

# Penarth Town Council

Mr M Goldsworthy - Oper. Man. Develop & Build. Control  
Vale of Glamorgan Council  
The Dock Office  
Barry Dock  
Barry  
CF63 4RT

Shan Bowden - Town Clerk  
West House  
Stanwell Road  
Penarth  
CF64 2YG

Telephone 02920 700721

Fax 02920 712574

Date 05/02/2016

Case Officer :

Application No :15/01449/FUL

Type : OFF.DEL.

Status : 0 New Application

Date Received : 30/12/2015

Applicant : Celtic Developments (Penarth)  
28 Sturmi Way  
BRIDGEND

Agent/Architect : LRM Planning Ltd  
28 Cathedral Road  
CARDIFF

Location : Northcliffe Lodge  
Northcliffe Drive  
PENARTH

Parish :

N.G.R. :

Road Class :

Proposal : Demolition of existing dwelling and outbuilding, erection of 30 apartments, new access and alterations to adjacent parking area, provision of a footpath link, replacement tree planting and landscaping and associated works.

## TOWN AND COUNTRY PLANNING ACT 1990 - LOCAL COUNCIL OBSERVATIONS

Penarth Town Council have considered the Application No 15/01449/FUL and observations thereon are as follows :

THAT the application should not be approved for the following reasons:

1. the proposal would be an overdominant form of development that could threaten the future of the Custom House and Marine Building, the listed buildings that are located directly below the application site.
2. the proposal is considered to be an overcrowded form of development.
3. the proposal will be detrimental to this iconic headland known as the Bears Head believed by some from where the name of Penarth derived from.
4. the Town Council would urge the Vale of Glamorgan Council to ask its own ecology officer to carry out a comprehensive ecology survey as it is considered that the one provided by the applicant is both cursory and inadequate. Local knowledge is aware of an extensive and active bat population that certainly feed on the site and probably colonise it and it is suggested that a one day look in October cannot possibly reveal the true picture of the sites biodiversity.
5. the loss of so many mature trees is also of concern.

If the Vale of Glamorgan Council is minded to approve the application the Town Council wishes to reserve the right to comment at a later date with regard to any Section 106 Agreement and the community needs within the locality.

D.E.E.R
RECEIVED
ACTION BY: <i>JMcl</i>
NO: <i>6</i>
ACK:

RECEIVED
- 8 FEB 2016
Regeneration and Planning

*SE Bowden*  
*Town Clerk*  
*5/2/16.*

## Vale of Glamorgan Highway Authority Observation Sheet

Planning Application Ref:	2015/01449/FUL
Observations By:	Paul D Harrison
Date:	5 February 2016
Location:	Northcliffe Lodge, Northcliffe Drive, Penarth
Proposal:	Demolition of existing dwelling and outbuilding, erection of 30 apartments, new access and alterations to adjacent parking area, provision of a footpath link, replacement tree planting and landscaping and associated works
Case Officer:	Mrs. Y. J. Prichard

Further to reviewing the proposals in relation to the above, the details below are required to be included on amended plans and submitted for consideration.

- 1 All car parking spaces within the site are required to be provided at 4.8m in length and 2.6m width, in accordance with the councils adopted parking standards.
- 2 The visitor parking spaces located along the site access are required to be located further into the site, adjacent to the proposed buildings.
- 3 A plan to a suitable scale, showing the existing and proposed parking layout (including of the number of parking spaces) and means of access associated with the adjacent Northcliff Apartments, is required to be submitted.
- 4 The swept paths along the access road within the site are required to show a large refuse vehicle and a car passing side by side along the complete length of the access from the adjacent highway.

# MEMORANDUM / COFNOD



To / I: Yvonne Prichard

Dept / Adran: Regeneration and  
Planning,, Dock Offices

Date / Dyddiad: 19 January 2018

Your Ref / Eich Cyf:  
P/DC/LC/YP/2015/01449/FUL

From / Oddi Wrth: Alan Sinclair  
Housing Strategy  
Civic Offices

My Ref / Fy Cyf:

Tel / Ffôn: (01446) 709237

Subject / Testyn: **Planning Application No. 2015/01449/FUL (YP)**  
**Location : Northcliffe Lodge, Northcliffe Drive, Penarth**  
**Proposal : Demolition of existing dwelling and**  
**outbuilding, erection of 30 apartments, new access and**  
**alterations to adjacent parking area, provision of a**  
**footpath link, replacement tree planting and**  
**landscaping and associated works**

Thank you for the opportunity to comment on this planning application.

