

**ITEMS RECEIVED AFTER THE PRODUCTION OF THE REPORT**  
**FOR THE PLANNING COMMITTEE**  
**TO BE HELD ON 26 JULY, 2018**

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# MATTERS ARISING FOR COMMITTEE

1.

COMMITTEE DATE : 26 July 2018

<b>Application No.:</b> 2013/00833/FUL	<b>Case Officer:</b> Mr. Robert Lankshear
<b>Location:</b> Opposite Hensol Villas, Hensol	
<b>Proposal:</b> Creation of sports training pitches, erection of maintenance facilities, associated car parking and internal roadway	

**From:** Council's Ecologist

**Summary of Comments:** Confirm that the LPA have sufficient information to assess the likely impact of the development on nature conservation and biodiversity issues. Confirm that officer should carry out 3 tests in their report relating to the European Protected Species Licence. They also confirm that they would like conditions relation to a reptile conservation strategy; invertebrate conservation strategy; ecological mitigation strategy; invasive species strategy and habitat management plan be attached to any consent granted.

**Officer Response:**

These conditions are recommended already and as such no further action is required.

To / I:	Operational Manager Development & Building Control	From / Oddi Wrth:	Ecology, Development Services  Countryside and Economic Projects.
FAO	Mr. Robert Lankshear		Mrs Erica Dixon
Date / Dyddiad:	20 July 2018	Tel / Ffôn:	(01446) 704855
Your Ref / Eich Cyf:	2013/00833/FUL	My Ref / Fy Cyf:	
Location	Opposite Hensol Villas, Hensol		
Proposal	Creation of sports training pitches, erection of maintenance facilities, associated car parking and internal roadway		

<b>ECOLOGY RESPONSE</b>	
<input checked="" type="checkbox"/> No objection	<input checked="" type="checkbox"/> Notes for applicant / advisory
<input type="checkbox"/> Object (holding objection)	<input type="checkbox"/> Request for further information
<input type="checkbox"/> Object and recommend refusal	<input checked="" type="checkbox"/> Recommend planning conditions

**Summary**

We have no objection to the application and make the following recommendations.

**Detailed Comments**

We are of the opinion that the LPA has sufficient information to assess the likely impact of the development on nature conservation and biodiversity issues and it therefore able to determine the application.

The following comments also incorporate NRW's recommendations (and where not considered appropriate, these have not been included)

It is currently unclear as to whether the works are considered licensable by NRW, a consultation has been made, but there has been no response from NRW at the time of writing this report. We make the following recommendations:

**Recommendations**

As there was at least some evidence of GCN on site, it is unclear as to whether this will be licensable. NRW consider that the proposed “4.3 ha of Nature Areas as indicated on drawing 3003-P-204a ‘Proposed Nature Areas’ and Figure 3 of the EMS, the site can provide sufficient terrestrial habitat for GCN to ensure no detriment to the maintenance of the favourable conservation status of this species”. It is therefore considered that NRW do not have significant concerns. As a result, we recommend:

- R1 That the Planning Officer, carry out, document and record the “3 tests” in the planning report and include an Advisory on the consent regarding a European Protected Species licence.

In addition, we recommend the following planning conditions to secure biodiversity interests on site (these incorporate NRW recommendations

#### Suggested Planning Condition #1 - Reptiles

*Prior to commencement of development, a reptile conservation strategy must be submitted to, and approved in writing by the LPA. The strategy shall be implemented as agreed.*

#### Suggested Planning Condition #2 - Invertebrates

*Prior to commencement of development, an invertebrate conservation strategy must be submitted to and approved in writing by the LPA. The strategy shall be implemented as agreed.*

#### Suggested Planning Condition #3 - Ecological Mitigation Strategy

*The scheme should be implemented in accordance with Sections 5 – 7 and appendices I-IV of the report ‘Land at Hensol, Vale of Glamorgan, South Wales. Ecological Mitigation Strategy’, (issue 4) dated 8 July 2016, by Ecosulis.*

#### Suggested Planning Condition #4 - Non native species

*Prior to commencement of development, an invasive species strategy must be submitted to and approved in writing by the LPA. The strategy shall be implemented as agreed.*

#### Suggested Planning Condition #5 – Habitat management plan

*Prior to commencement of development, a habitat management plan shall be submitted to and approved in writing by the LPA. The strategy shall be implemented as agreed. The plan shall include, but not exclusively: a planting plan, habitat creation areas, long term management plan and any post development monitoring proposed.*

#### Suggested Advisory #1 - Standard European Protected Species licensing advisory

**CONSERVATION OF HABITATS AND SPECIES REGULATIONS 2010 (AS AMENDED):**

Known as the “Habitats Regulations”, this statutory instrument transposes the Council Directive 92/43/EEC on the Conservation of natural habitats and of wild fauna and flora (the Habitats Directive) into UK law. The Directive is the means by which the European Union meets its obligations under the Bern Convention. The most vulnerable and rarest of species internationally (in the European context) are afforded protection under this legislation. The species listed on Schedule 2 are termed “European Protected Species” and are afforded the highest levels of protection and command strict licensing requirements for any works which may affect them. The species include all British bats, Otter, Dormouse and Great Crested Newt. They are fully protected against disturbance, killing, injury or taking. In addition any site regarded as their “breeding site or resting place” is also protected. It is generally regarded that the site is protected whether the animals are present or not.

