

The Vale of Glamorgan Council
Docks Office
Barry Docks
Barry
CF63 4RT

Dyddiad/Date: 03 May 2024

Annwyl Syr/Madam/Dear Sir/Madam,

BWRIAD/PROPOSAL: RETENTION OF THE IMPORTATION AND DEPOSITION OF SOIL AND INERT MATERIAL AND ASSOCIATED GROUND ENGINEERING OPERATIONS TO SUPPORT AND SAFEGUARD THE STRUCTURAL STABILITY OF HILLSIDE COTTAGE, LECKWITH, CARDIFF, DAMAGED BY FLOODING ORIGINATING FROM THE ADJACENT PUBLIC HIGHWAY, LAND AND MUD SLIDES.

LLEOLIAD/LOCATION: HILLSIDE COTTAGE, LECKWITH ROAD, LECKWITH.

Thank you for consulting Cyfoeth Naturiol Cymru (CNC)/Natural Resources Wales (NRW) about the above, which we received on 05 April 2024.

We have concerns with the application as submitted because inadequate information has been provided in support of the proposal. To overcome these concerns, you should seek further information from the applicant regarding ancient woodlands, protected sites, waste and pollution prevention. If this information is not provided, we would object to this planning application. Further details are provided below.

We also advise based on the information submitted to date, a condition for a Construction Environment Management Plan should be attached to any planning permission granted. Without the inclusion of this condition we would object to this planning application.

Ancient Woodland

There is Ancient Semi-Natural Woodland within the application site. Ancient woodland is valuable because of the long ecological history which results in diverse species, habitats, and characteristic woodland soils. A primary core woodland habitat network extends from Leckwith Woods in the North to Cwm Cydfin Site of Special Scientific Interest (SSSI) woodland in the South. This is a core network due to the presence of broadleaved woodland throughout the network. This is a primary core network due to the presence of the SSSI woodland within the network.

We are aware from historic images that woodland habitat was present on site, however, it appears the site has already been felled, and material has already been deposited and spread. The loss of the swathe of woodland within the application site fragments the primary

core woodland habitat network. This is detrimental not only to the area directly impacted, but also to the woodlands to the North and South. The fragmentation and the damage caused by the deposition and spreading of material has also negatively impacted the woodlands' ability to adapt to changing conditions, such as climate change; negatively impacted the woodlands ability to recover; reduced the resilience of the adjoining woodland by decreasing the level of connection between woodland ecosystems, reducing the scale of the ecosystem and had a detrimental effect on the condition of the remaining woodlands. The proposed development has not appropriately safeguarded the important ancient woodland soils which contain important seed banks, ancient woodland remnant features and carbon stores. Furthermore, the deposition of material at this site has been detrimental to the viability of restoration of the site.

Paragraph 6.4.40 of PPW states Where trees, woodland and hedgerows are present, their retention, protection and integration should be identified within planning applications. Where surveys identify trees, hedgerows, groups of trees and areas of woodland capable of making a significant contribution to the area, these trees should be retained and protected. The provision of services and utilities infrastructure to the application site should also avoid the loss of trees, woodlands or hedges and must be considered as part of the development proposal; where such trees are lost, they will be subject to the replacement planting ratios set out below.

Paragraph 6.4.42 of PPW states Permanent removal of trees, woodland and hedgerows will only be permitted where it would achieve significant and clearly defined public benefits. Where individual or groups of trees and hedgerows are removed as part of a proposed scheme, planning authorities must first follow the step-wise approach as set out in paragraph 6.4.15. Where loss is unavoidable developers will be required to provide compensatory planting (which is proportionate to the proposed loss as identified through an assessment of green infrastructure value including biodiversity, landscape value and carbon capture). Replacement planting shall be at a ratio equivalent to the quality, environmental and ecological importance of the tree(s) lost and this must be preferably onsite, or immediately adjacent to the site, and at a minimum ratio of at least 3 trees of a similar type and compensatory size planted for every 1 lost. Where a woodland or a shelterbelt area is lost as part of a proposed scheme, the compensation planting must be at a scale, design and species mix reflective of that area lost. In such circumstances, the planting rate must be at a minimum of 1600 trees per hectare for broadleaves, and 2500 trees per hectare for conifers. The planting position for each replacement tree shall be fit to support its establishment and health, and ensure its unconstrained long-term growth to optimise the environmental and ecological benefits it affords.

The valuable woodland within the application site has been felled and damaged without following the stepwise approach. We note the submitted Tree Planting Proposal (unauthored and undated). We note that the proposed replacement planting would not achieve a ratio equivalent to the quality, environmental and ecological importance of the trees lost as the woodland proposed is substantially smaller than that which has been lost. In addition, the woodland would be classed as secondary woodland and therefore not achieve the value of the former Ancient Semi-Natural Woodland it is being proposed to replace and would not connect with the surrounding woodland as it once did. Furthermore, the tree planting scheme proposed does not include appropriate detail regarding the proposed ground preparation methods. Also, without knowing the nature of the materials deposited on site, we are unable to comment on the suitability or viability of the establishment proposal.

