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25/11/2020

Annwyl Syr/Madam / Dear Sir/Madam,

BWRIAD / PROPOSAL: OUTLINE APPLICATION FOR RESIDENTIAL DEVELOPMENT, A PRIMARY SCHOOL, COMMUNITY SPACE AND PUBLIC OPEN SPACE WITH ALL MATTERS RESERVED OTHER THAN ACCESS

LLEOLIAD / LOCATION: Land at Upper Cosmeston Farm, Lavernock Road, Penarth

Thank you for consulting Cyfoeth Naturiol Cymru / Natural Resources Wales about the above, which we received on 23 October 2020.

We have significant concerns with the proposed development as submitted. We recommend you should only grant planning permission if you attach the following conditions to the permission.

Conditions:

1. Dormouse Conservation Strategy
2. Details of works implemented to fulfil the Dormouse Conservation Strategy (Reserved Matters Applications)
3. Details of Phasing of Site Development
4. Lighting Strategy (Outline application)
5. Lighting Plan (Reserved Matters Applications)
6. Landscape and Ecology Management Plan (LEMP)
7. Details of works implemented to fulfil the LEMP (Reserved Matters Applications)
8. Pre commencement Species Surveys
- 9-11. Land Contamination
12. Designated Sites – Appropriate Buffer Zone
13. Construction Environmental Management Plan – to protect the water environment.

Condition identifying approved plans and documents on the decision notice to include:
Environmental Statement entitled 'Land at Upper Cosmeston Farm, Lavernock Road, Penarth' by Asbri Planning dated September 2020 incorporating:

- Appendix 8.1 'Cosmeston. Preliminary Appraisal Report' by Wardell Armstrong dated August 2018
- Appendix 8.2 'Cosmeston. Bat Survey Report' by Wardell Armstrong dated September 2018;
- Appendix 8.4 'Cosmeston. Dormouse Survey Report' by Wardell Armstrong dated September 2018;
- Appendix 8.5 'Cosmeston. Great Crested Newt Survey Report' by Wardell Armstrong dated August 2018;
- Appendix 8.7 'Land at Upper Cosmeston Farm, Lavernock Road, Penarth. Ecology Update Note (edp5187_r004c)'.
- Drawing UFC-ASL_00-00-DR-A-0930 entitled 'Upper Cosmeston Farm. Proposed Masterplan' by Austin Smith Lord dated 2/5/19;
- Drawing 0933 entitled 'Upper Cosmeston Farm. Parameter Plan-Green Infrastructure' by Austin Smith Lord dated 2/5/19.
- PAC Report (Appendix H).

We also provide advisory comments in respect of the Wales Coast Path and Shoreline Management.

We received a statutory pre-application consultation notice for this proposal under Article 2D of the Town and Country Planning (Development Management Procedure) (Wales) (Amendment) Order 2012. We provided a substantive response to that consultation on 18 October 2019, reference CAS-100830-M0Q9. A copy of that letter is attached.

We have reviewed the Pre-Application Consultation Report, dated July 2020, by Asbri submitted in support of the application. We note the applicant's response to our comments in appendix H of the report and confirm that the requirements in our letter of 18 October 2019 have been satisfactorily addressed.

European Protected Species Bats and Dormice

We have considered the following documents in support of the application:

- Environmental Statement entitled 'Land at Upper Cosmeston Farm, Lavernock Road, Penarth' by Asbri Planning dated September 2020 incorporating:
 - Appendix 8.1 'Cosmeston. Preliminary Appraisal Report' by Wardell Armstrong dated August 2018
 - Appendix 8.2 'Cosmeston. Bat Survey Report' by Wardell Armstrong dated September 2018;
 - Appendix 8.4 'Cosmeston. Dormouse Survey Report' by Wardell Armstrong dated September 2018;

- Appendix 8.5 'Cosmeston. Great Crested Newt Survey Report' by Wardell Armstrong dated August 2018;
- Appendix 8.7 'Land at Upper Cosmeston Farm, Lavernock Road, Penarth. Ecology Update Note (edp5187_r004c)'.
- Drawing UFC-ASL_00-00-DR-A-0930 entitled 'Upper Cosmeston Farm. Proposed Masterplan' by Austin Smith Lord dated 2/5/19;
- Drawing 0933 entitled 'Upper Cosmeston Farm. Parameter Plan-Green Infrastructure' by Austin Smith Lord dated 2/5/19.
- PAC Report (Appendix H).

