# CONSULTATION RESPONSE:

**COUNTRYSIDE AND ENVIRONMENT (ECOLOGY)**

|  |  |  |
| --- | --- | --- |
| To / I: Operational Manager Development & Building Control  FAO Ceiri Rowlands  Date / 17th July 2023 Dyddiad:  Your Ref / 2023/00622/FUL Eich Cyf: |  | From / Ecology, Countryside Oddi Wrth: Services  Planning Section Mr Colin Cheesman  Tel / Ffôn: (01446) 704855  07514 623147  My Ref / Fy Cyf: |
| Location Land adjacent Littlemoor Farm, Squire Street, Llysworney | | |
| Proposal Erection of a single dwelling house, single storey detached garage, landscaping, and associated works | | |

|  |  |
| --- | --- |
| **ECOLOGY RESPONSE** | |
| No comment | Notes for applicant |
| Object (holding objection) | Request for further information |
| Object and recommend refusal | Recommend planning conditions |
|  | Approve |

### Summary

Current status: 2021/01242/FUL - Refused

Previous status: New planning application submitted

### Comments

This new application for this site differs from the previous application in the siting of the garage but not the main house.

## Loss of trees

Given the comments that were made during the previous application, which was refused, it is disappointing that with over 580m2 of amenity grassland and garden that this proposal is still removing a number of Class B and C trees.

The location of the new dwelling is sited where it would be more appropriate to avoid landscape harm. The submitted arb statement assesses the impact of tree loss and sets out the replanting mitigation. Detailed justification and evaluation of the proposed location of the new dwelling are set out in the submitted Planning and Heritage Statements.

It is important to bear in mind that arboricultural surveys are concerned wholly with tree heath and form and not with the value of trees for biodiversity, the landscape and the climate services they provide.

Yes, trees generally are important for lots of reasons, but when it comes to a planning application, we need to look at the detail of the site specifics. The site is not woodland or a nature reserve. The site is a residential garden where removing and planting trees is an expected part of gardening. There is a reason felling licenses do not apply to residential garden.

BS5837:2012 is a well-established approach to tree surveys in relation to development. The submitted arb statement assesses tree quality, age, and other factors in determining impacts of tree loss and ability to compensate/mitigate the removal of trees

We agree that the trees on site have value to biodiversity, however, we believe that the enhancement measures provide adequate mitigation for the loss of value to biodiversity, landscape, and climate services. Given that the trees on site will be replaced at a ratio of 2:1 and given the fact that two extra heavy trees will be planted in order to mitigate against the loss of category B trees on site, we believe that these enhancements will provide appropriate mitigation.

Alongside tree planting, the species-poor hedgerow which borders the western and northern boundaries of the garden will be enhanced. At least five native tree species or tree species with benefits to biodiversity will be planted with a minimum of two native climbers. Native-species-rich hedgerow is a priority habitat under the Environment (Wales) Act, and therefore has high value to biodiversity. We believe that with the above enhancements, the site will have a greater value to biodiversity than before and will provide landscape connectivity and climate benefits beyond what it currently provides.

It should also be mentioned that within the enhancement measures within our report, we detail a variety of types of bird box which should be installed during the development. These boxes, along with newly planted trees and enhanced hedgerow, should provide sufficient nesting habitat for a variety of garden bird species.

As mentioned above, the reasons for the siting are detailed in the Heritage Statement. We did try to contact Colin Cheesman on 01/08/2023 for feedback/ discussion on our recommended mitigation but unfortunately received no response. If further mitigation is suggested, we would appreciate some guidance on what will be required.

