**CONSULTATION RESPONSE : Caerphilly Countryside Service (Ecology) On Behalf of Vale of Glamorgan Countryside and Landscape (Ecology)**

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| **To/I: Operational Manager**  **Development & Building**  **Control**  **FAO Stephen Butler**  **Date/Dyddiad 22/11/2017**  **Your Ref/Dich Cyf: 2017/00746/RES** | **From/Oddi Wrth: Ecology Caerphilly**  **Countryside and**  **Landscape Services**  **on Behalf of Ecology,**  **Development Services,**  **Countryside and**  **Economic Projects**  **Mrs Alison Jones**  **Tel/Ffon 01433 866615** |
| **Location Land off Cardiff Road/Cross Common Road, Dinas Powys** | |
| **Proposal Approval of all matters reserve including Appearance, Landscape , Layout and Scale and subsequent discharge of planning conditions 2, 6,10,,12 and 16 attached to the Outline Permission for Proposed Residential Development Ref 2015/00392/OUT** | |

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| **ECOLOGY RESPONSE** |
| **Holding Objection** |

***Summary***

I have put forward a holding objection on this proposal subject to the receipt of a completed unilateral agreement that adequately secures the off-site mitigation proposals for dormice in the short and longer term. A section 106 agreement or unilateral agreement is also required to secure the long term management of habitats within the application site boundary.

***Detailed comments***

The applicant has submitted an Ecological Mitigation Strategy dated January 2016 and updated in October 2017, an Ecological Design Strategy dated August 2017, a Bat Tree Assessment dated July 2017 a draft Dormouse Licence Method Statement dated September 2016 and updated on 7/09/2017 and a Preliminary Ecological Appraisal dated February 2015 in support of the reserved matters planning application and to discharge conditions relating to the Outline permission 2015/00392/OUT.

European Protected Species

Dormouse

Following discussions with Natural Resources Wales (NRW) and due to the presence of dormice nearby, for the purposes of this application, the applicant has assumed that dormouse are present on the application site in the scrub hedgerows and woodland habitats within the site. A total of 4575m2 of scrub, woodland and a hedge line will be removed to facilitate the development. Without mitigation the impact on dormouse will be certain, moderate, permanent and adverse. The applicant has proposed mitigation within the planning application boundary which includes relocating hedge plants, planting up gaps in existing hedgerows around the periphery of the development, and planting an additional 3m buffer with shrub species where possible between the boundary hedge and the development. This is insufficient to fully mitigate for the loss of dormouse habitat within the development, so in addition the applicant proposes to undertake long term off site management of Shortlands Wood, and to plant an additional 4000m2 of new woodland adjacent to Shortlands Wood. This woodland and the land proposed for new woodland planting is owned by a third party, so it is not possible to secure this through conditions or via a Section 106 Agreement, and will require a unilateral undertaking between the developer and the third party to provide certainty that the new woodland will be planted and long term management of the existing and new woodland will be implemented.

Works associated with the proposed development will require a NRW European Protected Species development licence (derogation) and in order to comply with it’s duty under the Habitat Regulations 2010, (and its amendment 2012), the LPA will need to ensure that the development complies with all three European Tests in order to make this development acceptable. It will also be necessary to ensure that a satisfactory Unilateral Undertaking is in place between the developer and the third party owner of the off-site mitigation areas, prior to the application being determined. A draft Dormouse Licence Method statement has been prepared which sets out how works on the application site will proceed, and sets out mitigation measures and monitoring, that will ensure that there is no detrimental impact on the conservation status of the species. The mitigation measures are shown on the submitted drawing no. 994/PA/03C. Long term management of the habitats within the application site are proposed to be set up using a management company. The details of this mechanism will need to be provided prior to determination.

The three tests that need to be applied to this planning application are:

1. it is in the interests of public health and public 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.

2. that there is no satisfactory alternative,

3. it will not be detrimental to the maintenance of the populations of the species concerned at a favourable conservation status in their natural range

In order to satisfy test no 1, the planning officer will need to demonstrate that the need for housing is of over-riding public interest and has beneficial consequences of primary importance for the environment.

In order to satisfy test no 2, alternative options need to have been considered including the option of doing nothing.

With regard to test no 3, the development will lead to the loss of dormice habitat within the application site, but measures have been put in place to ensure that dormice are not harmed during the clearance works, and remaining habitat within the application site will be enhanced to benefit dormice, and connectivity enhanced to nearby off site habitat. This will also be enhanced through new planting of habitat suitable for dormice and subject to unilateral agreements, and or section 106 agreements being put in place this will secure the long term management of on and off site habitats for dormouse.

Bats

A total of four trees have been confirmed as bat roosts, within and on the boundary of the application boundary. The species using the trees are common pipistrelle and soprano pipistrelle bats with one tree also being used by a possible noctule bat (an obscured view through tree branches prevented species determination). A maximum of 4 soprano pipistrelles, were recorded using the tree labeled TPO 1 and a maximum of 5 pipistrelle bats also recorded using the tree TPO 1. The remaining 3 trees had smaller numbers of common and/or soprano pipistrelles. The type of bat roost was not determined, and for the purposes of the assessment they have been assessed as being maternity roosts.