We note that dormice and bats were found on the application site.

European Protected Species: Legislation and Policy

Dormice and all species of British bats are European Protected Species, legally protected under The Conservation of Habitats and Species Regulations 2017 (as amended). Legal protection relates to the animals themselves and the places they use to rest and breed.

Where a European Protected Species is present and development proposal is likely to contravene the legal protection they are afforded, the development may only proceed under licence issued by Natural Resources Wales, having satisfied the three requirements set out in the legislation. One of these requires that the development authorised will 'not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status (FCS) in their natural range'.

These requirements are translated into planning policy through Planning Policy Wales (PPW) December 2018, section 6.4.22 and 6.4.23, and Technical Advice Note (TAN) 5, Nature Conservation and Planning (September 2009). The planning authority should take them into account when considering development proposals where a European Protected Species is present.

Bats

We note that surveys for bats in 2017 and 2019 recorded farm buildings B3, B4 and B7, and bridge B8, as supporting non-breeding pipistrelle bat roosts.

We concur that works to the buildings should be covered by a European Protected Species (bat) licence from NRW and welcome the proposed mitigation measures for the loss of these roosts set out in chapter 8 of ES.

With regards to the former railway bridge B8, we note that it will be retained as part of the proposals. We agree that development of the site will require the implementation of a sensitive lighting strategy, to avoid compromising the bats' use of compensatory roosts and the green infrastructure across the site. Advice on the addition of a lighting condition is given below.

Dormice

We note that 2017 surveys recorded dormice in woodland along the former railway line, as well as in a hedgerow on the south-east perimeter of the application site.

We welcome the broad principles for dormouse mitigation outlined in Chapter 8 of the ES, on drawings 0933 (Green Infrastructure Parameter Plan), and in Appendix H of the PAC Report.

In view of the above, we advise that these broad principles are developed further in a dormouse conservation strategy to underpin the development of the site, to be secured by a condition attached to any planning permission granted as follows:

Condition 1

Prior to the commencement of works on site, a detailed Dormouse Conservation Strategy shall be submitted for the written approval the LPA. The strategy shall set out the likely impacts of the proposals on dormice, and detail measures that will be put in place to mitigate and/or compensate the impacts on dormice (as appropriate), building on the principles set out in Chapter 8 of the Environmental Statement, on drawing 0933, and in Appendix H of the PAC report. The strategy shall include:

- A plan showing habitat to be lost, created and retained, which should identify the extent and location on appropriate scale;
- Details of protective measures to be taken to minimise the impacts;
- Proposals to minimise the severance of dormouse habitat, including at least 2 safe crossings for dormice where green infrastructure is severed by the central spine/access road;
- Details of the nature and widths of dormouse habitat buffers, and where these will apply across the site; we would advise that these are planted with appropriate species
- Details of the condition of current dormouse habitat, proposed habitat enhancement measures, and the condition of dormouse habitat that these aim to achieve;
- Details of phasing of construction activities and conservation measures, including a timetable for implementation of mitigation demonstrating that works are aligned with the proposed phasing of the development;
- Details of initial aftercare and long-term management including details of who will be responsible for and how long-term management will be funded;

The Dormouse Conservation Strategy to be implemented in accordance with the approved details.

Justification: To ensure that an approved Dormouse Conservation Strategy is implemented, which protects Dormice affected by the development.

Condition 2

With reference to the detailed Dormouse Conservation Strategy approved as part of the outline consent, each Reserved Matters application shall include details of the specific

measures that will be implemented for that phase of the development and confirm how they contribute to the implementation of the agreed Dormouse Conservation Strategy. The measures shall be approved in writing by the Local Planning Authority and implemented as agreed.

Justification: To ensure that an approved Dormouse Conservation Strategy is implemented, which protects Dormice affected by the development.

Nationally fully protected species: Water Voles

Further to our pre-application advice, we note the comments in the ES and PAC report (Appendix H) regarding water voles, in particular that surveys for the species were not carried out due to the site being considered unsuitable for the species. We therefore make no further observations on this species at this time.

Development of the site: Securing Green Infrastructure

From the information provided, it is not clear whether the site will be developed in one go or come forward for development in phases. Whatever the proposals it is essential that robust, unlit, green infrastructure prevails across the site throughout both the construction and operational phases, to minimise potential impacts on light sensitive species such as dormice and bats.