As previously indicated, the Strategy Team does not consider it acceptable that no affordable housing is included in this proposal. In accordance with the latest Supplementary Planning Guidance the Council would expect 40% of the units as an affordable housing contribution.

We have examined the applicant's planning statement and would comment as follows:

Paragraph 5.4 is incorrect. Policy MG4 states that there will be 40% affordable housing on residential developments in Penarth not 35%.

Paragraph 7.24

- i. Land in Penarth is in short supply, so the value of an off-site contribution will be reduced by the practical difficulties involved in putting the money to productive use.
- ii. Service charges in flats are commonplace is social housing. A Registered Social Landlord could manage the whole site on a not-for-profit basis or simply manage the blocks containing the affordable housing. We do not consider that the need for a service charge constitutes an exceptional circumstance.
- iii. TAN2 We cannot find anything in TAN2 to support this planning statement; rather the opposite: TAN2 states "5.4 The strong presumption is that affordable housing will be provided on the application site..."

In support of this position we would refer to the 2015 Local Housing Market Assessment which identified an annual need for 550 affordable homes, 152

in Penarth & Llandough.

The Council's housing waiting list shows an overall figure of 500 households in current need of accommodation in Penarth, broken down as follows:

Penarth	
1 bed need	253
2 bed need	178
3 bed need	55
4 and over bed need	14

On a 30 home development we would require 12 as affordable. Assuming the developer would still prefer to deliver these as flats our preference would be for 8 one bedroom and 4 two bedroom units. In view of the potential management and service charge issues we would prefer the affordable units to be in exclusive blocks.

Please do not hesitate to call if you have any queries.

Regards,

*AJ Sinclair*

Affordable Enabling Officer

## CONSULTATION RESPONSE: COUNTRYSIDE AND ENVIRONMENT (ECOLOGY)

To / I:	Operational Manager Development & Building Control	From / Oddi Wrth:	Ecology, Development Services  Countryside and Economic Projects.
FAO	Mrs. Y. J. Prichard		Mrs Erica Dixon
Date / Dyddiad:	18 January 2016	Tel / Ffôn:	(01446) 704855
Your Ref / Eich Cyf:	2015/01449/FUL	My Ref / Fy Cyf:	
Location	Northcliffe Lodge, Northcliffe Drive, Penarth		
Proposal	Demolition of existing dwelling and outbuilding, erection of 30 apartments, new access and alterations to adjacent parking area, provision of a footpath link, replacement tree planting and landscaping and associated works		

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

### **Summary**

We submit a Holding Objection to this scheme at the current time due to insufficient information provided to allow the LPA to make a fully informed decision with respect to the likely impact of the development on Protected Species.

### **Detailed Comments**

We welcome the submission of the following ecological report in support of the application.

*Land at Northcliff Lodge, Penarth, Ecological Assessment; December 2015 by David Clements Ecology Ltd.*

We note that the ecology report recommends that 2 activity surveys be undertaken on the Northcliff lodge building to establish whether bats are roosting in the building. Additionally a reptile survey has been recommended to establish the presence/absence of reptiles on site. As this information is currently outstanding, the LPA is not currently in a position to make a full assessment of the impact of the development on a nationally and European Protected Species. Therefore, we currently

object to the application in the absence of such information and make the following recommendations:

***Recommendations***

1. To undertaken emergence / dawn surveys (x2) of the Northcliff Lodge building as recommended by the ecological consultants. Prior to determination
  
2. To undertake a reptile survey of the development site, as recommended by the ecological consultants. Prior to determination.
  