Planning Policy Wales states in paragraphs 6.4.24 and 6.4.25 of **Planning Policy Wales Edition 11 (February 2021)**

*“**Trees, woodlands, copses and hedgerows are of great importance for biodiversity. They are important connecting habitats for resilient ecological networks and make a valuable wider contribution to landscape character, sense of place, air quality, recreation and local climate moderation. They also play a vital role in tackling the climate emergency by locking up carbon, and can provide shade and shelter, a sustainable energy source and building materials.*

*Planning authorities should protect trees, hedgerows, groups of trees and areas of woodland where they have ecological value, contribute to the character or amenity of a particular locality, or perform a beneficial and identified green infrastructure function.”*

Within the Vale of Glamorgan Local Development Plan, Objective 2 states

### To ensure that development within the Vale of Glamorgan makes a positive contribution towards reducing the impact of and mitigating the adverse effects of climate change.

The removal of trees is often required as part of development and mitigation is rightly provided. The above policies cannot be interpreted as tree removal is always unacceptable. If that was the case no one would ever be able to build unless the site had no vegetation to begin with.

The site is a small residential garden, and the trees are garden trees. The arb statement assesses the impact of the loss of trees in terms of quality, age, replaceability and on the conservation area.

As stated with Planning Policy Wales Edition 11: *“Trees, woodlands, copses, and hedgerows are of great importance for biodiversity. They are important connecting habitats for resilient ecological networks…”.* The value of restoring existing hedgerows on site should not be underestimated when considering appropriate mitigation for the loss of trees. In its current state, the hedgerow provides relatively minimal benefits to biodiversity. By increasing the number of native species, the newly restored hedgerow will act as a food source for a variety of animal species and will enhance landscape wide connectivity for species such as bats. Furthermore, the enhanced hedgerow is also likely to provide climate benefits beyond what the current hedgerow provides.

Therefore, there needs to be some explanation as to why the proposed development has been sited in the location chosen and not away from the mature trees on site, especially when there is the space available.

It is understood that the revised scheme has considered the views across the garden area of Littlemoor Farm, setting the proposed house back into the plot on the eastern boundary, maintaining the limited sightlines that run across the site are maintained, and the site remains relatively open.

At a time when both the Welsh Government and the Vale of Glamorgan Council have declared a climate and biodiversity emergency then there needs to be a strong reason for the loss of so many mature trees.

As set out in the submitted report and information submitted as part of the previously refused application, the trees in question are NOT mature. A photo in the Conservation Appraisal (referred to in the tree report at Fig 2 in appendix 8), shows that the trees were either very young or non-existent at the time the phot was taken (believed 2008/9).

In addition, the Supplementary Planning Guidance for Trees, Woodlands, Hedgerows and Development (July 2018) is clear in Section 9.1.2 in setting out that for every tree lost to development, that two trees will be planted as a replacement. Planning Policy Wales is proposing to increase this to three trees in the near future.

The submitted arb report includes a landscape plan that sets out new tree planting which is in accordance with SPG replanting requirements. 7 trees require removal to enable development with 1 more due to condition. 7 to be removed and 14 new trees to be planted.

Planting trees should be seen as the least desirable option when there are opportunities to retain mature trees. It will take many decades before planted trees start to provide the ecosystem services of a lost mature tree.

As set out previously, the trees in question are not mature. Based on relatively small stem size and a photograph of the site in the conservation area appraisal form 2009 shows that some of the trees don’t yet exist at that time or are every young i.e., the trees to be removed have not lived many decades but have only existed in the last approx. 15 years. Based on age the trees to be removed they could be replaced in the short to medium term.

Although it is true that trees take some years to provide benefits to biodiversity and the wider ecosystem, the trees to be removed are not classed as mature. Given the fact that two of the trees to be planted are to be extra heavy standard, it can be assumed that the trees planted will provide similar ecosystem benefits to the trees to be removed in the short to medium term.

Finally, it should be pointed out that all trees in a Conservation Area are protected by Section 211 of the Town and Country Planning Act 1990 and the council needs to be informed through the proper channel, a section 211 notice of any works to trees in the conservation area. All trees on site are therefore protected to a similat level as a TPO.

A conservation area protects trees from work or removal without prior notification of intent to the council. This 6 week notice is to give the LPA time to assess and determine whether to protect the trees with a preservation order. A conservation area does not mean all trees within it are important to the conservation area or justify preservation.