Further information: Therefore, we advise you seek further information from the applicant via a revised replacement planting scheme which covers, but limited to, the following:

- Details of, such as a full survey of the existing woodland (noted as Factory Wood) species mix.
- Details on ratios of habitat lost to replacement habitat, including a carbon impact assessment.
- Details of the nature of the materials deposited.
- Details of ground preparation methods, and their suitability for replanting.
- Existing and proposed cross section details.
- Details of the proposed restoration mix and its location.
- Details of long-term monitoring and care to ensure establishment.

Advice on Biodiversity and Ecology

Paragraph 6.4.4 of Planning Policy Wales (2024) (PPW) states potential applicants should not conduct any pre-emptive site clearance works before submitting a planning application as this can make it more difficult for a development proposal to secure a net benefit for biodiversity. Where a site has been cleared prior to development its biodiversity value should be deemed to have been as it was before any site investigations or clearance took place. A net benefit for biodiversity must be achieved from that point. Habitat status can be established through evidence remaining on site and local desk-based assessments (planning authorities must ensure that they have access to these data sources). In such cases, habitat status will be presumed to be good in the absence of any evidence to the contrary.

There are no ecological surveys submitted to inform the proposed development. As such, there is no record of the quality or extent of the ecological habitats that have been lost. A wider woodland habitat survey would have provided context and information about the surrounding habitats and help inform mitigation proposals. We recommend you seek the advice of your in-house ecologist in relation to the need for habitat status to be established by the Applicant through evidence remaining on site and local desk-based assessments, prior to planning permission being granted.

In accordance with the policy position outlined above, we advise the mitigation should be based on a worst-case scenario in terms of impacts and should be designed accordingly. The current mitigation proposals do not appear to be based on sound evidence about the quality and nature of the habitat that has been lost. There is a lack of information relating to the soils on site and their suitability for planting. There is very little information regarding long term care and monitoring. As such, the proposed mitigation appears insufficient and poorly designed given the scale of impacts.

Furthermore, the Tree Planting Proposals (unauthored and undated) appear to include planting of species which likely did not and do not occur in the surrounding woodland (for example, black poplar). In addition, the proposal for a wildflower meadow is lacking in detail and are contrary to the usual accepted approach for managing and enhancing species rich grassland or wildflower meadows, for example, suggesting cutting the grassland once a year and not removing the arisings (which should be removed to reduce fertility and encourage increased diversity). We recommend you seek the advice of your in-house ecologist in relation to these matters and any further information which should be sought from the Applicant prior to planning permission being granted.

European Protected Species

We consider the proposed development has the potential to impact European protected species (EPS). We recommend you seek the advice of your in-house ecologist to determine if there is a reasonable likelihood of EPS being present within the application site and whether surveys may be required. Any survey should be carried out in accordance with best practice guidelines. Please consult us again if any survey undertaken finds EPS are/would have been present at the site, and you require further advice from us.

Further Advice

We advise your Authority we are currently undertaking an ongoing prosecution under Section 17 of the Forestry Act (1967) and retain the right to issue a Section 17(A) restocking notice to re-establish woodland at this site.

We advise your Authority to consider the proposal in relation to the Town and Country Planning (Environmental Impact Assessment) Regulations 2017.

Protected Sites

As outlined in the Ancient Woodland section above, we have concerns that the proposed development is likely to damage Cwm Cydfin SSSI woodland. In the absence of adequate information outlined in the Ancient Woodland section above, we cannot rule out adverse impacts on the Cwm Cydfin SSSI woodland.

Paragraph 6.4.26 of PPW states proposals must be carefully assessed to ensure effects on those nature conservation interests which the designation is intended to protect are clearly understood; development should be refused where there are adverse impacts on the features for which a site has been designated.

Planning permission should only be granted if information is provided which demonstrates the proposed development will not unacceptably damage the features by reason of which the SSSI is of special interest.

Should you be minded to grant permission for the above planning application in the absence of this information, we ask you notify us under the provisions contained in Section 28I of the Wildlife and Countryside Act 1981 (as amended).

Waste

We are aware there was a landslide at this location site in December 2022 which involved the imported and deposited material. There is no information in the submission confirming the material meets the technical requirements for the specified purpose of its use, nor is there evidence provided in the submission showing the volume of material is the minimum required to meet the objectives of its use, i.e. stabilisation of the surrounding ground following a landslide. There are no details of engineering considerations to show how the material will provide the stated stabilisation of the surrounding ground. Therefore, we consider the material has been deposited without due consideration to structural stability. Furthermore, there is no evidence to show the classification of the imported material, i.e. what the material is, where it has come from, testing to show it is suitable for use.

Further information: Therefore, we advise you seek further information from the Applicant with regard to the above, and the following:

- Materials used and its classification, including details of its origin and suitability for use.
- Volume of material used.

- Details of how the ground has been stabilised including engineering works undertaken.