3. Submit an Biodiversity Strategy for the conservation, maintenance and enhancement of biodiversity features on site, prior to determination. The Biodiversity Strategy should include, but not be exclusively limited to:
  - a) Trees being lost / retained / managed / translocated
  - b) Hedgerows lost / retained / managed / translocated
  - c) Newt-friendly drainage strategy
  - d) Scheme of vegetated dark flight corridors
  - e) Scheme for the provision of additional bird nesting opportunities, with the following target species: Swift, Swallow, House martin, House sparrow.
  - f) Use of native species in the planting schemes
  - g) Gaps under fences and other means to maintain connectivity for a range of wildlife.
  - h) Post development management and monitoring where appropriate.
  
4. Reconsult Ecology when the information above is available.

## ANNEX 1 – SUPPORTING INFORMATION (LEGISLATION, PLANNING POLICY AND CASE LAW)

### **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).

## **WILDLIFE AND COUNTRYSIDE ACT 1981 (AS AMENDED)**

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.



## **NATURAL ENVIRONMENT AND RURAL COMMUNITIES (NERC) ACT 2006**

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).



**Cyfoeth  
Naturiol**  
Cymru  
**Natural  
Resources**  
Wales

Ein cyf/Our ref: **CAS-14178-D2B5**  
Eich cyf/Your ref: **2015/01449/FUL**

Rivers House  
St Mellons Business Park  
Fortran Road  
Cardiff  
CF3 0EY

Ebost/Email:  
[melinda.barratt@cyfoethnaturiolcymru.gov.uk](mailto:melinda.barratt@cyfoethnaturiolcymru.gov.uk)  
Ffôn/Phone: 03000 653 091

**FAO: Yvonne Pritchard**

The Vale of Glamorgan Council  
Development Control  
Docks Office  
Subway Road  
Barry  
CF63 4RT

18 January 2016

Dear Sir/Madam,

**DEMOLITION OF EXISTING DWELLING AND OUTBUILDING, ERECTION OF 30 APARTMENTS, NEW ACCESS AND ALTERATIONS TO ADJACENT PARKING AREA, PROVISION OF A FOOTPATH LINK, REPLACEMENT TREE PLANTING AND LANDSCAPING AND ASSOCIATED WORKS AT NORTHCLIFFE LODGE, NORTHCLIFFE DRIVE, PENARTH.**

Thank you for consulting us on the above application, which we received on the 7 January 2015.

We have reviewed the 'Land at Northcliffe Lodge, Penarth, Ecological Assessment' prepared by David Clements Ecology Ltd dated December 2015. We note from the report that the buildings on site have a medium potential for bats and note recommendations for further bats surveys to be completed.

We recommend you seek the advice of your in-house ecologist to determine if there is a reasonable likelihood of bats, a European Protected Species, being present within the application site. If so, in accordance with Technical Advice Note 5: Nature Conservation and planning (paragraph 6.2.2) a bat survey may be required.

The survey should be carried out in accordance with 'Bat Surveys; Good Practice Guidelines 2<sup>nd</sup> Edition' published by the Bat Conservation Trust 2012.

Please consult us again if any survey undertaken finds that bats are present at the site and you require further advice from us.

If you have any further queries, please do not hesitate to contact us.

Yours faithfully

**Melinda (Lindy) Barratt**

Ymgynghorydd Cynllunio Datblygu / Development Planning Advisor  
Cyfoeth Naturiol Cymru / Natural Resources Wales

## Prichard, Yvonne J

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**From:** South East Planning <southeastplanning@cyfoethnaturiolcymru.gov.uk>  
**Sent:** 18 January 2016 10:21  
**To:** Prichard, Yvonne J  
**Subject:** 2015/01449/FUL - Northcliffe Lodge, Northcliffe Drive, Penarth - NRW Response NRW:01180290  
**Attachments:** 2015 01449 FUL - Northcliffe Lodge, Northcliffe Drive, Penarth.pdf

Dear Yvonne

Please find attached our response in respect of the above application.

With this application we note that the phase 1 habitat survey advises more surveys are to be done. Until these have been completed that isn't much we can say as it's unclear whether there are EPS on site, sorry.

If you received anything else we would be happy to be consulted again.