The Habitats Regulations clearly outline the role of Planning Authorities in the implementation of the Habitats and Birds Directives; by stating [Section 9(3)] “**A competent authority, in exercising any of their functions, must have regard to the requirements of the Habitats Directive and Birds Directive so far as they may be affected by the exercise of those functions**”

New amendments to the Conservation of Habitats and Species Regulations 2010 included a duty on LPAs to “*take such steps in the exercise of their functions as they consider appropriate to contribute to... the preservation, maintenance and re-establishment of a sufficient diversity and area of habitat for wild birds in the UK including by means of the upkeep, management and creation of such habitat...*” (Reg 9A(2) & (3))

***Habitats Regulations Licensing***

Where works will affect a EPS, then the developer must seek a derogation (licence) prior to undertaking the works. The licence can only be issue once the “3 tests” are satisfied, that is:

- Test 1 – the purposes of “preserving public health or safety, or for reasons of overriding public interest, including those of a social or economic nature and beneficial consequences of primary importance for the environment”.
- Test 2 – there must be “no satisfactory alternative”; and
- Test 3 – the derogation is “not detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range”.

Licences are issued by Natural Resources Wales (NRW), with NRW assessing Test 3, and the LPA assessing tests 1 & 2 (where proposals are not subject to planning, then NRW alone will assess all three tests). Where Planning regulations apply, the NRW will only issue a licence after determination of the planning application. Planners failing to do so will be in breach of the Habitats Regulations (see also Case Law, Morge Case and Woolley Ruling below).

The WCA protects the UK's most vulnerable and rare species as outlined below.

Section 1 – breeding birds. The basic protection afforded to all birds is:

- Protection from killing, injury or taking of any wild bird
- Protection from taking, damaging or destroying the nest of any wild bird
- Protection from taking or destroying the egg of any wild bird

Further, some species, specifically those listed on Schedule 1 of the Act are afforded extra levels of protection to include:

- Protection from disturbance whilst it is nest building; or, is at or near a nest with eggs or young, or disturb the dependant young of such a bird.

There are exemptions from this basic protection for, for example: sale, control of pest species and sporting eg. game birds outside of the close season.

Section 9 (Schedule 5) - protected animals (other than birds) All animals listed on Schedule 5 are protected against killing, injury or taking. Any structure/place used for shelter or protection is protected against damage, destruction or obstructing access to. And it is an offence to disturb an animal whilst using such a structure / place. Some species are afforded "Part Protection" meaning that they enjoy only some of the protection outlined above – eg the animals may be protected, but not their structure used for shelter/protection (such as slow worm).

Section 13 (Schedule 8) – protected plants. Protected plants are afforded protection against: being picked, uprooted or destroyed. They are also protected against sale (or advertising for sale) – this is particularly relevant with respect to bluebells.

## **THE PROTECTION OF BADGERS ACT 1992**

This protects badgers from killing, injury and taking; or attempting to kill, injure or take. Badger setts are also afforded protection and it is an offence to:

- Damage a badger sett or any part of it
- Destroy a badger sett
- Obstruct access to any entrance of a badger sett
- Disturb a badger when it is occupying a badger sett

Development which will destroy or disturb a badger sett (within 30m) is subject to licensing. The licensing body is NRW. However, badgers are considered a species protected under UK legislation (see PPW) and are therefore a material consideration during the planning decision.

Under the NERC Act, Local authorities have a Duty to have regard to the conservation of biodiversity in exercising their functions. The Duty affects all public authorities and aims to raise the profile and visibility of biodiversity, to clarify existing commitments with regard to biodiversity, and to make it a natural and integral part of policy and decision making. Note - Conserving biodiversity includes restoring and enhancing species populations and habitats, as well as protecting them.

**PLANNING POLICY WALES SEPTEMBER 2009 (TECHNICAL ADVICE NOTE 5: NATURE CONSERVATION AND PLANNING)**

Section 6.2.1 – the presence of a protected species is a material consideration when a local planning authority is considering a development proposal, that, if carried out, would be likely to result in disturbance or harm to the species or its habitat.

Section 6.2.2 – It is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted.