We therefore advise that the following conditions are attached to any planning consent that the LPA is minded to grant:

Condition 3: Details of Phasing of Site Development

Prior to any works commencing on site, details of the phasing of the development shall be submitted to the LPA for their written approval. The phasing details shall include details of the extent and nature of each phase, a timetable for implementation of each phase, and shall ensure that the protection and delivery of the green infrastructure as indicated on Drawing 0933 (Green Infrastructure Parameter Plan) and Drawing 0930 (Proposed Masterplan) commences from the outset of development works starting on site.

Justification: To ensure continued use of the site by protected species on site throughout both the construction and operational phases.

Condition: 4 Lighting Strategy (Outline Application)

Prior to the commencement of any works on site associated with the matters approved as part of the outline planning permission, a lighting strategy shall be submitted to the Local Planning Authority for their written approval. The Lighting Plan should include:

- Drawings setting out the location of dark corridors
- Details of the siting and type of external lighting to be used;
- With respect to the consented access roads, drawings setting out light spillage in key sensitive areas (Eg. on mitigation/compensatory bat roosts, green infrastructure, attenuation ponds, drainage ditches, dormouse crossings, and where green infrastructure is intersected road infrastructure/paths);

- An Environmental Lighting Impact Assessment against conservation requirements for protected species
- Details of lighting to be used both during construction and operation

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 dormice and bats, their commuting corridors and foraging habitats.

Condition 5: Lighting Plan (Reserved Matters Applications)

Each reserved matters application shall include full details of the lighting to be installed, for the written approval of the local planning authority. The Lighting Plan should include:

- Details of the siting and type of external lighting to be used both during construction and operation
- Drawings setting out light spillage in key sensitive areas (Eg. on mitigation/compensatory bat roosts, green infrastructure, attenuation ponds, drainage ditches, dormouse crossings, and where green infrastructure is intersected road infrastructure/paths);
- An Environmental Lighting Impact Assessment against conservation requirements for protected species
- And information to demonstrate how it accords with the above lighting strategy

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 dormice and bats, their commuting corridors and foraging habitats.

Landscape and Ecology Management Plan

We welcome proposals for a site-wide Landscape and Ecology Management Plan (LEMP) (paragraph 8.5.71) to implement a holistic approach the postconstruction management of landscape, arboricultural, and biodiversity elements.

We therefore advise that the following conditions are attached to any consent that your Authority is minded to grant for the proposals:

Condition 6: Landscape Ecological Management Plan

No development or phase of development shall commence until a Landscape Ecological Management Plan (LEMP) for the provision, management and maintenance of the landscape and ecological features at the site or specific phase, has been submitted to and approved by the Local Planning Authority. The LEMP should include:

- Details of habitats, environmental and other ecological features present or to be created at the site including details of the desired ecological conditions of features
- Details of scheduling and good practice timings of management activities
- Details of short and long-term management, monitoring and maintenance of new and existing landscape and ecological features at the site to deliver and maintain the desired condition

- Details of replacement measures should any landscape or environmental features die, be removed or become seriously damaged or diseased within 5 years of completion of development
- Details of management and maintenance responsibilities
- Details of timescales, length of plan, the method to review and update plans (informed by monitoring) at specific intervals as agreed

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

Justification: A LEMP should be submitted to ensure necessary landscape and environmental management measures are agreed prior to commencement and implemented to ensure the site's landscape and environmental features are adequately managed long term.

We would look to your authority to ensure that financing and delivery of this LEMP is captured within any Section 106 for the development.

Condition: 7

Each Reserved Matters application shall include details, for the written approval of the LPA prior to works commencing on site, of the works that will be implemented to fulfil the LEMP agreed as part of the outline consent. The details shall include who is responsible for funding and undertaking the works, and the mechanism for implementation. The approved details to be implemented as agreed.

Justification: To ensure necessary landscape and environmental management measures are agreed prior to commencement and implemented to ensure the site's landscape and environmental features are adequately managed long term.