The submitted arb statement assesses the impact of tree loss on the conservation area. The conservation area appraisal itself identifies where key trees and tree group that are important to the conservation area are located. And none of the areas of important tree identified in the conservation area appraisal are within the application site. The trees are in a residential garden and are not particularly large and have limited public visual amenity value.

Based on stem and tree size, as well as photographic evidence from the conservation area appraisal from 2009, shows that the trees are not mature and are relatively young (i.e., existed only in last approx. 15 years. They are not ancient, veteran, notable, rare or have any other qualities or characteristics that would clearly justify preservation other than seeking to retain existing trees. Based on their young age they could be replaced in the short to medium term.

## Bats

In the last iteration of this planning application, I requested a flight survey for bats to determine use, species using the site and for what purpose. None has been submitted in support of this application. In order to mitigate and provide meaningful biodiversity benefits then we do need to know more about how these protected species use this site.

As per our previous comments on 12/11/2021, our mitigation strategy has been designed in the case of a ‘worse-case scenario’ regarding bats. Looking at the wider landscape, it seems highly likely that the hedgerows on site would be more likely to be used as commuting features for bats. Therefore, by enhancing the hedgerows and planting trees along the western and northern boundary of the site, we will be maintaining a dark corridor. Furthermore, a sensitive lighting strategy will be developed for the most light-averse species likely to be onsite and found in the local records.

Previous correspondence with Ceiri Rowland (Senior Planner) on 21/04/2022 indicated that further survey work was not envisaged as being a reason for refusal. Instead, our mitigation strategy has been designed in the case of a ‘worse-case scenario’. Looking at the wider landscape, it seems highly likely that the hedgerows on site would be more likely to be used as commuting features for bats. Therefore, by enhancing the hedgerows and planting trees along the western and northern boundary of the site, we will be maintaining a dark corridor and strengthening this commuting feature which is well connected to wider features. Furthermore, a sensitive lighting strategy will be designed with consideration for the more light-averse species found in the local records. It is also worth noting that a variety of bat boxes have been included within the enhancements. Boxes will be for a range of species based on nearby records.

With the mitigation measures discussed above, and given the very small size of the site, we consider bat activity surveys to be unnecessary. Given the precautionary approach to lighting and the enhancement of dark corridors on the western and northern boundary of the site, it is highly unlikely that a bat activity survey would contribute any new information relevant to the mitigation plan.

## Conclusion

The loss of trees remains a key issue here especially when there is space elsewhere on this plot to locate the proposed property and garage with almost no loss of trees.

As previously set out it is understood that the location of the proposed dwelling is to avoid/limit landscape harm and maintain the views across and out of the garden site.

The submitted arb statement assesses the impact of tree removal in terms of tree quality and impact on the conservation area as well as mitigation. Local planning policy should not be interpreted that no tree removal is ever allowed. Other than seeking to retain existing trees, it would be helpful for the officer to set out what part of the arb statement and evidence they disagree with.

The applicant was advised to ask the ecological consultants to undertake a flight survey for bats. It would appear that this has not been done and so the use of the site and the species using it are unknown which hinders useful mitigation and enhancement.

An assessment of the ecological impacts resulting from the development has been undertaken in our updated PEA report. The report includes an assessment of the impacts from loss of trees, along with associated impacts on bats, and details appropriate mitigation and enhancement measures.

As previously mentioned, during written correspondence with Ceiri Rowland, it was indicated that further survey work would not be required for the planning application. Furthermore, we do not believe that a bat activity survey would change the current enhancement measures (i.e. maintenance of a dark corridor on the western and northern boundaries of the site and sensitive lighting suitable for the most light averse species in local records).

A refusal is requested as there is no explanation for retaining the current layout which is deleterious to the trees on site.

