

Rivers House,
St Mellons Business Park,
St Mellons,
Cardiff,
CF3 0EY

Merthyr Tydfil County Borough Council,
Unit 5 Triangle Business Park,
Pentrebach,
Merthyr Tydfil,
CF48 4TQ

ebost/email:
southeastplanning@cyfoethnaturiolcymru.gov.uk
Ffôn/Phone: 03000 65 4959

14/09/2020

Annwyl Syr/Madam / Dear Sir/Madam,

BWRIAD / PROPOSAL: RESIDENTIAL DEVELOPMENT CONSISTING OF THE CONVERSION AND EXTENSION TO A LISTED BUILDING TO CREATE 7 APARTMENTS AND A DWELLING, CONSTRUCTION OF 62 DWELLINGS (INCLUDING 3 AFFORDABLE UNITS), THE DEMOLITION OF EXISTING BUILDINGS, LANDSCAPING, REPROFILING OF LAND, ALTERATIONS TO THE EXISTING ACCESS AND OTHER ASSOCIATED WORKS

LLEOLIAD / LOCATION: FORMER ST TYDFIL'S HOSPITAL, UPPER THOMAS STREET, MERTHYR TYDFIL

Thank you for consulting Cyfoeth Naturiol Cymru / Natural Resources Wales about the above, which we received on 27/08/2020.

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. Otherwise, we would object to this planning application.

Conditions 1 – 5: To ensure an acceptable scheme to deal with land contamination is agreed with the planning authority.

Further consideration of potential impacts on European Protected Species is also provided below.

Land potentially affected by contamination

We have reviewed the following document: "Phase I Assessment, St Tydfil's Hospital, Merthyr Tydfil, St Tydfil's Developments LLP, DS-21988-19-321 RevA, August 2020", submitted in support of the proposed development.

Although a desk study and limited site investigation have been completed, we agree that, given the site is located on a Principal Aquifer, a phase II intrusive site investigation will need to be undertaken. We therefore request the following conditions are imposed on any planning permission granted.

The first condition requests desk study and site investigation but based on the information submitted, the request for a desk study could be removed – if your Authority deems this appropriate.

Condition 1

Prior to commencement of [development or phase of development] the following components of a scheme to deal with the risks associated with contamination at the site, shall be submitted to and approved in writing by the Local Planning Authority.

1. A preliminary risk assessment which has identified:
 - a. all previous uses
 - b. potential contaminants associated with those uses
 - c. a conceptual model of the site indicating sources, pathways and receptors
 - d. potentially unacceptable risks arising from contamination at the site
2. A site investigation scheme, based on (1) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.
3. The results of the site investigation and the detailed risk assessment referred to in (2) and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.
4. A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation strategy in (3) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

The remediation strategy and its relevant components shall be carried out in accordance with the approved details.

Justification:

To ensure the risks associated with contamination at the site have been fully considered prior to commencement of development as controlled waters are of high environmental sensitivity; and where necessary remediation measures and long-term monitoring are implemented to prevent unacceptable risks from contamination.

Condition 2

Prior to the occupation of the [development or phase of development] a verification report demonstrating completion of works set out in the approved remediation strategy and the effectiveness of the remediation shall be submitted to and approved in writing by the Local Planning Authority. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met. It shall also include a long-term monitoring and maintenance plan for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action, as identified in the verification plan. The long-term monitoring and maintenance plan shall be carried out in accordance with the approved details.

Justification:

To ensure the methods identified in the verification plan have been implemented and completed and the risk associated with the contamination at the site has been remediated prior to occupation or operation. To minimise the risks to both future users of the land and neighbouring land, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.

Condition 3

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. A site investigation may not uncover all instances of contamination and this condition ensures that contamination encountered during the development phase is dealt with appropriately.

Condition 4

No infiltration of surface water drainage into the ground Site 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 5

No 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/foundation designs shall be implemented in accordance with the approved details.

Justification:

Piling/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.

European Protected Species

We note that the bat report submitted in support of the above application (Bat Survey Report, David Clements Ecology Ltd., July 2020) has identified that bats are present at the application site.

Bats and their breeding sites and resting places are protected under the Conservation of Habitats and Species Regulations 2017 (as amended). Where bats are present and a 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. A licence may only be authorised if:

- i. the development works to be authorised are for the purpose of preserving public health or 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.
- ii. There is no satisfactory alternative and
- iii. The action authorised will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in its natural range.

Paragraph 6.3.7 of Technical Advice Note 5: Nature Conservation and Planning (TAN5) states that your Authority should not grant planning permission without having satisfied itself that the proposed development either would not impact adversely on any bats on the site or that, in its opinion, all three conditions for the eventual grant of a licence are likely to be satisfied.

On the basis of the above report, we do not consider that the development is likely to be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in its natural range.

Therefore, we do not object to the proposal but in line with the 'Dear CPO' letter issued by Welsh Government on 1st March 2018, we request that the following informative is attached to any planning permission granted by your Authority:

Warning: An European protected species (EPS) Licence is required for this development.

This planning permission does not provide consent to undertake works that require an EPS licence.

It is an offence to deliberately capture, kill or disturb EPS or to damage or destroy their breeding sites or resting places. If found guilty of any offences, you could be sent to prison for up to 6 months and/or receive an unlimited fine.

To undertake the works within the law, you can obtain further information on the need for a licence from Natural Resources Wales on 0300 065 3000 or at <https://naturalresources.wales/permits-and-permissions/protected-species-licensing/european-protected-species-licensing/information-on-european-protected-species-licensing/?lang=en>.

Development should not be commenced until the Applicant has been granted a licence by Natural Resources Wales pursuant to Regulation 55 of the Conservation of Habitats and Species Regulations (2017) authorizing the specified activity/development to go ahead.

Please note that any changes to plans between planning consent and the licence application may affect the outcome of a licence application.

We advise recipients of planning consent who are unsure about the need for a licence to submit a licence application to us.

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 Informative/ advice to applicant

The treatment and disposal of contaminated soils and groundwater is regulated by waste legislation and requires an environmental permit.

Excavated materials that are recovered via a treatment operation can be re-used on-site under the CL:AIRE Definition of Waste: Development Industry Code of Practice. This voluntary Code of Practice provides a framework for determining whether or not excavated material arising from site during remediation and/or land development works are waste.

Developers should ensure that all contaminated materials are adequately characterised both chemically and physically, and that the permitting status of any proposed operations are clear. If in doubt, Natural Resources Wales should be contacted for advice at an early stage to avoid any delays.

We recommend that developers should refer to our:

- Position statement on the Definition of Waste: Development Industry Code of Practice and;
- website at www.naturalresourceswales.gov.uk for further guidance.

Contaminated soil that is excavated, recovered or disposed of, is controlled waste. Therefore, its handling, transport, treatment and disposal is subject to waste management legislation, which includes:

- Duty of Care Regulations 1991
- Hazardous Waste (England and Wales) Regulations 2005
- Environmental Permitting (England and Wales) Regulations 2010

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

Yn gywir / Yours faithfully

Kate Glover

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