Pre-construction species surveys

Given that much of the ecological survey work was undertaken three years ago, we advise that each reserved matters application is informed by updated surveys agreed in advance with the LPA Ecologist. We advise that updated bat surveys of trees include climbing inspection and/or emergence observations. Surveys should be carried out in accordance with good practice guidance for the relevant species. Therefore, we request the following condition be included in any permission granted:

Condition: 8

No development or phase of development, including site clearance with the potential to impact on protected species, including Bats and Dormice, shall commence until a pre-construction survey has been carried out for the development or phase of development. If the survey confirms the presence of such species the results of the survey together with proposed mitigation measures shall be submitted to and approved in writing by the Local Planning Authority. The measures shall be carried out in accordance with the approved details.

Justification: To ensure the potential presence of protected species is confirmed prior to construction and where necessary remedial measures are implemented for their protection.

EPS Licensing

We advise that the applicant seeks a European Protected Species licence from Natural Resources Wales under Regulation 55 of The Conservation of Habitats and Species Regulations 2017 before any works on site commence that may impact upon bats or dormice. Please note that the granting of planning permission does not negate the need to obtain a licence.

Land Contamination

We consider this site to be environmentally sensitive, given that it is bordered the Cosmeston Lakes and Penarth Coast Sites of Special Scientific Interest (SSSI) and the Severn Estuary Special Area of Conservation (SAC)

We have reviewed the information submitted in relation to land contamination within the Environmental Statement. We agree that it has been demonstrated that there is minimal risk to controlled waters from the contamination identified. However, given the history of the site it is considered possible that there may be unidentified areas of contamination at the site that could pose a risk to controlled waters if they are not remediated. Also, there is an increased potential for pollution of controlled waters from inappropriate methods of piling and from inappropriately located infiltration systems such as soakaways, unsealed porous pavement systems or infiltration basins.

Therefore, to protect the water environment from any previously undiscovered contamination and to ensure no new pathways are created by piling and /or soakaways which could mobilise contamination, we request the following conditions are included on any planning permission granted.

Condition 9: 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 10: Surface Water Drainage

No infiltration of surface water drainage into the ground is permitted other than with the express written consent of the local planning authority, which may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to controlled waters. The development shall be carried out in accordance with the approval details.

Justification: To prevent both new and existing development from contributing to or being put at unacceptable risk from or being adversely affected by unacceptable levels of water pollution.

Condition 11: Piling

No development or phase of 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 and foundation designs shall be implemented in accordance with the approved details.

Justification: Piling and 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.

Statutorily Protected Sites and Water Quality

The proposed development site lies adjacent to the Penarth Coast Site of Special Scientific Interest (SSSI), the Severn Estuary SAC/SPA and approximately 120m from the Cosmeston Lakes SSSI.

Cosmeston Lakes is situated 2km south of Penarth. It includes two lakes, created from flooded limestone quarries, which are connected by a narrow channel. These are deep (up to 10m), eutrophic water bodies, which support a range of submerged plants. One of the lakes is of special interest as the only known site in Wales for the presence of starry stonewort *Nitellopsis obtusa*. This species usually grows in lakes of between 1m and 6m in depth.

The Penarth Coast (SSSI) is principally designated for geological features. Also included in the designation are species rich calcareous grassland and cliff-top scrub which support several plant species of limited occurrence and distribution in the area. The nature of the site means that it has the potential for erosion and destabilisation. In our response to the EIA scoping opinion request (CAS-78688-C6L4 dated 1 March 2019) we advised that a robust buffer was required to protect the features of the Penarth Coast SSSI from the proposed development. In addition to addressing proximity risks from curtilages and use of the development site, the size of a buffer should take account of the potential for cliff erosion, as it raises co-dependant long-term management issues for the SSSI and the Wales Coast Path. Erosion will at some point lead to a need to re-align the path inland. A buffer should ensure there is sufficient land to allow any re-alignment without significant effects on the SSSI special interest and still maintain sufficient width to manage proximity risks from use of the development to the SSSI (e.g. fly tipping from curtilages)

The proposed development is located in a sensitive location and has the potential to affect the water environment and the integrity of the adjacent designated sites. Therefore, we require conditions for an appropriate buffer zone to protect the Penarth Coast SSSI and a Construction Environmental Management Plan to ensure appropriate pollution prevention measures are employed to protect water quality during and after the construction phase, as follows:

Condition 12: Buffer Zone

No development or phase of development shall be carried out until the details of a buffer zone along the eastern boundary of the site have been agreed with the LPA. The buffer Zone will be of a scale and nature that will ensure that the special interest of the adjacent SSSI can be maintained in perpetuity. The details to be agreed shall include the maintenance and managed necessary to achieve its purpose and how this will be secured in perpetuity. The buffer zone will be implemented in accordance with the details agreed with the LPA.