All four trees will be retained as part of the development, and none are located within garden plots, although 3 are on plot boundaries. A tree protection plan has been submitted that will protect the trees during the construction period. For the longer term protection of the trees, the applicant has indicated that where the branches of tree roosts overhang housing plots, the deeds for those plots will include clauses to require ecological surveys and/or relevant permissions, prior to pruning or felling. In addition as mitigation for loss of other trees with lower potential to support bats, new bat roosts will be provided in 7 properties, together with 2 free standing roosts in the public open space. Lighting has the potential to disrupt bats utilising the hedge and tree lines around the site. The Ecological Design Strategy indicates that lighting will be located away from site boundaries and/or fitted with baffles to maintain them as dark flight lines and foraging areas. A lighting plan has not been submitted to demonstrate location and types of lighting, and this and should therefore be provided. This could be provided as a condition, and submitted prior to the occupation of the first property. Without mitigation, the impact of the application has been assessed as being of minor significance as a result of vegetation removal, and with mitigation has been assessed as of neutral significance. As the four tree roosts will be retained and protection measures proposed to protect the roosts during and after construction, an EU Derogation bat licence is unlikely to be required, and the three tests are therefore not necessary in this instance.

Great Crested Newt

There are no ponds within the application site to support breeding great crested newts although terrestrial habitat on site is suitable. However, the waterlogged nature of the ground will limit its suitability during the winter. A derogation licence is unlikely to be required, but as a precaution, retained habitats have been designed to benefit amphibians, drainage systems are also designed to prevent amphibians falling in to drainage chambers and a method statement prepared in appendix B of the Ecological Design Strategy August 2017 to ensure impact on Great Crested newts, and other amphibians are minimised.

Otters

Otters were not recorded on site although evidence was recorded on the adjacent Cadoxton River. The Ecological Design strategy has included precautionary measures to provide pre commencement checks of the site and working methods to minimise impacts to otters in the unlikely event of them being present on site. With these measures in place there is unlikely to be any impact on otters as a result of the development.

UK Protected Species

Birds

The scrub and tree habitats on site have the potential to provide nesting sites for birds. All birds are protected during the bird breeding season, and the Ecological Design Strategy includes measures to clear trees and scrub between October and March only. In addition new planting within the development and on land adjacent to Shortlands Wood, will provide replacement habitats to increase nesting opportunities for birds. The applicant also proposes to include 25 nest boxes on the new properties, to suit a variety of house nesting bird species that will provide additional nesting opportunities for birds. as set out in the annotated drawing P100. This will provide adequate mitigation for breeding birds.

Reptiles.

No reptile survey was undertaken, but mitigation has been provided based on a presumed presence of reptiles on site. The Ecological Design Strategy has included a method statement for site clearance that will ensure that reptiles are not killed or injured during the development works, and enhancement of habitats around the perimeters and reptile hibernacula constructed within the areas of open space will ensure that reptiles are accommodated within the development.

Management of Habitats within the Application Site

The proposal includes the retention of existing habitats around the perimeter of the development, the enhancement of these habitats and the creation of hedgerows and grassland habitats within the public open space. Mitigation for the permanent loss of habitats within the application site will require the long term management of these habitats once the development has been completed. The Ecological Design Strategy has proposed that this management should be secured via a Section 106 Agreement to secure it’s long term management. This could be delivered either via a private management company or via a transfer of the land to the Vale of Glamorgan with a commuted sum. The details need to be discussed and agreed with the applicant prior to determination of the application.

**Conditions**

Outline application Conditions

The outline permission 2015/00392/OUT set out several ecological conditions relating to this site:

**Condition 15** - *The development shall be carried out in accordance with the recommendations of the submitted Ecological Mitigation Strategy Revision C (Celtic Ecology – February 2015) and the letter received from Celtic Ecology (dated 30 November 2015), with respect to protected Species.*

**Condition 17** *– Prior to the commencement of any development, including site clearance, an Ecological Design Strategy to include a Method Statement for the sensitive site clearance with regards to protected species (reptiles, birds and amphibians) to be submitted to and agreed in writing by the Local Planning Authority. The Ecological Design Strategy shall be implemented as agreed.*

**Condition 18.** *- Prior to the commencement of development, the local planning authority shall be provided with a copy of the licence issued by Natural Resources Wales, pursuant to Regulation 53 of the Conservation of Habitats and Species Regulations 2010 (as amended) authorising the specified activity/development to commence development.*

With regards to condition 15, this Ecological Mitigation Strategy has been superseded by the updated version dated October 2017 as part of the submission of the reserved matters application. The applicant should therefore apply to remove this condition from the outline application

For clarity a new condition should be placed on the reserved matters permission that ensures the development is carried out in accordance with the updated Ecological Mitigation Strategy dated October 2017

Information in support of Condition 17 has been submitted as part of the reserved matters application, and this condition relating to the submission of an Ecological Design Strategy can be partially discharged.

With regards to Condition 18, a Dormouse derogation licence has not yet been applied for will have to await approval of the reserved matters application, so this condition cannot be discharged at this stage.

Reserved Matters Conditions

The following conditions are recommended to be applied to the reserved matters application 2017/00746/RES

**Condition – In accordance with Ecological Mitigation Strategy**

*The development shall be carried out in accordance with the recommendations of the submitted Ecological Mitigation Strategy (Celtic Ecology dated January 2016 and updated October 2017)*

Reason:

To safeguard protected species, in accordance with Policies MD2 and MD9 of the Local Development Plan

**Condition – Lighting**

A detailed lighting plan for the development hereby approved, including inter alia the position, height and type of lighting columns, shall be submitted to the local authority for approval within 6 months of the planning application approval. The approved details shall be strictly complied with.

Reason:

To safeguard protected species, in accordance with Policies MD2 and MD9 of the Local Development Plan

**Legal Obligations**

In order to make the development acceptable with regards to Dormice and other protected species, the long term management of the land within the application site and mitigation land outside the application site needs to be secured.

For mitigation land outside the application boundary, this needs to be secured through a unilateral undertaking between the applicant and the owner of the third party land, and should include within it a long term management plan.

For land within the application boundary this needs to be secured either by a section 106 agreement or a second unilateral undertaking.

The details of these agreements need to be discussed with the applicant as a matter of urgency and should be in-place prior to the application being approved.