# RELEVANT POLICIES FOR INFORMATION

**MG21 - SITES OF IMPORTANCE FOR NATURE CONSERVATION, REGIONALLY IMPORTANT GEOLOGICAL AND GEOMORPHOLOGICAL SITES AND PRIORITY HABITATS AND SPECIES.**

Development proposals likely to have an adverse impact on sites of importance for nature conservation or priority habitats and species will only be permitted where it can be demonstrated that:

1. The need for the development clearly outweighs the nature conservation value of the site;
2. Adverse impacts on nature conservation and geological features can be avoided;
3. Appropriate and proportionate mitigation and compensation measures can be provided; and
4. The development conserves and where possible enhances biodiversity

# MD9 – PROMOTING BIODIVERSITY

New development proposals will be required to conserve and where appropriate enhance biodiversity interests unless it can be demonstrated that:

1. The need for the development clearly outweighs the biodiversity value of the site; and
2. The impacts of the development can be satisfactorily mitigated and acceptably managed through appropriate future management regimes.

**ANNEX 1 – SUPPORTING INFORMATION (Legislation, planning policy and case law)**

# CONSERVATION OF HABITATS AND SPECIES REGULATIONS 2017

Known as the Conservation of Habitats and Species Regulations 2017 “Habitats Regulations” transpose the Council Directive 92/43/EEC on the Conservation of Natural Habitats and of Wild Fauna and Flora (the Habitats Directive) instrument transposes the 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 of the Habitats Regulations 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 10]

***10.****— (1) ………a competent authority must take such steps in the exercise of their functions as they consider appropriate to secure the objective in paragraph (3), so far as lies within their powers.*

*(3) The objective is the preservation, maintenance and re-establishment of a sufficient diversity and area of habitat for wild birds in the United Kingdom, including by means of the upkeep, management and creation of such habitat, as appropriate, having regard to the requirements of Article 2 of the new Wild Birds Directive (measures to maintain the population of bird species).*

### Habitats Regulations Licensing

Where works will affect an 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 e.g., 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 – e.g., 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.

# ENVIRONMENT (WALES) ACT 2016

The Environment (Wales) Act became law in March 2016 and replaces the earlier Natural Environment and Rural Communities Act 2006. It puts in place legislation to enable Wales’ resources to be managed in a more proactive, sustainable and joined up manner and to form part of the legislative framework necessary to tackle climate change. The Act supports the Welsh Governments wider remit under the Well-Being of Future Generations (Wales) Act 2015 so that Wales may benefit from a prosperous economy, a healthy and resilient environment and vibrant, cohesive communities.

Section 6 of the Environment Act requires all that public authorities “***must seek to maintain and enhance biodiversity in the exercise of functions in relation to Wales, and in so doing promote the resilience of ecosystems, so far as consistent with the proper exercise of those functions***”. The intention of this duty is to ensure biodiversity becomes an integral part of decision making in public authorities.

Welsh Government, with consultation with NRW must prepare and publish a list of habitats and species which, in their opinion, are of principal importance for maintaining and enhancing biodiversity in Wales (“Section 7 list”). Public bodies must take all reasonable steps to maintain and enhance the living organisms and types of habitat on this list. At the current time, this list directly replaces the list created under the now defunct Section 42 of the Natural Environment of Rural Communities (NERC) Act 2006 (Habitats and Species of Principal Importance for Conservation in Wales).

# 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 10, DECEMBER 2018)

Planning Policy Wales, Section 6.4 places a duty on local authorities to ensure that biodiversity and resilience are fully considered by Local authorities.

Particular reference is made to The Section 6 Duty (Environment Act) to ensure that planning authorities demonstrate that they have sought to fulfil the duties and requirements of Section 6 of the Environment Act by taking all reasonable steps to maintain and enhance biodiversity in the exercise of their functions.

Protected Species under European or UK legislation, or under section 7 of the Environment Act are a material consideration when a 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 and to ensure that the range and population of the species is sustained. (Section 6.4.22)

Paragraph 6.4.23 outlines the process whereby European Protected Species are considered in Planning.

# 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).