Justification: To safeguard the special interest of the Penarth Coast SSSI

Condition 13: Construction Environmental Management Plan

No development or phase of development, including site clearance, shall commence until a Construction Environmental Management Plan (CEMP) has been submitted to and approved in writing by the Local Planning Authority. The CEMP should include but not be limited to:

- Construction methods: details of materials, how waste generated will be managed;
- Pollution Prevention: demonstrate how relevant Guidelines for Pollution Prevention and best practice will be implemented, including details of emergency spill procedures and incident response plan.
- General Site Management: details of the construction programme including timetable, details of site clearance; details of site construction drainage, containments areas, appropriately sized buffer zones between storage areas (of spoil, oils, fuels, concrete mixing and washing areas) and any watercourse or surface drain.
- Biodiversity Management: details of tree and hedgerow protection; species and habitats protection, avoidance and mitigation measures.
- CEMP Masterplan: details of the extent and phasing of development; location of landscape and environmental resources; design proposals and objectives for integration and mitigation measures.
- Details of the persons and bodies responsible for activities associated with the CEMP and emergency contact details
- Landscape/ecological clerk of works to ensure construction compliance with approved plans and environmental regulations.

The CEMP shall be implemented as approved during the site preparation and construction phases of the development.

Justification: A CEMP should be submitted to ensure necessary management measures are agreed prior to commencement of development and implemented for the protection of the environment during construction.

Habitats Regulation Assessment (HRA)

We note the comments under section 8.5.14 of Appendix 2 of the Environmental Statement that as part of the LDP process an HRA was undertaken and *“Although the EIA site is located adjacent to the Severn Estuary Ramsar/SAC/SPA, an AA concluded that development will not result in any direct impacts given the EIA site is raised on a headland above the Severn Estuary.”*

We also note point 8.5.15 states that *“the EIA site still requires consideration at the project level particularly given that an HRA and AA of allocated development at Upper Cosmeston Farm was based on an allocation of only 235 dwellings.”*

Therefore, prior to determination of the application, your authority, as competent authority, will need to consider an assessment of the proposal on the Severn Estuary SPA and SAC, as required under Regulation 63 of the Conservation of Habitats and Species Regulations 2017.

Wales Coast Path and Shoreline Management Plan 2 – Advisory Note

The Wales Coast Path (WCP) is routed along the Vale of Glamorgan Public footpath 2, Lavernock (FP2) that runs adjacent to the eastern side of the proposed development site. The WCP, opened in 2012, is a Welsh Government (WG) initiative, co-ordinated by Natural Resources Wales (NRW) and managed by local authorities. The path is a key asset for both tourists and local communities.

The Path is managed in line with established Quality Standards and Route Criteria. These require the route to be continuous, legally and physically available at all times and as close to the sea as practicable and desirable. It also requires the route to avoid roads used by motor traffic, including adjacent pavements and verges, unless there is no practical alternative.

We concur with the advice from the Vale of Glamorgan Public Rights of Way (PROW) Officer that; *‘In order to ensure the continued existence of the path it will need to be rolled back into the development site. A margin of 20 metres from the current path alignment is appropriate.’ ‘It is appropriate that .. provision be included within the development for accommodation of the path in a green margin along the eastern face of the site.’*

The Shoreline Management Plan 2 ([SMP2](#)) [links to other plans and strategies](#), currently has 2 policy units relating to the Penarth coastline and; ‘predicts some erosion to cliffs at

Lavernock and recommends no active intervention (NAI) at this location.’ We refer you to the Severn Estuary Group’s planning leaflet on SMP2 [Vale planning leaflet..](#)

Within the documents submitted in support of this application, there were no apparent references to the Vale SMP policy units. We advise this is a matter for your Authority’s consideration with this development proposal.

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

The watercourse known as the Sully Brook is scheduled as a statutory main river, pursuant to the Water Resources Act 1991. The applicant/developer will need to apply for a Flood Risk Activity Permit if they wish to undertake any work in, over, under or adjacent to this main river. Please use the following link for further information <https://naturalresources.wales/permits-and-permissions/flood-risk-activities/?lang=en>

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

Yn gywir / Yours faithfully

Claire McCorkindale

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