in Zone C2 (as defined in TAN 15 and shown on Welsh Government's Development Advice Map). However, no consideration has been given to the following:

- The effect on flood risk of the proposed new vehicle bridge or the proposed new footbridge. It is not clear whether there is an existing bridge on the site (the Planning and Access Statement indicates a bridge 'that previously existed', paragraph 6.5) or whether the proposed vehicle bridge would be a like-for-like replacement for any existing or previous bridge. The FCA mentions only one new bridge 'for pedestrian visitors and maintenance vehicles' (paragraph 4.12.5) although two bridges are shown on the Proposed Planning Layout in Appendix C of the FCA. However, any new bridges could have a significant impact on water levels on the site. Basic river modelling at this stage could establish key parameters for the bridge designs (soffit height, position of abutments and parapet type) to ensure that they can accommodate the design flow (with 600mm freeboard above the 1% AEP plus climate change flow) and do not cause flood risk elsewhere. The applicant should note that both new bridges are likely to require a Flood Risk Activity Permit from NRW, under the Environmental Permitting (England and Wales) (Amendment) (No.2) Regulations

2016; further information is available on Natural Resources Wales' website at: <https://naturalresources.wales/apply-for-a-permit/flood-risk-activities/?lang=en>.

- The effect on flood risk of blockage at either of the new bridges. Blockages at these structures could divert flood flows, so the effects on the site and in particular the visitor centre complex and site access/egress should be assessed;
- The effect of blockage at the bridges a short distance south of the site (the Fagl Lane bridge and the older structure just downstream of this) should be assessed, particularly on the visitor centre complex which is located at the southern end of the site, and the site access/egress.
- The effect of the various proposed topographical changes should be assessed, including in the event of blockage at any of the structures on the River Alyn on/near the site, and also with regard to surface water flooding. The topographical changes include any improvements to the Pigeon House Lane Access Route which raise the track in the floodplain, reprofiling of the silt and overburden storage mounds and the addition of several substantial bunds (as described in the 'Park in the Past Fagl Lane Quarry Restoration Management Plan, Richards Moorehead & Laing Ltd, April 2015, some of which are near the visitor centre complex).

In addition, parts of the site are shown to be at risk of surface water flooding in Natural Resources Wales' Flood Map for Surface Water, particularly the area marked for development of the Roman Fort and farm and therefore consideration should be given to the effect of surface water flooding in this area.

We would also point out that, contrary to the indication in paragraph 4.1.11 of the FCA, JFLOW flood modelling does not provide depth data suitable for use in an FCA. Modelling the effects of blockage is likely to require production of a more detailed flood risk model.

Pollution Prevention

Responsibility for preventing pollution rests with those in control of the site. Pollution Prevention Guidance should be read by those carrying out the work.

If a pollution incident does arise the site must inform us immediately via our incident hotline **0800 80 70 60**

Any waste produced during the demolition/construction should be disposed of as per Waste regulations. It is the producer's responsibilities to ensure that Waste regulations are followed. Please see our website www.naturalresourceswales.gov.uk for Waste disposal Guidance.

Biodiversity and the Environment (Wales) Act 2016

Please note that we have not considered possible effects on all species and habitats listed in section 6 of the Environment (Wales) Act 2016, or on the Local Biodiversity Action Plan or other local natural heritage interests. To comply with your authority's duty under section 6 of the Environment (Wales) Act, to have regard to conserving and enhancing 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 7 of the Environment (Wales) Act/ and Section 42 of the Natural Environment and Rural Communities Act 2006. (See habitats and species listed in www.biodiversitywales.org.uk).

Please do not hesitate to contact us if you wish to discuss our comments further or if we can be of any further assistance to you.

Yn gywir / yours faithfully,

Charlotte Hawksworth

Swyddog Cadwraeth Casework Officer
Tîm Gwaith Achos / Casework Team