Yn gywir / Kind regards,

Lindy

Melinda (Lindy) Barratt

Ymgynghorydd Cynllunio Datblygu / Development Planning Advisor  
Cyfoeth Naturiol Cymru / Natural Resources Wales

Ffôn/Tel: (0300) 0653091

Gwefan / Website: [www.cyfoethnaturiolcymru.gov.uk](http://www.cyfoethnaturiolcymru.gov.uk) / [www.naturalresourceswales.gov.uk](http://www.naturalresourceswales.gov.uk)

Ein diben yw sicrhau bod adnoddau naturiol Cymru yn cael eu cynnal, eu gwella a'u defnyddio yn gynaliadwy, yn awr ac yn y dyfodol.

**Our purpose is to ensure that the natural resources of Wales are sustainably maintained, enhanced and used, now and in the future.**

# MEMORANDUM / COFNOD

VALE of GLAMORGAN



The Vale of Glamorgan Council  
Public Protection Services  
Legal, Public Protection and Housing Services Directorate  
Civic Offices, Holton Road  
BARRY, CF63 4RU

To:	Mrs Yvonne Prichard
Dept / Adran:	
Date/Dyddiad	7 January 2016
:	
Your Ref / Eich Cyf:	Docks Office, Subway Road, Barry, Vale of Glamorgan, CF634RT

From /	Sue Brown
Oddi Wrth:	Pollution Section
My Ref/Cyf	SFB/294056
Tel / Ffôn:	01446 709872
Fax /	01446 709449
Ffacs:	

Subject /  
Testyn: **Re: Planning Application No - 2015/01449/FUL  
Northcliffe Lodge, Northcliffe Drive, Penarth, Vale Of Glamorgan. CF64 1DQ  
Demolition of existing dwelling and outbuilding, erection of 30  
apartments, new access and alterations to adjacent parking area,  
provision of a footpath link, replacement tree planting and  
landscaping and associated works**

I refer to your memorandum received by this department on 4 January 2016, this department advises the following regarding the above application;

## Construction Environmental Management Plan (CEMP)

1. Before the development commences a scheme shall be submitted to and agreed in writing by the local planning authority which specifies the provisions to be made for the control of noise, dust and vibration emanating from the site. The mitigation scheme should be maintained and shall not be altered without the prior written approval of the local planning authority. The CEMP should address both the demolition and construction phases including all necessary engineering and ground works.
2. Due to the potential for noise disturbance to local residents, the development should be subject to the following hours of operation, restrictions should include deliveries;

Monday – Friday	8:00 until 18:00
Saturday	8:00 until 13:00

With no Sunday or Bank Holiday working

3. Should there be a requirement to undertake foundation or other piling or drilling on site to accommodate on site surface water drainage or other works it is advised that these operations are restricted to:

Monday – Friday  
Saturday and Sunday

8:30 until 17:30  
Nil

Over a time period to be agreed with the planning authority and Environmental Health Pollution Section

### **Contaminated Land**

Having reviewed information held here it is not expected that contamination will be found on site, however in the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported immediately, with follow up in writing, to the Local Planning Authority. An investigation and risk assessment must be undertaken in accordance with the requirements of current guidance, and where remediation is necessary a remediation scheme must be prepared, which is subject to the approval in writing of the Local Planning Authority.

Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority.

### **Asbestos**

This material is commonly found in domestic situations as corrugated roofing sheets or downpipes, and was particularly popular for roofing sheds or garages. It is normally seen as a greyish-white fibrous material with a rough surface.

However it was also used as recently as the late 1970s and early 1980s in artex, vinyl floor tiles and even toilet cisterns. Therefore it is advised that prior to demolition of the existing structures on site that an Asbestos Survey is carried out and all necessary reports and remedial works if required are carried out and verified.

Any removal work undertaken by contractors is regulated by the Health and Safety Executive. Such contractors must be licensed to handle and dispose of this material.

### **Disposal of demolition and other wastes**

The contractor has a duty of care to correctly dispose of any waste arising from the demolition and other works.

**Sue Brown**  
**Environmental Health Officer**