Further Advice

We advise your Authority the importation and deposition of material at this site is currently the subject of an ongoing investigation by us in relation to the illegal deposit of controlled waste on land contrary to Section 33 of the Environmental Protection Act 1990 and Regulation 38 of Environmental Permitting (England and Wales) Regulation 2016.

Advice to the Developer

We consider the proposed activities may require an Environmental Permit or exemption under The Environmental Permitting (England and Wales) Regulations 2016. An Environmental Permit or exemption must be in place before any waste activity takes place on site. Undertaking the proposed activities without the benefit of an Environmental Permit or exemption is an offence against Environmental Legislation and may result in enforcement action being taken against the operator. We do not retrospectively consider applications for Environmental Permits or exemptions.

Further advice and guidance regarding Environmental Permits and exemptions can be found on our website: [Natural Resources Wales / Check if you need to tell us about your waste activity](#) or by calling us on 0300 065 3000.

Please note, obtaining planning permission does not necessarily ensure you will be issued an Environmental Permit or exemption.

Waste produced during the construction phase of your development must be dealt with appropriately and be in line with all relevant waste legislation including Duty of Care Regulations and Hazardous Waste Regulations. As part of your waste duty of care you must classify the waste produced:

- before it is collected, disposed of or recovered;
- to identify the controls that apply to the movement of the waste;
- to complete waste documents and records;
- to identify suitably authorised waste management options;
- to prevent harm to people and the environment.

Any waste removed from site will be subject to waste management controls. Further advice and guidance on how to classify waste and register as a waste carrier or hazardous waste producer is on our website: [Natural Resources Wales / Waste permitting](#). Further guidance can be also found on the GOV website: [Dispose of business or commercial waste: Your responsibilities - GOV.UK \(www.gov.uk\)](#).

Pollution Prevention

The proposed development has resulted in a large, unconsolidated mass of loose material perched above the River Ely. There is a watercourse within the application site, which is a tributary of the River Ely, meaning the application site is hydrologically connected to River Ely. This presents a significant pollution risk. We are aware there was a landslip at this location in December 2022 which involved the imported and deposited material. This caused pollution of controlled waters via the release of suspended solids into the River Ely.

Whilst the Phase 2 Contamination Assessment by Dice Environmental, dated 17/11/2023, considers there were no levels of contaminants of concern with respect to groundwater or controlled waters, it advises further assessment may be required including leachate testing.

Further information: Given the lack of information regarding the nature of the materials deposited on site, we recommend you seek leachate testing results from the Applicant to help ensure controlled waters are not adversely affected by pollution.

Whilst we note this application is retrospective, we consider a Construction Environment Management Plan (CEMP) is required to minimise the risk of pollution, particularly for any additional material to be brought onto site, any reprofiling works, and any remediation works.

We expect a buffer zone of a minimum of 10m to be provided as part of the CEMP. Therefore, we advise the following condition should be attached to any planning permission granted:

Condition: No development, including site clearance, shall commence until a site wide Construction Environmental Management Plan (CEMP) has been submitted to and approved in writing by the Local Planning Authority. The CEMP should include:

- Construction methods: details of materials, how waste generated will be managed;
- General Site Management: details of the construction programme including timetable, details of site clearance; details of site construction drainage, containments areas, buffer zones of a minimum of 10m between storage areas (of material, spoil, oils, fuels, concrete mixing and washing areas) and any watercourse or surface drain;
- Biodiversity Management: details of tree and hedgerow protection; invasive species management; species and habitats protection, avoidance and mitigation measures;
- Soil Management: details of topsoil strip, storage and amelioration for re-use;
- 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;
- Control of Nuisances: details of dust control measures;
- Resource Management: details of fuel and chemical storage and containment; details of waste generation and its management; details of water consumption, wastewater and energy use;
- Traffic Management: details of plant on site, wheel wash facilities;
- 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;
- 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.

Flood Risk

Our Flood Risk Map confirms the application site abuts Zone C1 of the Development Advice Map (DAM) contained in Technical Advice Note (TAN) 15: Development and Flood Risk

(2004). The Flood Map for Planning (FMfP) identifies the application site to be at risk of flooding and is partially within Flood Zone 2 and 3 Sea. As confirmed in the [letter](#) from Welsh Government dated 15 December 2021, the FMfP represents better and more up-to-date information on areas at flood risk than the DAM.

We consider any displacement of floodwater caused as a result of the proposal will be negligible, and there are no third parties in the nearby vicinity that it will impact. Given this, and the limited extent of flood risk shown to be affecting the application site (and in the absence of a flood consequences assessment), we consider the proposal could be acceptable in flood risk terms, subject to the developer being made aware of the potential flood risks to these areas.

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 to the Developer

The Planning Statement incorrectly names Natural Resources Wales as *National Resources Wales*. We advise the document is updated accordingly.

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

Yn gywir / Yours faithfully

Lindy Marshall

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Cyfoeth Naturiol Cymru/Natural Resources Wales

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Croesewir gohebiaeth yn Gymraeg a byddwn yn ymateb yn Gymraeg, heb i hynny arwain at oedi./Correspondence in Welsh is welcomed, and we will respond in Welsh without it leading to a delay.