Section 6.3.5 – any step in the planning or implementation of a development likely to affect a European Protected Species could be subject to a licence to permit or the survey or implement the proposal are under a duty to have regard to the requirements of the Habitats Directive in exercising their functions.

**PLANNING POLICY WALES (EDITION 5, NOVEMBER 2012)**

Planning Policy Wales, Section 5.5.11 states that *“The presence of a species protected under European or UK legislation is a material consideration when a local planning authority is considering a development proposal which, if carried out, would be likely to result in disturbance or harm to the species or its habitat”*.

Furthermore, Section 5.5.12 states that *“Developments are always subject to the legislation covering European Protected Species regardless of whether or not they are within a designated site. ”And “Local planning authorities are under a duty to have regard to the requirements of the Habitats Directive in exercising their functions. To avoid developments with planning permission subsequently not being granted derogations in relation to European protected species, planning authorities should take the above three requirements for derogation into account when considering development proposals where a European protected species is present”*.

**VALE OF GLAMORGAN COUNCIL - SUPPLEMENTARY PLANNING GUIDANCE**

Supplementary Planning Guidance – Biodiversity and Development

**WOOLLEY RULING**

This case confirmed that local planning authorities must apply the same three tests as Natural England (in Wales, CCW) when deciding whether to grant planning permission when one or more of the European protected species offences under the Habitats Regulations may be committed.

This judgment clarifies a legal duty which was already in existence although many planning authorities were not applying it correctly. His Honour Judge Waksman QC, in the High Court in June 2010, handed down this ruling in the case of R (on the application of Simon Woolley) v Cheshire East Borough Council concerning a development with a bat roost. **This judgment makes it clear that the local planning authority must apply the “3 tests” when determining a planning application.**

### **MORGE CASE (SUPREME COURT CASE 19 JANUARY 2011)**

The case gives clarification to deliberate disturbance and to the interpretation of “damage or destruction of a breeding site or resting place”. It also gives guidance on how LPA should discharge their duties with respect to the Habitats Directive.

### **CORNWALL RULING**

**Judgement that a planning authority had acted unlawfully by granting planning permission without sufficient information on flora and fauna.**

Sometimes planning authorities grant planning permission before some or all ecological surveys have been carried out, making ecological surveys a planning condition, or Section 106 Agreement, under the Town and Country Planning Act 1990.

For development that requires an Environmental Impact Assessment this practice was subject to judicial review proceedings in the High Court and it was determined that the planning authority had acted unlawfully by granting planning permission without sufficient information on flora and fauna (known as the Cornwall Ruling because the planning authority in this case was Cornwall County Council). Requiring surveys as a condition of the Section 106 Agreement was not sufficient, as this would exclude the consultation process that is required under the Town and Country Planning (EIA) Regulations (1999).



## MATTERS ARISING FOR COMMITTEE

COMMITTEE DATE : 26 July 2018

2.

<b>Application No.:</b> 2013/00833/FUL	<b>Case Officer:</b> Mr. Robert Lankshear
<b>Location:</b> Opposite Hensol Villas, Hensol <b>Proposal:</b> Creation of sports training pitches, erection of maintenance facilities, associated car parking and internal roadway	

**From:** Natural Resources Wales

### Summary of Comments:

Email from NRW providing confirmation following query from the Council's Ecologist that *'we can confirm that based on the information submitted with the application NRW would not be unlikely to grant a great crested newt licence for the proposals.'*

### Action required:

None

**From:** South East Planning <southeastplanning@cyfoethnaturiolcymru.gov.uk>  
**Sent:** 17 July 2018 11:35  
**To:** Lankshear, Robert F  
**Subject:** Hensol Training Ground Ecology question NRW:01161357

2.i

Hello Robert,

In response to the question from your Ecologist : we can confirm that based on the information submitted with the application NRW would not be unlikely to grant a great crested newt licence for the proposals.

Regards

Claire

# MATTERS ARISING FOR COMMITTEE

3.

COMMITTEE DATE: 26 July 2018

<b>Application No.:</b> 2016/00927/FUL	<b>Case Officer:</b> Mr. Ceiri Rowlands
<b>Location:</b> 33, Holton Road, Barry	
<b>Proposal:</b> Proposed conversion and extension of existing property to form ground floor commercial units with 7 self contained apartments at ground, first and second floors. On site cycle parking, and refuse storage facilities	

**From:** Mr. Ceiri Rowlands

## **Deferral of Decision:**

In view of the recommendation to approve the application subject to a 24 month completion period/ viability review mechanism, the applicant has requested that the decision be deferred in order to progress on-going discussions with a Registered Social Landlord for the delivery of a scheme comprising 100% affordable housing.

## **Action required:**

The determination of this application is deferred.